

Monday, 24 October 2011

(10.15 am)

MRS JUSTICE GLOSTER: Yes, Ms Davies.

MR ALEXANDER GOLDFARB (continued)

Cross-examination by MS DAVIES (continued)

MS DAVIES: Mr Goldfarb, when we broke on Wednesday --

THE WITNESS: Excuse me. My Lady, I wish to correct something that I said on Wednesday.

MRS JUSTICE GLOSTER: Right. Have you been reading the transcript?

THE WITNESS: Yes, and I looked at my witness statement and there is a discrepancy and what I said in the witness statement is right and what I mentioned on Wednesday is wrong. And that relates to the period between 2001 and 2006: I said that I worked full-time for Mr Berezovsky, which is not correct. I of course held a faculty position in New York all this time and so I never had more than 50 per cent income from Mr Berezovsky's side.

MRS JUSTICE GLOSTER: Right, thank you.

MS DAVIES: When we broke, we had just been discussing your visit to Cap d'Antibes in November 2000.

A. That's correct.

Q. And I now want to move on to your next visit to Cap d'Antibes, which was between 7 and 10 December 2000; is that correct?

A. Yes.

Q. Now, you do not suggest that you saw Mr Abramovich at Mr Berezovsky's property at any point during that visit, do you?

A. No. I should explain that I went there primarily for the purpose of seeing my son, who came from London, and it was kind of an emotionally important moment for me because I was banned from entry into United Kingdom a few weeks before that for bringing the Litvinenko family, someone who brought asylum seekers to this country. So they didn't allow me to come to London, where my son was in school.

So that was our rendezvous in Cap d'Antibes. And I arrived on the morning --

Q. Yes, I don't want to interrupt you but we're going to come on to deal with your son's arrival and in fact your movements through --

A. So what I meant is that I spent most of the time with him.

Q. Okay. Now, you travelled to Nice from New York overnight on 6 December, arriving at Nice Airport at 9.50 am on 7 December?

A. Judging by the plane schedule, yes.

Q. And from Nice Airport you travelled immediately to Cap d'Antibes?

A. That is correct.

Q. So you would have arrived at Mr Berezovsky's property at around lunchtime on 7 December?

A. Yes, around noon or so, maybe later.

Q. Can you recall whether or not you immediately went to Mr Berezovsky's house, the chateau?

A. No, of course not. I would probably be taken straight to the Clocher and most likely I would just go sleep because it was an overnight flight and I was jet lagged.

Q. But once you arrived at the Clocher and after you changed and rested, you must have been keen to go and see Mr Berezovsky, mustn't you?

A. Not necessarily. As I said, I was looking forward to seeing my son and that was my first purpose -- main purpose.

Q. Let's take in this stages, Mr Goldfarb. First of all, your son was not due to arrive until the next day, 8 December?

A. Correct. Correct.

Q. And at the moment I'm just focusing on 7 December, okay?

A. Yes.

Q. So let's just stay with 7 December for a moment.

A. Okay.

Q. So you had travelled from New York all the way to Cap d'Antibes to see Mr Berezovsky, who was your host.

Isn't it the most natural thing to do, once you've freshened up from the journey, to actually go and say hello to your host?

- A. Well, as I said, I travelled to Nice primarily to see my son and not Mr Berezovsky. That was my second, obviously, priority on that visit. That's number one.

Number two, I could tell you straightaway that I do not remember on which of these three days that I was there I saw Mr Berezovsky. What -- the way memory works is that there are certain highlights kind of, milestones of the visit, and on that visit the dinner and the meeting with Mr Berezovsky and Badri was obviously such a highlight but I do not recall whether it was on the first evening or the second evening or the third evening.

- Q. Okay. Well, what we're going to try and do, if we can, Mr Goldfarb, is explore what you can and can't remember.

Now, what you tell us in your witness statement is that you had found out about the arrest of Mr Glushkov on your way from the airport to Mr Berezovsky's property?

- A. What I think I said in the witness statement is that as I was driving or I was driven rather to the property, probably closer to the end of the trip, I got a phone call from a journalist in Moscow, most likely it was

Mr Korsunsky, who told me about the rumour that is making rounds in Moscow that Mr Berezovsky has dumped the idea of setting a teletrust for holding the share in ORT. That was essentially the major point. He may have mentioned about Mr Glushkov's arrest, he may have not, but I can tell you that what was really hot issue is that the teletrust was dead. And at the time, for me at least, it was the main point of concern because so much effort was -- has been put into this teletrust that I may have noted that Glushkov was arrested but I didn't kind of link it to teletrust immediately; it might have come some minutes later.

Q. You say in your second witness statement at paragraph 12 -- this is D4/05/25, if you want to look at it:

"I also learned in that phone call..."

And this is the phone call about the teletrust.

"... of the arrest of Nikolay Glushkov."

A. Well, that is true. I could -- it is likely that he could have mentioned that in that context. But the reason for the call, for the phone call and the urgency of the matter was about teletrust, not about Glushkov.

Q. And the individual who called you on your journey also mentioned, didn't he, that Mr Berezovsky's announcements in relation to the teletrust had caused some

controversy?

A. Oh, yes. I'm not -- I am not 100 per cent sure whether by that time Mr Berezovsky has already announced his decision to drop teletrust; it might have come right after that. But the man I spoke to, who called me, is kind of part of the journalistic milieu in Moscow and the rumour was out that the teletrust is finished, yes.

Q. So you believe that the conversation that your journalist friend had was before Mr Berezovsky had made his public announcement?

A. It might have been before, I cannot say.

Q. But what was clear to you from this telephone conversation was that he had decided to abandon the teletrust proposal --

A. What was clear to me is that my friends, the journalists in Moscow who essentially stuck their neck out for Mr Berezovsky by agreeing to go into teletrust in spite of the obvious danger such a decision would have vis-a-vis Mr Putin, felt kind of abandoned and, if I may use the word that has been coined here, kinut: they were kind of misled by Mr Berezovsky because he abandoned this idea.

Q. Now, having had that conversation on the way to Mr Berezovsky's house and knowing, as you did know also, that Mr Glushkov was an individual who Mr Berezovsky was

very concerned about, you must have been interested, mustn't you, to find out what was actually going on?

A. I was very much interested, of course.

Q. So indeed the first opportunity you got to go and see Mr Berezovsky, you would have taken, wouldn't you?

A. Absolutely correct, yes.

Q. And doesn't that make it more likely that you went to see him at some point on the afternoon of 7 December?

A. Well, first of all, if he was there. Again, as I said, I don't remember the particular details of that visit: it could have happened on the 7th, it could have happened on the 8th. The fact is that the moment I saw him, I asked him that question. But I really do not remember when -- on which day it was.

Q. When you were staying at the Clocher, where did you take your meals, Mr Goldfarb?

A. Well, sometimes they serve it in the Clocher, sometimes they would invite you to join the hosts in the chateau. But, as I said, when Tim, my son, arrived that morning, I would have probably gone to the airport to meet him because he was 12.

Q. I'm going to come on to -- I'm still on the 7th, Mr Goldfarb.

A. We could have eaten out because most of the time we spent out of the property with him.

Q. Now, you told us a moment ago that the main purpose of your visit was to go and see your son.

A. Yes.

Q. But in fact in your witness statement you say that the purpose of your visit was to discuss the set-up of Mr Berezovsky's new foundation, the International Foundation for Civil Liberties?

A. That is true and there is some confusion between my first, second and third witness statement. Initially, when I made my first witness statement, I was under the impression that I had two visits in December, one on the 7th, 8th and 9th and the next one after Christmas. I had the initial recollection in my mind that my son came during the second visit, after Christmas. So in my first witness statement I wrote that the purpose -- obviously it was more reconstruction than recollection -- was to see Boris about the foundation.

However, when I went back to New York and checked the travel records and the tickets and the boarding passes and invoices and all that, I realised that my meeting with my son was during the first visit. Then everything kind of fell into place. And the truth is that my primary purpose was to -- on that visit, was to see my son and my secondary purpose is, of course, to discuss with Boris the foundation that we've been

launching at the time.

Q. The foundation was a non-profit-making foundation based in the US --

A. That's correct.

Q. -- which was founded and funded by Mr Berezovsky?

A. Correct.

Q. You were to become its executive vice president?

A. Yes.

Q. And does that mean you were essentially in charge of its day-to-day management?

A. That is correct.

Q. It was formally to be launched in Washington on 18 December 2000?

A. Right, yes.

Q. A week or so after your visit to Cap d'Antibes?

A. Yes, and a week or so after we have incorporated it.

So...

Q. And it was just about to be incorporated?

A. Yes.

Q. And your professional relationship with Mr Soros had only come to an end at the beginning of November 2000?

A. Yes, in connection with the Litvinenko.

Q. So your involvement in this foundation was a new matter so far as you were concerned?

A. Yes, and we started working right away in November, even

before the foundation was formally incorporated.

Q. And there must at this time -- and I'm focusing here again on 7 and 8 December --

A. Yes.

Q. -- have been much to discuss with Mr Berezovsky about the foundation and the details of its launch, mustn't there?

A. That is correct, but it was not the first opportunity, obviously.

Q. But that's presumably why you felt it was appropriate to charge your travel expenses for your trip to France to the foundation?

A. That's correct.

Q. You must therefore, Mr Goldfarb, mustn't you, have seen Mr Berezovsky a fair bit during your visit?

A. Can you repeat the question?

Q. You must have seen Mr Berezovsky a fair bit during your visit?

A. No. As I said, I recall one dinner which kind of was impressed in my memory for three reasons. If you want, I can go into this. One of them was the teletrust conversation. But I don't think that I saw much of him because usually my relationship with him about this foundation was like I was chasing him and he was always busy. So it does not necessarily mean that he was so

eager to talk to me. And now, as we know, he had many other things on his mind.

Q. Now, you told us a moment ago that as soon as you saw Mr Berezovsky --

A. Yes.

Q. -- you raised with him the teletrust issue.

A. Yes, and that was before dinner.

Q. That was before dinner?

A. Yes.

Q. That was on a separate occasion?

A. No, it was not a separate occasion. Before dinner, when kind of I came to the building, to the chateau for dinner, I saw him and I told him what's going on as such.

Q. Can you actually recall that, Mr Goldfarb?

A. I recall asking him about that, yes.

Q. Can you recall that it was just before your dinner?

A. I would think so, yes.

Q. Well, aren't you reconstructing?

A. Well, no, I think it was before my -- before the dinner, yes.

Q. Now, you mentioned your son Timothy was due to arrive on 8 December from London.

A. Yes, in the morning.

Q. And you've explained again this morning that your

earlier recollection that he was at Cap d'Antibes on your second trip in December is incorrect?

A. Yes.

Q. And your son was 12, I think you just told us?

A. Yes, about that.

Q. So he was still at school in England when he made this visit?

A. Yes.

Q. And presumably his school week was a Monday to Friday?

A. Yes.

Q. Now, you tell us in fact in your statement that 8 December was a Friday --

A. Yes.

Q. -- and 10 December was a Sunday.

A. Presumably. I don't remember now.

Q. So it looks like he came to see you for the weekend?

A. Yes.

Q. Rather than taking time off school, isn't it likely that he travelled out to see you after school on the evening of 8 December?

A. Not necessarily. He could have easily asked for a day off.

Q. You've mentioned several times today that he arrived in the morning of 8 December.

A. Yes.

Q. Do you suggest you recall that?

A. No, I think that is my reconstruction from his plane ticket, unless --

Q. Well, his plane ticket --

A. It should be in the case.

Q. His plane ticket, are you referring to the document you've exhibited?

A. Yes.

Q. That tells us that the flight number was BA352 --

A. Yes.

Q. -- and for the transcript that's at D4, tab 10, 110 D4/10/110 -- but it doesn't actually reveal the time of the flight, Mr Goldfarb.

A. Well, I think it could be easily checked.

Q. Well, we have checked it --

A. Okay.

Q. -- and we've managed to obtain some records. It's not perhaps as easy as one might think. But that indicates that the flight was not scheduled to depart London until 18.50 pm --

A. Uh-huh.

Q. -- and to arrive in Nice at 21.45 pm.

A. I'll take your word for it.

MS DAVIES: My Lady, we do have the records and we can circulate them, but --

MRS JUSTICE GLOSTER: Well, if there's any dispute, no doubt the matter can be raised with Mr Rabinowitz.

MS DAVIES: So it looks, doesn't it, as if your son did not in fact arrive in Nice until late on 8 December 2000?

A. Possible.

Q. Presumably you were hoping to spend some time with your son once he arrived at Cap d'Antibes, as well as seeing Mr Berezovsky?

A. Yes.

Q. And as you just explained you weren't able to travel to England to see him, so you no doubt wanted to get as much of your work out of the way as you could before your son arrived?

A. Possible, yes.

Q. And given that he was not arriving until late on 8 December, doesn't that again make it likely that you spent time with Mr Berezovsky on 7 and 8 December 2000?

A. Well, as I said, I do not recall now, after all these years, on what day I had this dinner and on what day we spoke with him.

MRS JUSTICE GLOSTER: Did you just have dinner with Mr Berezovsky on one occasion?

A. Yes, there was one dinner, there was a kind of large dinner. There were definitely Badri and him and me and maybe somebody else which I do not recall. Maybe Elena

was there. Maybe my son was there. I really do not recall that. But the three of us I remember because I remember the issues that were raised.

MS DAVIES: You told us a moment ago you went to airport to collect your son.

A. I would certainly do that unless there were some circumstances against it. I didn't say I went there; I said that it would be normal for me to go and meet him.

Q. This dinner that you're describing, do you recall going to the airport after the dinner to collect your son?

A. No, I don't recall anything like that.

Q. In fact, Mr Goldfarb, you did spend a good deal of your time prior to the evening of 8 December with Mr Berezovsky, didn't you?

A. No, I don't think so, not necessarily. I don't remember but not necessarily, given that he is a busy guy.

Q. You travelled all this way to see Mr Berezovsky, to discuss his new foundation with him, and your son was not yet there. So you must have, mustn't you, Mr Goldfarb?

A. Well, the first day was probably spent mostly relaxing because -- after the jet lag. It is possible that I bumped into him, if he was around on the 8th, but I don't really remember.

- Q. You've been sitting in court through much of this trial --
- A. Yes.
- Q. -- and appreciate, don't you, that the events on 7 and 8 December are important to Mr Berezovsky?
- A. Yes.
- Q. The only reason, Mr Goldfarb, I would suggest to you, that you're seeking to down play the extent to which you were at the chateau on those dates is that you know it does not suit Mr Berezovsky's case that he had a visitor at the chateau at the time who did not see Mr Abramovich.
- A. Not at all.
- Q. Well, once your son arrived in Nice, you presumably took him to see Mr Berezovsky at the chateau?
- A. Not necessarily, no.
- Q. You didn't take your son to visit your host?
- A. Well, he's seen him many times before that, so it's -- if he was there, I would -- first of all, the host, the setting of the whole thing was that the host would really be not Boris but Elena. I could have bring him over to see Elena but not necessarily to see Boris. But again, it's all guesswork. I do not really remember those things.
- Q. And presumably you would have made sure you said goodbye

to your host before you left on 10 December?

A. If he was around, yes.

Q. Now, you told us in your first statement, and it's paragraph 62 on page D1/03/55, that when you first saw Mr Berezovsky during this visit to Cap d'Antibes, he did not tell you about any visit by Mr Abramovich.

A. No, he didn't.

Q. But your evidence is that he did subsequently tell you --

A. That's correct.

Q. -- he'd been visited in France by Mr Abramovich and that Mr Abramovich had promised that Mr Glushkov would be released from prison if they sold ORT and that if they didn't sell ORT, the Kremlin would take it away.

A. Yes.

Q. When do you believe that Mr Berezovsky told you that?

A. It could be on my -- one of my next visits shortly after that. I was there in the end after Christmas, as I said, for half a day and then there was this big birthday party.

And the context of it is that right after the New Year, sometime in January, we were much involved in trying to save another TV network in Moscow, that is NTV, by Mr Gusinsky. And we discussed a lot an opportunity -- a possibility of Mr Berezovsky and Badri

giving Gusinsky a loan to repay his debt to Gazprom, which was the basis for expropriation of his network at the time. And that was, I think, was to be channelled through the Foundation for Civil Liberty, that loan.

And in the context of these conversations, which happened essentially in mid-January, the issue of Mr Putin's drive to take control of all electronic media in Russia was discussed and it's quite possible that it was sometime in January that I learned about the details of it.

Q. You can't recall, can you, Mr Goldfarb?

A. Can't recall what?

Q. You can't recall when you were told about --

A. I can't recall it. As I said, it should be at one of my next meetings with Mr Berezovsky within late December because it was 27 December or his birthday party in the end of January. I have to look in my diary when actually I saw him. But that conversation, when he essentially told me kind of in their roles who said what at the meeting, which I kind of recreated in my book, probably was in the context of all this heated situation with media being taken under control by the government.

Q. Now, we've seen from your own statements, Mr Goldfarb -- and this is not a criticism -- that it's very possible to confuse dates and events, given how long ago all of

this was.

A. Well, I should perhaps quote another witness saying that what you remember is the sequence of events and the context, the logic of them. So I would not, obviously, remember on which day this or that happened unless I have, you know, a documentary proof of my presence, but I do remember what came after what. And, as I said, I learned about Mr Abramovich's kind of explicit warnings or threats, if you will, in the context of the whole media takeover, which happened in January actually.

Q. You just said you remember what comes after what.

A. Yes.

Q. But, for example, in your second witness statement, you remembered -- and I use your words -- that your son came to stay at the chateau in Cap d'Antibes in late December 2000.

A. Yes, that was my initial recollection until I was able to check it by documents and it turned out that it was a wrong recollection. So I --

Q. So the sequence was incorrect?

A. Yes.

Q. Could you be given bundle R(E)1, tab 4, please R(E)1/04/356.

A. Yes.

Q. This is your witness statement in support of Mr Berezovsky's asylum application --

A. Mm-hm.

Q. -- which we looked at on Wednesday, sworn on August 10, 2003.

A. Yes.

Q. Now, you don't make any reference in this statement to the meeting between Mr Abramovich and Mr Berezovsky in Cap d'Antibes, do you?

A. Well, if you say so, I don't, then I don't.

Q. But it would clearly have been relevant to mention it, wouldn't it?

A. No, I wouldn't think so, because Mr Abramovich, in my view, then and now, in this particular case of ORT expropriation was not principal party. He came as a messenger from Mr Putin and presidential administration and he just conveyed information that was given to him and that's -- at least that's how I understand the ORT situation.

Q. But what you were addressing in your witness statement in support of Mr Berezovsky's asylum application was the pressure that you understood had been placed on Mr Berezovsky to part with his shares in ORT.

A. Yes.

Q. That pressure, according to your evidence today,

includes pressure that came via Mr Abramovich at the meeting in France.

A. This includes it, but it was by no means the first moment of pressure. The pressure started right in front of my eyes in August, during the Kursk submarine treaty (sic), and it came personally from Mr Putin and Mr Voloshin. So Mr Abramovich was, I would say, the third in this line of pressure people.

Q. But the evidence you're giving about the meeting with Mr Abramovich in France is the first occasion on which Mr Glushkov had been mentioned in connection with this pressure, isn't it?

A. That is correct.

Q. So, again, I put to you, it would have been relevant to mention in your statement in support of Mr Berezovsky if at the time you'd made this statement you recalled having been told about that meeting?

A. Perhaps in retrospect it would, but at the time it didn't seem that important to me.

Q. Well, the real reason you didn't mention it in this statement is that you hadn't been told about the meeting by August 2003, had you?

A. No, of course I'd been told about it, as I just told you a minute ago.

Q. In between your visits to Cap d'Antibes in December

2000 --

A. I should add -- one sec -- to this question.

The taking of hostages is not an unusual method in these situations. It happened with expropriation of NTV from Mr Gusinsky before the situation with Glushkov; it happened later with Khodorkovsky, who was lured back to Russia by taking one of his associates.

So I remember very distinctly my impression of January 2001 that Mr Glushkov was clearly taken hostage and that was clear even before the visit of Mr Abramovich, and that is in October, when we persuaded Mr Berezovsky not to go to Moscow to answer this witness summons.

So Glushkov was a clear situation, we discussed that.

Q. Your understanding before you'd even heard about the meeting that Mr Berezovsky suggests took place with Mr Abramovich in the south of France was that Mr Glushkov was being taken as a hostage and that the ORT shares were being delivered in order to secure his release; is that what you're suggesting?

A. No. Mr Glushkov was not taken as a hostage until 7 December, obviously. He was arrested on 7 December. But his vulnerability from the -- and his -- as a potential hostage was obvious from the moment Boris

refused to go to Moscow for this prosecutor's questioning. It was obvious it was mentioned.

Q. And that was on 13 or 14 November?

A. Yes. Yes.

Q. Now, in between your visits in December 2000 to Cap d'Antibes, you had also been to Washington with Mr Berezovsky for the launch of the foundation.

A. Correct.

Q. Was that the only occasion on which Mr Berezovsky came to Washington for an event associated with the foundation or were there others?

A. Well, he was in Washington several times and after the foundation was launched he was kind of presented to the Washington scene as the chairman of our foundation. At the moment I couldn't tell you whether it was -- it was definitely the only occasion in December 2000, but after that he came several times.

Q. And on some of those other occasions he came after December 2000 --

A. Yes.

Q. -- was he accompanied by Ms Gorbunova?

A. Not always. For example, he came after September 11, right after the terrorist attacks, and I took him around Washington. I don't remember Elena around.

Q. Sometimes was he accompanied by Ms --

A. Sometimes, yes.

Q. You say in your third statement that you believe that Ms Gorbunova attended the launch and that you may have gone to New York with Mr Berezovsky and Ms Gorbunova the next day, 19 December, to view an apartment and some proposed offices.

A. Well, she was obviously around. I don't remember whether she was sitting at the National Press Club in the audience, after all this years, when it was announced, but she was in Washington and she was during that trip. And I didn't return to New York with them because I took a flight and their tickets in the case back from Washington to New York with my secretary, Julia. So I most probably flew to Washington on their plane from New York but I came back to New York on my own.

Q. Isn't it possible, Mr Goldfarb, that you're mistaking this trip with another trip that occurred subsequently?

A. No, I cannot mistake. I have tickets.

Q. Sorry, not your trip, but Ms Gorbunova being in Washington or New York. You're mistaking that with another trip that took place subsequently?

A. I don't think I'm mistaking because I have this recollection, subject of course to all these years that passed, and I checked with my secretary, Julia, who is

no longer working for me, and she definitely remembers Elena, whom she says is hard to forget.

Q. Well, you suggest you went to view an apartment and offices on 19 December but Mr Berezovsky's travel records suggest he flew to Aspen on 18 December.

A. Yes, it could be on the 17th. I wouldn't give you 100 per cent for that. It all actually puzzled me: why did I come back from Washington to New York not on their plane? I asked Julia and she said: no, they definitely flew to Aspen on the 19th. And now that you tell me that his records are different, so it must have been that we went to see those offices before we went to Washington; maybe in the morning, I don't remember.

Q. Ms Gorbunova's passport does not have an entry stamp for America at this time of year.

A. It's not surprising. When you go to -- in those years, before September 11, when you entered America on a private plane, quite often they wouldn't stamp your passport and I know a couple of other cases like this. People had then problems with immigration because they couldn't prove how they entered the country.

Q. Well, Mr Berezovsky's passport is stamped on the same day.

Now, you tell us in your first statement -- it's paragraph 22 D1/03/44 -- that when you first met

Mr Abramovich, Mr Berezovsky introduced him to you as his partner.

A. Yes.

Q. Are you suggesting that Mr Berezovsky described Mr Abramovich as his partner in Mr Abramovich's presence or are you simply suggesting that Mr Berezovsky told you that you would be meeting his partner, Mr Abramovich?

A. Well, this I cannot remember. But the context of this introduction was my plan to set up a foundation in Moscow by what has later become known as oligarchs, Russian oligarchs, to replace the Soros fund, which were coming to an end. And in the context of this effort I met with all the -- or most of the people who were the oligarchs, such as Mr Fridman or Mr Smolensky or Mr Potanin, Gusinsky, all through Boris's introduction.

And in the context of these meetings he introduced me to Roman and I should say that I was quite surprised that a person who is totally unknown, of his age, would be suggested by Boris to sit on the board of this new foundation with all these billionaires. So he clearly -- what -- the impression that I had from that meeting is that Boris obviously introduced to me -- him to me as someone with substantial financial weight.

Q. In paragraphs 30 to 31 of your first statement, D1/03/46, you're describing certain conversations you

say you had with Mr Shvidler in connection with some negotiations that you say were about a possible joint investment between Mr Berezovsky and Mr Soros in Gazprom in 1997.

A. Yes.

Q. And in particular you refer to a meeting with Mr Shvidler in Moscow at which you say you learnt:

"... that [Mr] Abramovich... was a major shareholder of Sibneft along with Boris."

A. Yes.

Q. Can you explain exactly what you recall Mr Shvidler saying about Sibneft's shareholders?

A. I cannot recall what he said explicitly. I remember that we met for a meal, or coffee maybe, at a hotel in Moscow which was right next to the headquarters of Sibneft and in that conversation I kind of -- it was -- I didn't learn; it was confirmed to me that Shvidler was in Sibneft, was second in command to Roman, and I knew that Roman was a shareholder. It was -- everybody knew that.

Q. Mr Shvidler didn't say, did he, that Mr Berezovsky was a shareholder in Sibneft?

A. Oh, it went without saying because he -- everybody knew that he is the principal there.

Q. You also refer in your first statement to two trips you

made to Cap d'Antibes in May and June 1998, during one of which Mr Shvidler also came to Cap d'Antibes.

A. I didn't see Mr Shvidler on Boris's property, I should say, at that visit. I saw him, I think, on a boat, or maybe on the beach or maybe on a boat. There were several boats with Russian connection parked there and on one of them there was Mr Shvidler. So... and actually I didn't even spend the night during that visit, I'm not sure even that I stayed overnight there, but we stayed there several hours. It was right after our meeting with Soros in Budapest. We flew to Cap d'Antibes -- I mean, we flew to Nice and there was this yacht scene and I remember distinctly Mr Shvidler there and then we flew to New York.

Q. You saw Mr Shvidler meet Mr Berezovsky?

A. It was a social, more or less, setting and I think Boris was around and he was around, but I do not -- cannot say that there was a formal, you know, business setting meeting then.

Q. And you did not yourself participate directly in the discussions between Mr --

A. No.

Q. You were just witnessing them from a distance?

A. No, not from a distance. As I said, it was on board of a boat most likely.

Q. Now, finally, Mr Goldfarb, you mention in your first statement a meeting you had with Mr Berezovsky in London on or around 14 April 2000. It's paragraph 39 of your statement.

A. Yes. This I need to see.

Q. D1/03/49.

A. Can you repeat the date, please?

Q. You tell us it was a meeting on or about 14 April 2000.

A. April 2000, yes, it was right -- it was before inauguration, right. Mm-hm. So what do I say there? Which paragraph is that?

Q. It's paragraph 39.

The first question I have for you is: what is it about this date that sticks in your mind?

A. Well, the date comes from my travel records. I remember generally the time, it was spring, early April, so I placed the date simply from my -- because I keep precise travel records. And how precise it was, it depends on other visits to London, of course.

Q. You must have had many visits to London over the years where you've met Mr Berezovsky, mustn't you?

A. I had many -- well, at the time I was not working for Mr Berezovsky, I was working for Mr Soros and in my academic job, so my visits were mostly to Moscow and not to London. London started after Litvinenko because

I could no longer go to -- none of us could go back to Russia after 2000. But I cannot tell you right away, without looking at my diary, when was the visit before April 13 and when was the next visit. But most likely, if I put it there, it means that it's pretty precise.

Q. Since that time you have had many visits to London where you have met Mr Berezovsky, haven't you?

A. After he moved to London. He hadn't moved to London until I think 2001.

Q. Although you tell us in your statement that during the first half of 2000 Mr Berezovsky spent most of his time out of Russia?

A. That is correct, and I didn't see him much.

Q. He was travelling a lot, was he?

A. He was travelling a lot, I was travelling a lot and we lived in totally separate universes.

Q. Now, in your statement at paragraph 39 you say you believe that Mr Berezovsky mentioned having acquired interests in aluminium at the meeting in April 2000.

A. Absolutely. Yes, I remember this scene very well. We went to see the exhibition of Salvador Dali next to, you know, the bridge where the London Eye is. There was a... and we were walking across the bridge and he said that he essentially doesn't know what to do now because they've got all they wanted with Mr Putin's election.

Specifically he mentioned Sibneft and ORT and aluminium and he thought that, "I don't really -- I feel under-used now because maybe we should go into the dotcom thing. What is it all about? Tell me". So that's what was the conversation on that bridge.

Q. You have had so many conversations over the years with Mr Berezovsky, Mr Goldfarb --

A. Yes.

Q. -- it must be impossible to recollect that it was on this conversation on this date, 11 years ago --

A. No, this area, as I said, if you can put a conversation into a particular setting, both, you know, specifically where it happened -- and, as I said, it happened over the bridge near the Salvador Dali showroom -- and secondly that it was in the context of Mr Putin being successfully -- project Putin succeeding, and the inauguration was on May 1 or May 3, I think that's pretty easy to place.

Q. Do you recall Mr Berezovsky was happy about President Putin being elected?

A. Oh, yes. He considered it his -- one of his most successful projects.

Q. And he was happy with his position in life generally?

A. Yes.

MS DAVIES: Thank you very much, Mr Goldfarb.

MR MALEK: No questions, my Lady.

MR ADKIN: No questions, my Lady.

MR MUMFORD: No questions, my Lady.

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

Re-examination by MR RABINOWITZ

MR RABINOWITZ: A few questions for you, Mr Goldfarb.

You mentioned very recently that after 2000 you could not go back to Russia. Why, in your case, could you not go back to Russia?

A. Because on November 1 2000 I facilitated the entry of a group of asylum seekers to this country and this got in the press, and the family was Mr Litvinenko. Before he came here I facilitated his interview with the CIA in the American embassy in Ankara and all of this was out and as a result of that, no sane person would go to Russia. And Mr Soros fired me for that and that was a big change in my life.

Q. Why was Mr Litvinenko seeking asylum?

A. Mr Litvinenko was a former, as we all know, officer of the FSB. He was associated with Boris back in Russia. He spent some months in prison and it's a long story --

Q. Don't give us the long story.

A. -- I won't go into that, but in a nutshell when Boris -- when it was clear that Boris is not going back to Russia, it was clear that -- and that he quarrelled with

Putin, he would not be -- no longer would be able to protect him and it was a natural decision to flee. Otherwise he'll end up dead five years before he actually ended up dead.

Q. You referred -- you were asked a series of questions about events on 7 and 8 December. You mentioned the dinner being a memorable one --

A. Yes.

Q. -- with Mr Berezovsky and Mr Patarkatsishvili.

A. Yes.

Q. And you said that it was memorable for three reasons.

A. Yes.

Q. I think your first reason that you identified was the discussion about teletrusts.

A. Yes. The second reason was the discussion about Glushkov, and that is when -- it happened actually very shortly after Glushkov has been arrested, it was right then, and it happened a week after I got in the news because of Litvinenko.

So Badri took me aside -- and Litvinenko spent time in the same prison where they took Glushkov, namely the Lefortovo prison of the federal security service. So Badri took me aside and asked me to talk to Litvinenko and to see whether he could find some ways of communication, maybe through prison guards or some other

ways, with Nikolai, because he was an expert in that thing. That was the second thing.

The third thing that I remember very well is that Boris took me aside, probably after dinner, and asked me to arrange to have an American visa for Mr Andrei Lugovoi, who was at the time head of security for Badri and also helped with security for Cap d'Antibes, and he couldn't enter the United States. I told him that, "No, sorry, Boris, I won't do it. I don't understand your fascination with former KGB colonels, be it Mr Putin or Mr Lugovoi". But it turns out that I have been right.

Q. Can I just ask you this. On Wednesday of last week you were asked about whether or not on 13 November 2001 (sic) Mr Berezovsky had finally decided whether he would be returning to Russia.

A. Yes.

Q. And you explained that in fact Mr Berezovsky, as you recollected, had a plane ready to go to Moscow.

A. It was 2000.

Q. 2000.

A. 2000, yes.

Q. Sorry, you're quite right. I said 2001.

You explained that in fact Mr Berezovsky had a plane ready to go to Moscow and that there was a big discussion in the morning of 13 November about whether

he should go or not.

A. Yes.

Q. And that Mr Berezovsky's inclination was in fact to go back.

A. Yes.

Q. That, for the transcript, was at Day 12, page 175.

A. Yes.

Q. And in the course of describing this discussion on 13 November at Mr Berezovsky's chateau at Cap d'Antibes, you refer to the fact that collectively you, Ms Gorbunova and the widow of Nobel Laureate Andrei Sakharov sought to persuade Mr Berezovsky not to return.

A. Yes.

Q. Can I just ask you, please, to go to Day 2 (sic), tab 17, page 268.

Sorry, I meant D2, not Day 2. I'm sorry.

MRS JUSTICE GLOSTER: Would you give the reference again, please.

MR RABINOWITZ: D2, tab 17, page 268 D2/17/268.

Do you see paragraph 333 at the top of the page?

A. Yes.

Q. There is a reference there to:

"... a discussion with the widow of Andrei Sakharov, who told me, 'Boris, you will achieve more with your

freedom than from a jail'."

Can you tell me if that was the same conversation as the one that you're referring to?

A. Yes.

MR RABINOWITZ: Thank you very much, Mr Glushkov.

MRS JUSTICE GLOSTER: Thank you very much indeed.

MS DAVIES: My Lady, I do apologise. We have just checked, in the time available to us, and discovered that the Dali exhibition did not open until 3 June 2000 and I felt I ought to raise that in case Mr Goldfarb should be given a --

MRS JUSTICE GLOSTER: Well, put a further question in relation to that if you wish.

Further cross-examination by MS DAVIES

MS DAVIES: Mr Goldfarb, you told us a moment ago that you particularly remember this meeting on the bridge on 14 April because you remember leaving the Dali exhibition.

A. Mm-hm.

Q. In fact the Dali exhibition did not open until 3 June. So that suggests your recollection is incorrect, doesn't it?

A. It might be incorrect about Dali exhibition.

MS DAVIES: Thank you very much, Mr Goldfarb.

MRS JUSTICE GLOSTER: Yes, do you have any further questions

arising out of that, Mr Rabinowitz? No. Very well.

Thank you, Mr Goldfarb, for coming along. You can be released.

(The witness withdrew)

MR RABINOWITZ: Our next witness is Mr Jacobson.

MRS JUSTICE GLOSTER: Very well.

MR SUMPTION: My Lady, would it be sensible for your Ladyship to take the break before Mr Jacobson rather than ten minutes in? I ask that question entirely neutrally.

MRS JUSTICE GLOSTER: Okay. Well, I'm easy. Are you content with that?

MR RABINOWITZ: I'm content with that.

MRS JUSTICE GLOSTER: Very well. I'll take the break.

(11.09 am)

(A short break)

(11.19 am)

MR RABINOWITZ: I call Mr Jacobson.

MRS JUSTICE GLOSTER: Yes.

MR JAMES JACOBSON (sworn)

MRS JUSTICE GLOSTER: Please sit down.

Examination-in-chief by MR RABINOWITZ

MR RABINOWITZ: Good morning, Mr Jacobson.

Mr Jacobson, can you just confirm that you don't have with you any mobile phone or electronic device?

A. Yes, that's correct.

Q. Thank you very much.

Can I ask that you please be given bundle D2 open at tab 16, please D2/16/92. You should have a document there, "Witness Statement of James Edwin Jacobson". Do you have that?

A. I do.

Q. Can you go to page 191 of the bundle D2/16/191. It's page 99 of the statement.

A. Yes.

Q. Can you confirm that the signature on that page is your signature?

A. It is.

Q. Can you confirm that this is your first witness statement in these proceedings?

A. It is.

Q. Now, I understand that there are four corrections that you'd like to make to this witness statement. You should, I think, have in front of you a document, "Corrections to James Jacobson's Witness Statement". Do you have that?

A. I do.

Q. Can you first go to paragraph 38 at page 103 of the bundle, please D2/16/103. Now, you should have paragraph 38 at the bottom of the page.

A. Yes.

Q. Can you confirm that the correction that you have at the first point of your corrections document is in fact the correction that you want to make to paragraph 38 of the statement? Effectively you're clarifying your understanding --

A. Yes, that's correct.

Q. -- of whether Mr Abramovich or any of his companies were ever clients of Curtis & Co.

A. Mm-hm. That's correct.

Q. Can I ask you next to turn, please, to page 118, paragraph 105 D2/16/118. It's page 118 of the bundle, paragraph 105. Looking again at the document entitled "Corrections to [your] Statement", is it right that the correction you want to make to paragraph 105 is shown at point 2 of the document? It's a minor correction.

A. Yes, that's correct.

Q. Thank you.

Can I ask you next, please, to go to page 121 of the bundle and look at paragraph 123 D2/16/121. It's at the bottom of that page.

A. Yes.

Q. Do you have it?

A. Mm-hm.

Q. Again, looking at your corrections document, it's right,

is it, that the correction you want to make to paragraph 123 is that shown at point 3 of the document?

A. That's correct.

Q. Thank you. And then can you turn next to paragraph 415 at page 182 of the bundle D2/16/182. It's page 90 of the statement. Do you see point 4 is where you make a correction to paragraph 415?

A. Yes.

Q. And I think the emails that you refer to in the correction, are they the ones which are in fact attached to the corrections document? They should be behind the second page. Are those the two emails?

A. I think they are, yes. Yes.

Q. Can you next, please, go to -- I think those are the only corrections you make to this statement. So, subject to those corrections, can you confirm that the contents of this, your first witness statement, is true to the best of your knowledge and belief?

A. I do.

Q. Thank you.

Now, can you then be given bundle D4, please, and if you open that at tab 7. Can you turn to page 53 of the bundle D4/07/53. It's page 5 of the statement. Do you see a signature there?

A. I do, yes.

Q. Can you confirm that this is your signature and this is your second statement in these proceedings?

A. It is.

Q. Now, I understand that there is a small correction you want to make to paragraph 15 of this statement, which is the signature page. Again, if you've got the corrections document, you'll see point 5 deals with a correction to paragraph 15, changing the dates.

A. Yes.

Q. Can you confirm that that's the correction you want to make to that?

A. It is, yes.

Q. And subject to that correction, can you confirm that the contents of this your second witness statement are true to the best of your knowledge and belief?

A. It is.

MR RABINOWITZ: Thank you. Can you wait there, please.

Mr Sumption will have some questions.

Cross-examination by MR SUMPTION

MR SUMPTION: Mr Jacobson, I don't know whether you've been following the course of the trial to any extent so far?

A. Only in the papers.

Q. Sorry, can you speak up a bit?

A. Only in the papers.

Q. Only through the papers, I follow.

Now, there's one point I would like to make clear to you at the outset. I shall be suggesting to you in the course of your cross-examination that in 2001 Mr Curtis devised sham transactions for Mr Berezovsky and Mr Patarkatsishvili in order to deceive banks about the origin of their funds. The reason I'm telling you this is that I want to make it clear to you at the outset so that you appreciate this, but it's no part of my case that you personally had any intention of deceiving banks or assisting in money-laundering.

Now, can I ask you, please, when did Sheikh Sultan become a client of Curtis & Co?

A. I think it was late '99/2000.

Q. Late '99 or 2000?

A. Yes.

Q. Does that mean that he was a very recent client at the time when the firm was dealing with Mr Berezovsky?

A. Probably, I suppose, about 12 months maximum.

Q. About 12 months?

A. Mm-hm.

Q. Would you describe Sheikh Sultan as having been an important client of the firm in terms of the volume of fees that his work generated?

A. Well, I didn't do any work on any of his matters but I would say he was -- you said "work generated"?

Probably not a huge amount, no.

Q. I see.

Can you help us with the reintroduction of Mr Berezovsky to the firm. You talk about this in paragraph 31 of your first witness statement D2/16/102, where you say:

"[You] believe that Mr Berezovsky was re-introduced to Curtis & Co by Christopher Samuelson of Valmet in the summer of 2000."

Is that something that you remember?

A. No.

Q. Do you know anything about how that reintroduction came about?

A. No.

Q. Can you help us at all on what business the reintroduction was initiating?

A. No.

Q. Now, was it Mr Berezovsky who introduced the firm to Mr Patarkatsishvili?

A. I couldn't say. It might have been Valmet. I assume that they came as a package.

Q. Yes, but you have no knowledge about that?

A. No.

Q. Do you remember when it was that Mr Patarkatsishvili first started dealing with the firm?

A. I don't know.

Q. Now, I want to ask you first, please, about the ORT transaction.

Curtis & Co prepared two agreements relating to ORT initially in January 2001, didn't they?

A. They did, yes.

Q. Now, just for the record, the first was an option agreement, wasn't it, under which Spectrum General Trading bought options over shares in ORT from Mr Berezovsky and Mr Patarkatsishvili for \$70 million each?

A. I think so, yes. It might have been ORT-KB.

Q. Yes, you're quite right, ORT-KB.

The second document that was drafted was an assignment agreement under which Spectrum assigned the benefit of the option to a company called Akmos; is that correct?

A. It is.

Q. Now, Spectrum General Trading, as you confirm in your witness statement, was a company owned by Sheikh Sultan?

A. Correct.

Q. Now, when was the firm first instructed to prepare these documents?

A. Well, I don't know. It has to come from the documents that we've seen. Probably in January.

Q. Yes, I see. Can you help us on who the instructions to prepare these documents came from?

A. No.

Q. From whom did you first find out the background and purpose of these documents?

A. Stephen.

Q. And what did he tell you about their background and purpose?

A. Well, he didn't tell me anything; it was just reading the correspondence that was flowing.

Q. He didn't know anything?

A. No, he didn't tell me anything.

Q. He didn't tell you anything?

A. No.

Q. Right. At paragraph 61 of your first witness statement D2/16/108 you refer to a letter from Curtis & Co to Mr Sykes at Clydesdale Bank -- hold on a moment -- and you refer to Mr Curtis having been asked by Dr Jumean to assist in the establishment of accounts in the United Kingdom to receive the proceeds of the ORT transaction.

Now, I'm going to turn to that letter in due course. But so far as you're aware, was -- sorry, I'll start again. Do you have any knowledge of Dr Jumean having asked Mr Curtis to assist with the opening of those accounts, other than what can be inferred from that

letter?

A. No.

Q. So far as you are aware, was Dr Jumean's request for assistance in opening the accounts the firm's first introduction to the ORT transaction?

A. Possibly. I wouldn't know.

Q. For whom were these accounts to be opened?

A. Boris and Badri.

Q. And were they the accounts that were opened for both of those gentlemen at Clydesdale Bank?

A. Yes, I think so.

Q. Was it Mr Curtis therefore who was instrumental in the opening of those two accounts?

A. Yes.

Q. Would that request from Dr Jumean have involved making contact, first of all, with Mr Berezovsky and Mr Patarkatsishvili?

A. Possibly. I don't know.

Q. Do you know how Clydesdale was identified as a suitable bank for this purpose?

A. No.

Q. Had the firm had previous dealings involving Clydesdale Bank?

A. Yes.

Q. Were they dealings involving the sheikh also?

A. I don't think so, no.

Q. They were dealings for other clients?

A. Yes, I believe so.

Q. Now, presumably Mr Curtis would have had to make contact with Clydesdale Bank, get some forms, obtain evidence of account holders' identity and so on, before he could do much to open those accounts?

A. Yes, correct.

Q. And indeed he would also have had to ensure that he had the authority of the account holders?

A. Of course.

Q. So before the accounts were opened, there must have been a certain amount of communication between Mr Curtis, the bank and Messrs Berezovsky and Patarkatsishvili; would you agree?

A. Yes, I would agree with that.

MRS JUSTICE GLOSTER: Excuse me, are you drinking coffee over there? You're not allowed to eat or drink in court.

Right. Continue, Mr Sumption.

MR SUMPTION: Now, are you aware of the dates on which the account application forms were presented or prepared?

A. I don't think so, no.

Q. Right. Have you ever seen them?

A. I don't think so.

Q. Right. Now, let me tell you then that the account application on behalf of Mr Patarkatsishvili was dated 28 December 2000 -- for the transcript, the reference is H(A)26/126 -- and the corresponding application by Mr Berezovsky was dated 6 January 2001. For the transcript the reference is H(A)27/248.

Now, does that suggest that the request from Dr Jumean referred to by Mr Curtis must have happened sometime before 28 December?

A. Yes, I would agree with that.

Q. You agree?

A. Yes.

Q. Indeed, given that 28 December was only three days after Christmas, it must have been quite a few days before 28 December, not much happening in the United Kingdom over the Christmas holiday; would you agree?

A. Mm-hm. I would agree.

Q. In his own application Mr Berezovsky describes himself or the form describes him as the chairman of Spectrum. Do you know whether Mr Berezovsky was in fact the chairman of Spectrum?

A. I wouldn't have thought he was.

Q. Sorry?

A. I wouldn't have thought he was the chairman of Spectrum.

Q. No. If he was the chairman of Spectrum, do you think

you would have known?

A. No.

Q. Why do you say you wouldn't have thought that he was the chairman of Spectrum?

A. Because Spectrum is owned by the sheikh.

Q. Right.

Now, the first document that we have from Curtis & Co's files about this is at H(A)28/29 and I will, if I may, ask you to look at that.

MRS JUSTICE GLOSTER: You have the documents on the screen as well as in hard copy.

THE WITNESS: Oh, okay.

MRS JUSTICE GLOSTER: Suit yourself as to which you would prefer to look at.

MR SUMPTION: Now, this, I think, is your note of a conversation with Pavel, and that's Mr Ivlev, isn't it?

A. That's correct.

Q. Mr Ivlev was Mr Berezovsky's lawyer in Moscow; is that right?

A. Yes.

Q. Now, you will see that the heading of this note, which was presumably put there by you, is "Fomichev -- Option Agreement". Do you see that?

A. I do.

Q. Why was it headed in that way?

A. I've no idea.

Q. Well, did your --

A. I must have assumed that Fomichev, representing Boris and Badri, had some involvement with the option agreement.

Q. Yes. Well, does it look as if Mr Fomichev had asked the firm to prepare an option agreement?

A. Possibly.

Q. Now, your instructions must have come, must they not, at least in part from either Mr Fomichev or someone else on behalf of Mr Berezovsky or Mr Patarkatsishvili? Would you agree?

A. They would have given us information. I don't know formally where the instructions would come from.

Q. Well, if you were contacting Mr Ivlev for details of the ORT holdings and Mr Ivlev was Mr Berezovsky's lawyer in Moscow, you must have satisfied yourself that you could talk directly to Mr Ivlev with Mr Berezovsky's consent; do you agree?

A. Me personally?

Q. Well, somebody in the firm, not necessarily you, must have done that; do you agree?

A. I assume so, yes.

Q. Now, you suggest at paragraph 59 of your first witness

statement D2/16/107 that the firm was acting for Spectrum. May I suggest that if it was acting for Spectrum, it was also acting for Mr Berezovsky and Mr Patarkatsishvili?

A. In relation to establishing the accounts?

Q. Yes -- well, and in relation to the transaction generally, surely?

A. Well, I wouldn't know at the time. I'm just looking now in hindsight, reviewing the documents.

Q. With the benefit of the documents, would you agree?

A. I think there was an overlap in some respect.

Q. Right. Were you aware that unconditional agreements for the sale of the shares in ORT-KB had been executed which were dated 25 December?

A. No.

Q. You were not?

A. No.

Q. You're aware now, presumably, or are you not?

A. I think I've read it in one of the letters.

Q. I see.

Now, I'd like to look at the information recorded in the note which you've got on screen. Where did you understand that Mr Ivlev had obtained this information?

A. I've no idea.

Q. Well, looking at it, at the sort of information it was,

where would you have expected him to obtain it?

A. He must have checked with someone who knew about ORT.

Q. Well, when you say, "Pavel confirmed to me the following", does it suggest that you had at some earlier stage asked him to find out these facts and he was coming back to you with the answers?

A. Possibly.

Q. Presumably you would have asked him to check in the Moscow Companies Registry, wouldn't you?

A. I didn't.

Q. Sorry?

A. I didn't.

Q. You didn't?

A. No.

Q. Somebody must have done?

A. Well, I assumed it was literally, "Can you just confirm the ownership of this company".

Q. Do you see that under 1 and 2 it is said:

"... that ORT was owned 49% by ORT (KB)..."

And:

"... ORT (KB) was owned in turn by Mr Berezovsky and Bardrey."

I'm interested in the past tense. Did you understand that this information related to the shareholding position at some earlier stage?

A. No, that was how I'd have -- how it was at that date.

Q. I see.

Well now, the transfer of shares in ORT-KB to Akmos, which was an Abramovich company, had been registered at the Moscow Companies Registry by 29 December 2000; we know that from the document from the registry. Did Mr Ivlev tell you that in this conversation?

A. I don't think so, no.

Q. Were you aware of it at any stage during the course of the following weeks and months?

A. I wasn't.

Q. You weren't? Could we have a look, please, at bundle H(A)28/84. The same bundle if you're looking at the hard copy. It will come up on screen in a moment. Have you got that? If you want to wait for it to come up on screen, by all means do, but since this is a two-page document you might prefer to have the ability to flip over.

A. Okay.

Q. It isn't so easy on the screen.

Now, this is a letter from Mr Curtis dated 17 December (sic) to Clydesdale Bank. Now, you tell us that you didn't draft this. When did you first see it?

A. You mean 17 January?

Q. Yes.

A. I couldn't tell you when I first saw it.

Q. It's a letter that presumably would have been on the transaction file within the firm, isn't it?

A. Possibly.

Q. So you must have seen it pretty shortly afterwards?

A. Yes, I mean, it wasn't -- the files weren't always --

Q. Sorry?

A. The files weren't always up to date.

Q. I see. But this document has to be typed out by somebody in the office --

A. Yes.

Q. -- and then signed?

A. Mm-hm.

Q. Presumably it would have appeared without too much delay in the files of the transaction; otherwise it would be impossible for anybody picking the file up, as you later did, to discover what was going on. Don't you agree?

A. Yes, but this was pretty much Stephen's transaction, so the involvement was quite limited.

Q. Well now, we see in this letter Mr Curtis is asking the bank to accept the \$70 million from each of Mr Berezovsky and Mr Patarkatsishvili on the basis that it represents the proceeds of an option that they have sold to Spectrum. Do you see that?

A. Mm-hm. Yes.

Q. Now, at this stage do you know whom Mr Curtis had discussed this proposal for an option with?

A. I don't believe so.

Q. You don't.

Now, the next document that we have chronologically on the file is a discussion draft prepared on 18 January which you emailed on that date to Mr Jumean, and you refer to that in your statement, don't you?

Paragraph 62 D2/16/108. I'm happy to turn this document up if it would help you, but I'm just taking it from your statement.

A. Okay.

Q. Now, perhaps you could turn in bundle H(A)28 to page 125 H(A)28/125. Page 125 is the email front page, so to speak, listing the attachments --

A. Mm-hm.

Q. -- which you were sending to Dr Jumean. That's Eyhab, isn't it?

A. That's right, yes.

Q. If you look at page 127 you'll see the first page of the draft agreement H(A)28/127. Over the page, on page 128, you'll see that among the definitions, "the Option Price" and there's a note:

"PAVEL -- I believe the aggregate price to be paid for all of the shares equates to \$10 million. Can I

impose on you to calculate value per share in Roubles."

Did you put that note into the draft?

A. No.

Q. You did not?

A. No.

Q. Can you help us on whether the \$10 million was for the totality of the shares, ie both Mr Berezovsky's and Mr Patarkatsishvili's, or whether it was \$10 million each?

A. I can't help you.

Q. I see. We just have to draw our own conclusions from the document?

A. Yes.

Q. Now, you, I think, were responsible for sending this letter of 17 January to Mr Sykes of the Clydesdale Bank. Do you agree? Do you remember that?

A. I think so, yes.

Q. You think you were? We can establish that if you would like to be shown -- I'm sorry to encumber your desk with paper, but if somebody could show you H(D)2 at page 2 H(D)2/2.

Now, at page 2 you will see an expurgated version of this letter and I think, if the bundle you have been given is up to date, it will have a 2U after it which has the unexpurgated version. It's on Magnum.

Does that suggest that you took the 17 January letter that I showed you at bundle H(A)28/84 and yourself sent it to Mr Sykes of Clydesdale Bank?

A. I pp-ed the letter, yes.

Q. Yes. So in fact that does establish, doesn't it, that you must have seen it on about that date?

A. Yes.

Q. Now, if we can go back to page 128 of the bundle which you've got open, H(A)28 H(A)28/128, on the footing that the \$10 million related to the whole of the shares, ie \$5 million for each of them, this was a draft agreement under which the sheikh or Spectrum was buying, for a total of \$140 million between the two agreements, an option to acquire the shares in ORT-KB; that's right, isn't it?

A. Yes, that appears to be the case.

Q. And the option itself, once exercised, once the option was exercised, the shares were going to cost \$10 million because that was the option price? If you look at clause 3.4.1, top of page 129:

"The consideration payable for each of the Option Shares shall be the Option Price."

And that's defined at the top of the previous page.

A. Yes, it says that.

Q. Now, do you think that there was anything rather odd

about the notion of paying \$140 million to buy an option to buy shares for \$10 million?

A. I wouldn't have -- I wouldn't have thought about it.

Q. Well think about it now. Nobody would do that, would they, unless they'd already decided that the option was undoubtedly going to be exercised? Otherwise you'd be throwing \$140 million away. Do you agree?

A. Possibly, yes.

Q. It looks a bit artificial, doesn't it?

A. It looks a bit strange, yes. It looks a bit unusual.

Q. Well now, could I ask you, please -- you can put away bundle H(A)28 and I'd like to ask you to turn to H(A)29/13.

This is a letter from Mr Ivlev to Mr Curtis and, since I know you're fairly familiar with the file, at least now, you probably are aware that this was originally received from Mr Ivlev in unsigned form and then on 13 February the same letter in signed form.

A. That's right.

Q. You're aware of that?

A. Mm-hm.

Q. Now, let's look at the -- what we've got in front of us is in fact the signed version but the unsigned one would have been received about 5 February, would it not?

A. That's right.

Q. Now, Mr Ivlev reports in this letter, in the bottom paragraph on page 13, what he says by way of explanation is:

"There are two Share Sale and Purchase Contracts both dated 25 December 2000, one between Boris BEREZOVSKY (the seller) and [Akmos]... and the second one between [Mr] PATARKATSISHVILI and the same Purchaser, in accordance with which on 29 December 2000 [Mr] BEREZOVSKY and [Mr] PATARKATSISHVILI transferred all of their shares in the Company to the Purchaser."

Now, does that suggest that the firm, at least by 5 February, was aware that agreements for the sale of these shares by Mr Berezovsky and Mr Patarkatsishvili to Akmos had been made on 25 December? The firm was aware of that by 5 February, was it not?

A. Yes.

Q. Does it also suggest that by that date at the latest they were also aware that the shares had actually been transferred to Akmos, the purchaser, on 29 December 2000?

A. Yes. Yes.

Q. Now, would you agree that if Mr Berezovsky and Mr Patarkatsishvili had already transferred their shares to the purchaser on 29 December, there was nothing over which they could grant a call option to Spectrum?

A. Yes, but the rest of the paragraph...

Q. Yes, but what that says is:

"I was advised by Mr Ruslan FOMYCHEV,
a representative of Messrs BEREZOVSKY and
PATARKATSISHVILI, that the consideration under the Share
Sale and Purchase Contracts has not been paid as it was
subjected by the execution of performance of the call
option agreement between Messrs BEREZOVSKY and
PATARKATSISHVILI... and the company named Spectrum..."

Now, what Mr Fomichev is recorded there as
explaining is that the payment of the consideration was
being held up until the option agreement was executed;
that's what he's explaining, isn't it?

A. It seemed to be some sort of conditional arrangement.

Q. But if the shares had already been transferred to Akmos
on 29 December then whenever the consideration was paid,
there was nothing over which an option could be
exercised, was there?

A. Apparently not, no.

Q. Now, does it look therefore as if this option agreement
was in fact a sham because one thing it could not
achieve was a transfer of shares to Spectrum? That had
already happened: the shares had gone to Akmos.

A. Are you asking me what I think now or what I thought at
the time?

Q. What you think now.

A. Well, possibly it does look a bit like an agreement that may have been signed before, but I think Mr Curtis was relying on Mr Ivlev and Mr Fomichev.

Q. Well, Mr Curtis was aware that the registration of the shares to Akmos had already happened, wasn't he?

A. I don't think he was aware of the registration.

Q. Well, okay. He was aware that, in accordance with the agreement of the 25th, on 29 December they had transferred all of their shares to the purchaser? Those are his very words, aren't they, Mr Ivlev's very words?

A. That's true. But, you know, he does go on to say that the call option is not illegal under Russian law. So --

Q. Well, Mr Jacobson, if the shares had already been transferred to Akmos, it wasn't going to be possible, was it, to grant an option to Spectrum over them?

A. Theoretically not, yes.

Q. Because the two agreements that were drafted by Curtis & Co, one was an option in favour of Spectrum and the other was an assignment of that option back to Akmos, and all that was completely pointless if Akmos had already got the shares at the end of the previous month, wasn't it?

A. Seemingly so.

Q. Now, could I ask you, please, to turn to H(A)29/41,

the same bundle. This is Clydesdale Bank telling Mr Curtis that their due diligence had been completed and they were in a position to accept the \$140 million split equally between Mr Berezovsky and Mr Patarkatsishvili. Do you see that?

A. I do.

Q. Now, was Mr Curtis aware, so far as you are aware, at the time this letter was received that funds were being paid by Mr Abramovich's companies into Spectrum's account?

A. I've no idea.

Q. Can you help us on whether Mr Curtis was aware that in fact the payment which included the \$140 million had been made to Spectrum between 8 and 25 January 2001?

A. I've no idea.

Q. You weren't aware of that?

A. No.

Q. For the transcript, that appears, among other places, from H(A)41/128.

Now, you accept, I think, that Mr Curtis must have been aware that funds were paid by Spectrum to Mr Patarkatsishvili's and Mr Berezovsky's account at Clydesdale Bank --

A. Yes.

Q. -- on 13 February. You accept that, don't you?

A. Yes.

Q. He was aware at the time?

A. Yes.

Q. And as I understand it, that was because Curtis & Co had access to the Clydesdale Bank statements. Is that correct?

A. That's correct.

Q. Did they have access to Spectrum's account also?

A. No.

Q. They did not.

Now, if the money was being paid by Spectrum to the Clydesdale Bank accounts on 13 February, it was obvious, wasn't it, that corresponding sums must have been paid into Spectrum's account by Mr Abramovich's companies at some time before or possibly on 13 February? Do you agree?

A. Are you asking me now or --

Q. Yes.

A. Yes, I agree.

Q. Now, the execution copy of the option agreement executed on behalf of Spectrum was not in fact received until June, was it?

A. I think it was June.

Q. Yes. What happened, I think -- correct me if I'm wrong -- was that on 11 or 12 June Curtis & Co received

from the sheikh's financial office executed copies of a number of agreements, including the Devonia agreements and the Spectrum agreements. Is that right?

A. That's right, yes.

Q. Right. Now, that was, of course, some four months after the receipt of the funds into the Clydesdale account, which, as we've seen, occurred on 13 February.

A. Correct.

Q. When you nod, it doesn't get into the transcript.

A. I know, sorry. Yes.

Q. Now, does it look as if this arrangement was also a sham for that reason, namely that at the time the agreement was executed, everything had already been done?

A. I mean, are you saying when we receive the agreements or --

Q. Well, the sheikh --

MRS JUSTICE GLOSTER: Just a second, Mr Sumption. What is the date of the executed option agreement? You told us in your question that it was received by Curtis & Co on the 11th or 12th.

MR SUMPTION: Yes, let me take the witness to the document that establishes that. It isn't apparent from the agreement itself, which is undated. But if the witness could be shown H(A)39/105.

Have you got that either on screen or in hard copy,

Mr Jacobson?

A. Yes.

Q. Sorry?

A. I've got it here.

Q. At page 105 you will see a fax cover page, "Subject: devonia". This is addressed to Stephen Curtis and it sends the full deed of assignment.

Over the page one sees the signature page which has been signed -- there were a number of originals, I think this is right, and this is the original that was being signed on behalf of Devonia and by the sheikh as guarantor. Is that correct?

A. That's correct.

Q. That's correct. So this is effectively the sheikh's financial office sending to the firm the executed copy of the assignment agreement; is that right?

A. Yes, that's correct.

Q. Now, at page -- I'm sorry, that's the Devonia agreement. If you look at page 109, you'll see the deed of assignment H(A)39/109.

A. Is it 107?

Q. Sorry?

A. Are you -- the executed page?

Q. The executed copy of the deed of assignment starts at 107 and the signature page is at 109. This appears to

be -- this is all an attachment to the fax which is at page 105. Can you confirm that?

A. Yes, that's correct.

Q. Now, the option agreement, I think we can also demonstrate, arrived at the same time; is that correct? Or about the same time, Mr Jacobson?

A. I believe so.

Q. Sorry?

A. I believe it was, yes.

Q. Yes, well, we'll just check, but I think you're right about that. I think you say so in your witness statement.

Now, looking at -- I'm told it's page 91 of the same bundle H(A)39/91, where we have another fax cover page, also from the same source, and that attaches on the same date, 11 June, the executed copy of the Spectrum option. Do you see that? 91 is the fax cover page, 92 is the first page of the agreement and 98 is the signature page which, I think, confirms what you've just told us.

A. Yes, that's correct.

Q. Now, at the time when this was received in your office, that's to say on 11 June, the money had already been paid in its entirety both by Mr Abramovich to Spectrum and by Spectrum to Clydesdale Bank and you were -- or

the firm was clearly aware of the latter part of that payment system, ie between Spectrum and Clydesdale Bank, and had been for some four months.

A. That's correct.

Q. What did you understand to have been the point of the assignment of the option back to Akmos, given that payment had been made four months before?

A. I didn't have any thoughts of it at all.

Q. I see.

Now, what you received in June was the execution copy sent to the sheikh in February, which was then being sent back by the sheikh or his financial office to the firm in June, signed by the sheikh but not by Akmos. This is the assignment agreement. You make that point in your witness statement, don't you?

A. Yes, that's correct.

Q. Now, in August 2002 you -- and I mean you personally here -- sent the assignment to Mr Joseph Kay's office, did you not? You make that point in your second witness statement.

A. I think I did, yes.

Q. When you sent it in August 2002 to Mr Kay's office, the document which you sent was signed not only by the sheikh but apparently by Akmos as well? You're nodding and it's --

A. That appears to be right, yes.

Q. Right. Can we just have a look at that:

H(A)47/128.003.

Now, 128.003 is a letter signed by you enclosing a copy agreement with Spectrum and copy deed of assignment. Okay?

A. Mm-hm. Yes.

Q. And Ms Olga Lihou, to whom you're sending it -- see top left -- was someone who worked in Mr Joseph Kay's office; that's right, isn't it?

A. That's correct.

Q. Now, we can see from page 128.025 and following H(A)47/128.025 the assignment agreement and the signature page is at page 128.027 and by this stage a signature purportedly on behalf of Akmos has appeared. Do you see that?

A. I do.

Q. Now, our evidence is -- and I'm not expecting you to comment on this because you wouldn't know -- that that signature was a forgery. Can you help us on how the signature came to be on the copy of the document which your firm had held since June?

A. I've no idea.

Q. The document that you were sending to Mr Kay had been in the custody of your firm since June 2001, had it not?

A. What, the original?

Q. Sorry?

A. Which document? This --

Q. Well, the document that you are sending to Mr Kay is the document that you had received or the firm had received back in June 2001, isn't it, but with the addition of a signature on behalf of Akmos?

A. Yes, it looks like that, yes.

Q. Now, does it look therefore as if what you were sending Mr Kay was a document that had been on the files of your firm since June 2001? We don't know at what stage the signature was added, but the document must have been in your firm's files throughout that time. Do you agree?

A. What, without the Akmos signature?

Q. Well, without it at some stage and then, after a point of time which we can't identify, with it.

A. Yes.

Q. You agree?

A. I agree, yes.

Q. Now, for that signature to have been put on the document by an officer of Akmos, Mr Curtis's firm would have had to send it to them directly or indirectly for that purpose, would it not? Some arrangement would have had to have been made by Mr Curtis's firm --

A. Wouldn't Spectrum have --

Q. -- to get Akmos's signature there?

A. Wouldn't Spectrum have done that?

Q. Well, Spectrum could hardly sign on behalf of Akmos, could they?

A. No, but hang on --

Q. They may have done so, but it would be a forgery if they did?

A. But we received a fax copy without the Akmos signatures in June 2001.

Q. Yes.

A. And then --

MRS JUSTICE GLOSTER: What paragraph of your witness statement are you looking at?

MR SUMPTION: It's in the second witness statement, my Lady, at D4, flag 7. It's dealt with between paragraphs 12 and 16 of that statement D4/07/52.

MRS JUSTICE GLOSTER: Thank you.

MR SUMPTION: Now, we know that in August 2002 -- we've established this from your answers a few minutes ago -- there was this copy with an Akmos signature or a purported Akmos signature on it which you sent to Mr Kay's office.

A. Mm-hm. Correct.

Q. Now, for that document to have an Akmos signature on it by August 2002, some arrangement, some communication

must have occurred with the firm under which the document was supplied with an Akmos signature: either somebody sent it to them saying, "Here's another copy with Akmos's signature", or the firm must have arranged to get Akmos's signature. One of those two things must have happened, must it not?

A. If we received the fax copy in June 2001 --

Q. Yes.

A. -- I don't know when the original would have come --

Q. Yes.

A. -- but Spectrum could have arranged for the original to be signed by Akmos from wherever Spectrum was in Abu Dhabi.

Q. Well, is there any documentary record on the firm's file of the firm having received any other copy of the agreement as executed by the sheikh apart from the copy that was faxed to you on 11 June? Do you have any record --

A. No.

Q. -- on the firm's file of that having happened?

A. I think it was just the fax copy.

Q. Yes. Likewise, is there any record on the firm's file of the firm having itself arranged for an Akmos signature to be applied to it?

A. No.

Q. Now, if either of those things had happened, it would have left a documentary record on the firm's archives, wouldn't it?

A. Yes, should do.

Q. Does it look as if the Akmos signature was applied to this document in Curtis & Co's office?

A. No.

Q. Why do you say that?

A. Because the original would have still been in Abu Dhabi with Spectrum.

Q. Yes, but you had a version signed by Akmos by August 2002.

A. Yes, a fax version.

Q. Well --

A. Oh, no, sorry. Yes, original then, yes.

Q. Yes.

Now, how did the signature get there without leaving any trace of its having come into Curtis & Co's office unless the signature was applied in the office?

A. I don't follow. I'm missing something. Because I'm assuming the signatories were done in Abu Dhabi or elsewhere.

Q. Well, if that had happened, as you've just confirmed, Mr Jacobson, there would be some documentary record of the version with Akmos's signature coming into the firm,

and there isn't. Do you see?

A. No, I'm missing the point.

Q. What I put to you a moment ago was that if the firm had received the agreement from Spectrum at some stage after 11 June 2001 with Akmos's signature on it, there would have been a documentary record of that having been faxed in or emailed in, wouldn't there?

A. If it had been received -- well, if the original had come in by courier.

Q. If the original had come in by courier, you think that it would not necessarily have left any documentary evidence of receipt?

A. It would just be the document.

Q. Yes. Well, every other document that we have seen relating to this transaction came in either by email or by fax. Can you confirm that?

A. No, I don't think so, no. We obviously got original --

MRS JUSTICE GLOSTER: Can you speak up, please.

A. We obviously got original documents later on.

MR SUMPTION: Once you had received the faxed copy on 11 June, there would be no need for any haste and no need to courier the original to you, would there?

A. Are you talking about the assignment?

Q. Yes.

A. I assume not, no.

Q. Mr Curtis received a fee of \$600,000, described as a 0.66 per cent of the sheikh's turn on the deal relating to Spectrum, did he not?

A. I don't know whether he received it.

Q. Well, he certainly had an agreement that he was to receive it, did he not?

A. That appears to be the case in the instructions to counsel.

Q. Yes. Well, if we just have a look at H(A)32/20 --

MRS JUSTICE GLOSTER: Just before you leave the deed at page 128.027 H(A)47/128.027, is the document within Curtis & Co's firm the original or a copy, or is it not possible to say? The document that's on the screen at the moment.

A. That one would have been an original.

MRS JUSTICE GLOSTER: And the original comes from your files; is that -- well, let me ask Mr Sumption that.

Mr Sumption, the document that's on the screen at the moment, is it an original that comes from Curtis & Co's file?

MR SUMPTION: Well, it's only -- it comes from Curtis's files, yes. We can only be sure that it's an original so far as concerns the signature applied to Akmos. It's not clear that it isn't actually a signature that was applied to the faxed copy that had previously been

received. It's not clear one way or the other.

MRS JUSTICE GLOSTER: But so far as the signature is concerned, it's your case anyway that that is an original signature applied to that particular document?

MR SUMPTION: Yes, and a forgery.

Now, Mr Jacobson, if the document had in fact come in by courier, there would still be a documentary record, wouldn't there? Because if you send a document by courier you have to identify what it's about. So there would be a covering letter saying, "Please find enclosed..." whatever it is. That would happen almost invariably, wouldn't it?

A. Sometimes not with the Russians, no.

Q. Well, except I think you're envisaging that it was the Arabs.

A. Well, they're just --

Q. But are they just as bad?

A. Yes.

Q. You don't send a document to a solicitor's office without any kind of explanation of what it is or what it relates to or who it's come from, do you?

A. I don't. But it is done quite a lot where you just get something -- an original document. Or it could have been handed by --

Q. That wasn't Dr Jumean's practice, was it? We've seen

his practice from a number of other items of correspondence. He was quite meticulous about all this, wasn't he?

A. He was meticulous, yes.

Q. Now, if we can just return to the commission. If you would turn to H(A)32/20. This is a document that begins on page 19 and it's an attendance note of 29 May 2001 of your meeting, together with Mr Curtis, with Jonathan Fisher of counsel.

A. That's correct.

Q. And you refer to the commission on the second page, page 20 of the bundle, in the paragraph that begins just above halfway down the page. You refer to this in your witness statement. This is Mr Curtis discussing with counsel the \$600,000 fee which Mr Curtis said that he would be receiving from the ORT transaction.

Mr Fisher was a bit troubled by this fee, wasn't he?

A. Yes, he thought it should be written down.

Q. It should be...?

A. Written down.

Q. Yes, but it wasn't just that it should be written down, was it? He was a bit troubled because, as he points out, if you look at the three points made in the end of that paragraph: first of all it was "a very large amount"; secondly, "it was not referable to any time

expended which was unusual"; and thirdly, the point you've just made that "the basis had never been documented".

If you look two paragraphs further down:

"Counsel suggested... that the size of payment that was being given to SLC could in the worst light be interpreted as a payment for SLC to keep quiet about any... money laundering activities (this is obviously on the basis that the source of monies were proven to be illegal)."

That was his concern, wasn't it?

A. That's correct.

Q. Now, was the \$600,000 in addition to the firm's professional fees?

A. I've no idea.

Q. Sorry?

A. I've no idea.

Q. You don't know?

A. No.

Q. In your experience is it usual or unusual for a solicitor to receive a large profit commission on a transaction?

A. Unusual, I would say.

Q. Now, can we turn to the Devonian transaction.

I understand that your first recorded involvement in

this transaction was on 14 May, when you took a note of a telephone conversation between Mr Curtis and the Clydesdale Bank. Am I right about that? Or was there any other contact?

A. I think that's right.

Q. Yes.

Now, I wonder if you could turn to H(A)30/33.

This is the document in question and I think that you were listening in on this telephone -- was it a telephone conversation or a meeting? I understand it to have been a phone conversation. Is that right?

A. It's telephone.

Q. Right. And as I understand it, you were listening in on it and taking the note. Is that right?

A. That's right.

Q. Now, are you familiar with this document or would you like an opportunity just to remind yourself of its contents?

A. Yes, I'm okay with it.

Q. Right.

Now, did it become apparent in the course of this conversation that a receipt of very large sums originating from funds held by Mr Abramovich in a Latvian bank would cause difficulties for Clydesdale Bank?

A. Yes.

Q. And was that because they were likely to find it difficult to satisfy themselves about its origins?

A. That's correct, yes.

Q. Now, did the bank therefore say that because these problems would not apply to funds transmitted from Abu Dhabi by Sheikh Sultan, one possibility was that the funds should arrive from that source instead?

A. I think that's the gist of it, yes.

Q. Was that because the bank had already done due diligence in the past on Sheikh Sultan and his family and associates?

A. I think that's right.

Q. Now, three days after this telephone conversation, on 17 May, you tell us in your witness statement that Mr Curtis went to the south of France to see Mr Berezovsky, Mr Patarkatsishvili and Mr Fomichev. You remember that evidence?

A. I do, yes.

Q. Now, I'd like you, please, in bundle H(A)30 to turn to page 127 H(A)30/127. Now, you have described in your witness statement how this document was prepared at about the time that Mr Curtis went to France and a copy of it was in fact faxed by you to Mr Curtis in the south of France. You remember that evidence from your witness

statement?

A. I do, yes. Yes.

Q. Now, the bold-type comments before the actual draft agreement, that appears to be notes of advice which Mr Curtis was to give to them. Is that right?

A. I think that's right, yes.

Q. And I think your evidence is -- your first witness statement, paragraph 90 is where I get this from D2/16/114 -- that these five bold points reflected points dictated by Mr Curtis to Mr Gilchrist. Is that right?

A. That's right, although I think NB(5) may have come later.

Q. I see.

Well now, did Mr Curtis, so far as you can tell us, take a copy of a discussion draft, with or without these notes, with him to the south of France?

A. I don't know.

Q. You don't know?

A. No.

Q. Now, point 2, if you -- now, your evidence is that you faxed this at about midday UK time, allowing for the two-hour difference between Curtis & Co's internal clock and Greenwich Mean Time. You faxed this at about midday on the 17th; that's what you recall, isn't it?

A. That's right, yes.

Q. Now, point 2, if you will just have a look at point 2 in the list of points, suggests that Mr Curtis was going to advise that there should be a direct agreement with Mr Abramovich in order to be able to enforce payment against him in England. Do you see that?

A. Yes. Yes, I do.

Q. So does it look as if at this stage it was intended that there should be a contract between Mr Berezovsky and Mr Patarkatsishvili on the one hand and Mr Abramovich on the other, but that the money would be channelled through Sheikh Sultan? Does that seem to have been what was envisaged at this stage?

A. It's a possibility, yes.

Q. Can you think of any other possibility which is worth considering?

A. What, insofar as that the money couldn't come directly from Mr Abramovich?

Q. Yes.

A. No.

Q. So there was going to be a direct deal but a slightly roundabout route for the money?

A. That appears to be the case, yes.

Q. Yes.

Now, point 4 suggests that Mr Curtis thought that it

was desirable to "create evidence of the trust scenario". I'm quoting from the document; you'll see it in front of you.

A. Yes.

Q. Can you help us on what was meant by "creat[ing] evidence of the trust scenario"?

A. I'm assuming it's the relationship between Boris and Badri and Mr Abramovich.

Q. Yes, but why was it necessary to create that evidence?

A. Well, I think he wanted to have some sort of written evidence of it.

Q. You think what?

A. I think he wanted to have some sort of written evidence of it.

Q. I see.

Now, you faxed this document, as you've told us, to France, together with a shorter form of agreement which we can find at H(A)30/142, about 15 pages further on.

Now, this is what you call the short-form agreement and this is the version that you faxed at 14.29 on Curtis machine time; about half past midday actually. That's right, isn't it?

A. Yes, there's two forms of this agreement.

Q. Yes. Well now, this version is not in fact -- the first document is the sale agreement. This document is

actually a release, isn't it?

A. That's right. This -- the first version I think -- was it faxed afterwards?

Q. Well, it was faxed virtually simultaneously. If you look back at H(A)30/127 -- sorry I'm trying to find the version with your fax header sheet -- I think they were both faxed at about 2.30 on 17 May. I'll try and get chapter and verse for that.

If you look at -- 142 is the short-form, as you call it, and 145, which has a fax record going about a minute later --

A. Yes.

Q. -- is the -- no, that's the same document. 148 is the document we've just been looking at with the five bold advice points.

A. Yes, that's 14.47, isn't it?

Q. 14.47.

A. Okay.

Q. So it looks as if they've both been prepared at more or less the same time and were being faxed within a short time of each other to Mr Curtis in France; do you agree?

A. That's right, yes.

Q. Now, the document at 148 H(A)30/148 is the same as the one we've been looking at and that is a sale and purchase agreement directly between Mr Abramovich and

Mr Berezovsky and Mr Patarkatsishvili, isn't it?

A. That's correct.

Q. And the document at 142 H(A)30/142 is a release under which, in consideration of Mr Abramovich either paying to Mr Berezovsky or Mr Patarkatsishvili the sums of money set out below or procuring Sheikh Sultan to do so, Mr Berezovsky and Mr Patarkatsishvili release Mr Abramovich from all or any claims of any nature they may have in connection with 44 per cent of the issued share capital of Sibneft. That was its purpose, wasn't it?

A. That's correct.

Q. And was that because Mr Curtis appreciated that it would be necessary, if there was going to be an arrangement under which the money went via the sheikh, to ensure that Mr Abramovich was released from any liability in respect of the equitable interest referred to in the sale agreement? Was that the reason for that?

A. I wouldn't know. I mean, are you asking me now or at the time?

Q. Well, I'm asking you now, but in the light of your examination of these documents.

A. Yes, it was to show an agreement between Boris and Mr Abramovich.

Q. Now, as you tell us in paragraph 105 of your main

witness statement D2/16/118, that was sent for translation, but there is a note on one of the versions that it was abandoned on Saturday morning, ie the morning after it was sent for translation. Do you see that?

A. I do, yes.

Q. So can you help us on: what was it that was abandoned on the Saturday morning?

A. I'm assuming it was just that present format.

Q. Well, this was a note on a copy of the draft short-form agreement with Mr Abramovich, the release agreement, wasn't it? If you want to look at it, it's bundle H(A)45/8. Do you see? This is the release agreement and the note that you refer to in your witness statement is in manuscript at the top. Is that note in your handwriting?

A. It is, yes.

Q. Now, so it looks as if a decision had been made, very shortly after the discussions between Mr Curtis and Mr Fomichev, Mr Patarkatsishvili and Mr Berezovsky in France, to drop the idea of a release. Do you agree?

A. I do, although H(A)45/8 is different to H(A)30/142. One of them relates to -- specifically relates to transferring shares and the other one doesn't. There's quite a subtle difference there.

Q. You're quite right. But they are both releases, aren't they? They're successive drafts of a release?

A. I think so. I think -- yes, they are.

Q. The names have been blanked out because of confidentiality but they were intended to be Mr Berezovsky and Mr Patarkatsishvili in line 1 and Mr Abramovich in line 2, weren't they?

A. That's right, yes.

Q. Now, can you help us at all on -- you must have been told at the time, for you to make this note that it was being abandoned -- were you not told why it was being abandoned?

A. I doubt it.

Q. I see.

Well now, on 21 May 2001 was there a conversation between Mr Curtis and Mr Keeling of Denton Wilde Sapte in which you again took an attendance note?

H(A)31/47.

A. I don't think I took the note.

Q. Sorry?

A. I don't think I took the note.

Q. Okay. Let's have a look at the document. H(A)31/47.

Were you party to this conversation? It records in the first line that you were.

A. I think so, yes.

Q. This note is Mr Keeling's note. Did you take a note of your own?

A. No.

Q. I see. But you do confirm that you were party to the conversation?

A. I think so, because I spoke -- did speak to him about Devonia.

Q. Yes. Well, that was shortly afterwards, wasn't it?

A. Mm-hm.

Q. Now, this note records a conversation between Mr Keeling and you and Mr Curtis. Now, just to establish who Mr Keeling was, had Mr Keeling been retained to set up any offshore vehicles that might be required in order to deal with this sum of \$1.3 billion?

A. I don't know whether he was retained at that time.

Q. Well, it looks, doesn't it, as if there had been some previous contact with Mr Keeling because, if you look at the first paragraph:

"This follows on from the conversations of 27 April and 2 May and concerns the shares of Sibneft, apparently the second largest Russian oil company, after YUKOS.

"[Mr Keeling] was reminded [of certain things]."

Does it look as if there had been previous discussions with Mr Keeling?

A. It does.

Q. Now, Mr Keeling's function was in fact, whenever that was agreed, to set up any offshore vehicles that might be required, wasn't it?

A. I think so, yes.

Q. That's what he did?

A. Yes.

Q. So it looks as if he had received some kind of preliminary instruction at an earlier stage and this was a more detailed discussion of the background and what he was to do; do you agree?

A. Yes, I'm not -- yes, he would have been involved in some respect. I don't know if he was formally instructed on it.

Q. Right.

Now, Mr Curtis describes himself in this document, in this note -- see the third paragraph from the top -- as having been:

"... brokering a deal whereby Abramovich will buy out the shares of Beresovsky and Badre."

Now, was it your understanding that Mr Curtis was in fact in contact with Mr Abramovich on that subject?

A. I don't think so, no.

Q. No. At the time -- I mean, obviously you only saw this note much later. But at the time you were unaware of any contact, weren't you, between Mr Curtis and

Mr Abramovich?

A. I don't remember him speaking of any direct contact.

Q. Yes. And you don't remember Mr Curtis telling you that he'd been in contact with Mr Abramovich?

A. No.

Q. Now, there are some documents and you refer to them at paragraphs 136 and 137 of your witness statement D2/16/124 and 173 to 175 D2/16/132. I'm not going to ask you in detail about this but I'm just referring to it as background to the next question.

There are some documents recording the involvement of a Ms Khudyk, who was a member of Mr Abramovich's staff who was helping Mr Fomichev to set up an account for Devonia at the Latvian Trade Bank into which these sums to be paid by Mr Abramovich could be paid. She was dealing with some administrative arrangements for setting up that account, wasn't she?

A. I believe so. I don't know.

Q. Yes.

A. Was I involved in that?

Q. Well, your involvement was peripheral and is described in those passages of your witness statement. But you weren't involved and don't claim to have been involved in detail.

A. No.

Q. Now, is there any evidence in the firm's file of contact between Mr Curtis on the one hand and either Mr Abramovich or his staff on the other, apart from the dealings involving Ms Khudyk?

A. I don't think so.

Q. Now, Mr Curtis in this note H(A)31/47, as recorded by Mr Keeling, says that Mr Abramovich could not be seen to pay for the shares -- I'm looking at the fifth paragraph of the note -- because he had always publicly stated in Russia that he owned them. Do you see that?

A. Yes, I do.

Q. Now, can you help us on where Mr Curtis got that information from?

A. I can have a guess.

Q. What would your guess be?

A. Probably Mr Fomichev.

Q. Probably Mr Fomichev.

Now, the note goes on to describe a scheme under which there will be a direct contract between Mr Abramovich on the one hand and Messrs Berezovsky and Patarkatsishvili on the other which will serve as evidence of their beneficial interest in the shares. That's the fourth paragraph of the note. Do you see that?

A. Yes.

Q. Now, the agreement which he then proposes is described in the sixth paragraph of the note and that is an agreement under which Mr Abramovich would pay \$1.3 billion to the sheikh not, on the face of it, for shares in Sibneft but in return for an oil concession. Do you see that?

A. I do.

Q. Was the suggestion this: that the sheikh would grant Mr Abramovich or his companies an oil exploration concession over land in the Middle East which was known to have no oil in it?

A. It seemed to be -- yes, I think it's anticipated.

Q. Yes. That's the proposal that's being made?

A. Yes.

Q. Now, would you agree that to grant for \$1.3 billion an oil concession on land known to have no oil in it was obviously a proposal for a sham agreement?

A. Yes, that doesn't look correct.

Q. It's simply designed to generate documents to explain the payment, isn't it?

A. Pretty much.

Q. Now, was Mr Curtis troubled by that?

A. Well, I don't know whether it was his plan.

Q. Well, he was explaining it to Mr Keeling.

A. Yes, he seemed quite open about it --

Q. Yes.

A. -- to Mr Keeling.

Q. So he was untroubled about it?

A. He didn't seem overtly troubled, no.

Q. Yes.

A. But obviously it never went anywhere.

Q. Well you tell us in a memorable understatement, Mr Jacobson, that you yourself would no doubt have raised your eyebrows at it. You would have been troubled about a transaction like that, wouldn't you?

A. I think the fact there was no oil, yes. Maybe there was oil.

Q. Now, in fact you had drafted two oil concession agreements on the previous day, hadn't you, the day before this note was made?

A. Two licence agreements, yes.

Q. Yes. So it looks as if Mr Curtis was quite serious about this, does it not?

A. It was a proposal, yes.

Q. Now, Mr Keeling subsequently acquired, shortly after this telephone conversation, did he not, on Mr Curtis's instructions, an off-the-shelf company, Devonia Investments?

A. That's right, yes.

Q. Is that right?

A. Mm-hm.

Q. And Mr Keeling also -- is this right -- set up the Itchen and Test Trusts, of which he in fact became a trustee; is that right?

A. That's correct.

Q. And they were trusts for Mr Berezovsky and Mr Patarkatsishvili, were they not?

A. They were.

Q. Now, can you tell us: when was the plan for a direct contract between Mr Abramovich and Messrs Berezovsky and Patarkatsishvili abandoned? Because it was, you agree, at some stage dropped and replaced by a proposal for a sale of their interest to Devonian. Can you tell us when that change of plan occurred?

A. I can't, no.

Q. Are you aware of any documentary trace of the change of plan before 29 May?

A. I think there was -- was there a note, a telephone call on 25 May with Nick Keeling?

Q. I will check that. I'm not aware of it, but it's easy to overlook stuff in these enormous bundles and I will have it checked while I continue to ask you questions.

A. It was the first time he said that the transaction had become less complicated.

Q. Right. Well, we will see if we can lay our hands on

that and I will show it to you if we succeed.

On about 29 May -- is this right -- Mr Curtis prepared two draft letters, one addressed to Mr Fomichev and Mr Kay jointly and one to Dr Jumean explaining a change of plan. Do you remember those documents?

A. I do remember the letters, yes.

Q. Yes. Can I ask you to look at them: bundle H(A)32/12. This is the draft letter to Dr Jumean. And if you look back at page 8 H(A)32/8 you will see the draft letter to Mr Fomichev and Mr Kay. Do you see that?

A. Yes.

Q. Now, were you aware at the time that, in discussions with Mr Abramovich and his staff, Mr Fomichev had been trying to arrange for the \$1.3 billion to be paid in securities rather than in cash?

A. No.

Q. You were not aware?

A. No.

Q. So I think it must follow that you weren't aware that it was on this day, 29 May, that at a meeting in Cologne that suggestion was rejected by Mr Abramovich so that it was going to be cash?

A. I wasn't aware of that.

Q. I understand.

Now, these two documents, these two letters, both

explain that it has now been decided that there will be a sale to the sheikh rather than to Mr Abramovich directly. That's, in very bald summary, what they're both concerned with, isn't it? It's more obvious from the letter to Dr Jumean on page 12, where he summarises in the numbered paragraphs the deal as now envisaged.

A. That's right, yes.

Q. And he makes the point that now that the deal is going to involve the sheikh's company buying Mr Berezovsky's and Mr Patarkatsishvili's interests in Sibneft, he could no longer act for Mr Berezovsky and Mr Patarkatsishvili. That's one of the points he's making, isn't it?

A. That's right.

Q. Now, presumably if the sale to the sheikh had been decided earlier than this, Mr Curtis would have ceased to act for Mr Berezovsky and Mr Patarkatsishvili earlier than that, wouldn't he?

A. I believe so. I mean, there might have been a time delay, a little bit.

Q. The moment it became apparent that he had that conflict, he would inform his clients and withdraw from acting from them, wouldn't he?

A. I agree. But that attendance note of the 25th, I think it seems to suggest that the transaction had changed somewhat.

Q. Okay. Well, let's just have a look at that in case it assists: H(A)31/252. Now, I'm not sure this is correctly described as a "note" but it may be the document that you had in mind.

A. No. No, this isn't --

Q. That's not what you had in mind?

A. No. I think it's a fax from Nick Keeling on the 29th referring to a discussion --

Q. On the 29th?

A. Yes, it was -- referring to a discussion on the 25th --

Q. Right.

A. -- where Stephen confirmed that the transaction had --

Q. We will resume our searches, Mr Jacobson.

A. Yes -- had become less complicated and there would be a...

Q. Okay. Right.

Now, these two letters envisaged that there was now going to be a sale of part of the holding of Mr Berezovsky and Mr Patarkatsishvili's interests and a grant to Devonia of an option over the rest. That, in broad summary, was the structure proposed, wasn't it?

A. That's right, yes.

Q. Now, we've seen that Mr Curtis was going to cease to act, in consequence, for Mr Berezovsky and Mr Patarkatsishvili. In this letter to Dr Jumeau...

Sorry, can I just break off and show you what we now think is the note: H(A)32/43. Is this the document that you had in mind?

A. That was it, yes.

Q. I see. What was it that you wanted to point out to us?

A. Well, just the -- obviously the conversation on the Friday afternoon, which was probably the 24th or 25th, where in the next paragraph he explains, probably for the first time, how the transaction is going to be detailed.

Q. Yes, I see. Well, it may be therefore, you think, that was what was explained on the Friday afternoon.

I entirely see that.

Now, if we can go back to the draft letters that we had open before, pages 8 and 12, in particular the one that starts at page 12 H(A)32/12. Do you see that on the second page of that letter to Dr Jumean, page 13 of the bundle, bottom of the page, he says:

"I am required to make yourself and His Highness aware of the potential dangers of acquiring a nebulous beneficial interest without any third party confirmations from Mr Abramovich as to ownership."

Do you see that?

A. I do.

Q. Now, why was it nebulous?

A. Because it was undocumented and unacknowledged.

Q. Well, it was undocumented; that was one point. It was also an interest which Mr Curtis knew, didn't he, Mr Abramovich was not going to acknowledge?

A. Well, he tried, obviously, to formulate agreements for him to be able to acknowledge it, but it seemed to be by that stage acknowledgement --

Q. By this stage at the latest he realised that Mr Abramovich was not going to acknowledge that there was any interest, and that is information I think you told us that you thought was probably derived from Mr Fomichev, or you hazarded a guess to that effect?

MRS JUSTICE GLOSTER: Can you say "yes" or "no" because nodding doesn't appear on the transcript.

A. Okay. My nodding -- yes to Mr Fomichev or I agree with what you said in relation to the -- to it being unacknowledged.

MR SUMPTION: Yes. But Mr Curtis also knew by this time, didn't he, that Mr Abramovich was not going to acknowledge that Mr Berezovsky and Mr Patarkatsishvili had any interest in these shares?

A. I think that's right, yes.

Q. And that was the information that a few minutes ago, when you said you could hazard a guess, you said that he was liable to have obtained from Mr Fomichev.

A. This precise information?

Q. The information that Mr Abramovich was not going to acknowledge their interest.

A. Okay.

Q. Do you agree?

A. I don't -- I guess.

Q. Well now, it was also, of course, the case, was it not, that by this time any attempt on Mr Curtis's part to get any kind of direct agreement between Messrs Berezovsky and Patarkatsishvili on the one hand and Mr Abramovich on the other had been dropped in favour of this new structure? That was also the case, wasn't it?

A. Appeared to be the case, yes.

Q. Now, these new arrangements were communicated, weren't they, to Clydesdale Bank? They were sent copies of these draft letters?

A. Yes, that's right.

Q. And did these new arrangements give rise to concern on the part of the bank that the money that it was going to receive might be just Mr Abramovich's money passing into their accounts by a circular route via the sheikh?

A. Yes, they wanted some confirmation that the money originated from the sheikh's own funds.

Q. Yes. They were concerned, weren't they, that it might be Mr Abramovich's money just being recycled through the

sheikh?

A. That's right.

Q. Now, can you help us on why this change of a sale to the sheikh was decided upon?

A. What, you mean the actual sale or...?

Q. Well, at some stage a decision was made that instead of selling to Mr Abramovich, they were going to sell to the sheikh. You may not be able to help on this, but can you help us on, first of all, who made that decision?

A. I don't know who made it.

Q. So I think it probably follows from that answer that you probably can't help us on why either?

A. No, probably not.

Q. Now, the first discussion draft of a sale to the sheikh's company was prepared, I think you tell us, on the following day, 30 May. The reference is H(A)32/82, same bundle. It's actually marked, I'm not sure in whose handwriting, at the top right:

"1st Discussion Draft 30/05/01."

A. Yes, that's Mark Gilchrist.

Q. That's Mr Gilchrist, is it?

A. Yes.

Q. Thank you.

Now, were you aware at the time that on the following day, 31 May, the first payment, namely

\$33 million, was made by Mr Abramovich's companies into Devonia's account with the Latvian Trade Bank?

A. No.

Q. You were not.

Could I ask you to turn to bundle H(A)34/23, please. This is a letter from Ms Khudyk, whose role I have mentioned in the context of an earlier question, sending to you various documents which need to be signed and sent back initially by fax and then by courier to an address in Moscow. Do you see that?

A. I do.

Q. Now, the documents that she attached were documents, were they not, relating to the first payment of \$33 million out of the \$1.3 billion?

A. I had no idea what they were.

Q. Well, they were addressed to you. If we just look at page 24, the first of them, this is a receipt for a share in Pex Trade Corporation. And the next page is a direction:

"... to transfer the dividends payable to our company..."

And that's Devonia.

"... as the shareholder of Pex Trade Corporation..."

Then there's an assignment of the subscription by Pex to Devonia and you will see that on page 29 the

amount is specified.

There's a payment order, Pex Trade Corporation, \$33.85 million to Devonia at Latvian Trade Bank in Riga.

Do you see that?

Now, the first payment of the \$1.3 billion was made by transferring bearer shares of a company called Pex to Devonia and then procuring Pex to pay a dividend to Devonia in the amount of \$33.85 million. It's the documents relating to that transaction that are being sent to you on this occasion on 31 May, isn't it?

A. Yes, that's right, although I didn't receive this payment order.

Q. Sorry?

A. I didn't receive the payment order.

Q. You didn't receive the payment order?

A. No. 34/29.

Q. I see. You think that that's part of a different document, do you?

A. Yes, that's not --

Q. I see. Okay.

A. That's not part of the... well, we can check, can't we?

Q. Right, I follow. But you did see the other documents, including the document at page 25 which asks you to transfer the dividend, but the amount is unspecified, to Devonia?

A. I did, but I had no idea what it related to.

Q. Yes, I see.

Well now, did you actually read these documents or not?

A. Probably not, no.

Q. Do you agree that even without the payment order they appear to show that payment was imminent even though the Devonia agreement had not even been drafted, let alone executed?

A. I had no idea what it related to in relation to the Devonia agreement.

Q. Can we look at page 33 in this bundle, please H(A)34/33, which is a copy of the same documents but with a note from I think Mr Curtis to you. Is that right?

A. Me to Mr Curtis and then Mr Curtis to me, yes.

Q. Sorry?

A. It's from --

Q. Yes.

A. Yes.

Q. The first bit immediately under the typed text:

"James -- I have told Ehab..."

That's Mr Curtis, isn't it?

A. That's right.

Q. So Mr Curtis is saying to you:

"I have told [Dr Jumean] we cannot act on this -- he is to refer to his [Abu Dhabi] lawyers -- he confirms that he has already received these direct from (Sibneft?) and is dealing with Sibneft... direct -- do not send."

Okay? Now, Mr Curtis didn't want to see this sort of documentation, did he?

A. I've no idea.

Q. Well, he had carefully arranged, hadn't he, that his firm would not be instructed on any dealings between Devonian and Mr Abramovich because he didn't want to be involved with that side of things?

A. I don't know whether he was careful; it was just he didn't want to be instructed.

Q. Yes. It was his decision that he should not be instructed --

A. I think so.

Q. -- on that side of the transaction, wasn't it?

A. I think so, yes.

Q. Now, can you help us on why that was, if it wasn't simply in order to ensure that he was not aware of what was going on, if anything, between Devonian and Mr Abramovich?

A. I'm assuming it was relating to the Clydesdale Bank. He wanted to stick with --

Q. Yes.

A. -- stick with them and also to -- I assume the fact that none of the parties were from the UK and the money wasn't coming into the UK felt --

Q. Well, he didn't -- sorry.

A. He felt it was probably something best dealt with by other lawyers.

Q. He didn't want to have to answer questions from Clydesdale Bank about the supposed onsale of these shares by Devonia to Mr Abramovich, did he?

A. I've no idea.

MR SUMPTION: My Lady, would that be a convenient moment to break?

MRS JUSTICE GLOSTER: Yes, certainly.

MR SUMPTION: I'm not going to be that much longer with this witness; probably half an hour.

MRS JUSTICE GLOSTER: Yes, very well.

Mr Jacobson, you mustn't talk to anybody about the case or your evidence over the break. Do you understand?

THE WITNESS: Yes, my Lady. Yes.

MRS JUSTICE GLOSTER: Very well. 2.05.

MR SUMPTION: My Lady, before your Ladyship rises can I just mention that there has been a minor change to the witness material. Mr Stephenson is going to be

available if we get to him, which we may well do, this afternoon.

MRS JUSTICE GLOSTER: Very well.

MR SUMPTION: So if your Ladyship hasn't had an opportunity to read his statement --

MRS JUSTICE GLOSTER: Thank you very much. I'll go and read it over the break.

(1.03 pm)

(The short adjournment)

(2.05 pm)

MRS JUSTICE GLOSTER: Yes, Mr Sumption.

MR SUMPTION: Mr Jacobson, can I ask you, please, to turn to H(A)34/33, which you won't have in front of you.

I think it will be brought to you.

A. It's here.

Q. You have got it, I see. Thank you.

Now, this is a letter of 31 May 2001 addressed to Ms Hilton, who was the compliance officer of the Clydesdale Bank, was she not?

A. Sorry, did you say 34/33?

Q. Sorry, forgive me, I've given you a false reference.

It's a different document. 33 --

MRS JUSTICE GLOSTER: That was the one we were looking at before lunch.

MR SUMPTION: Sorry, 34/2, forgive me. My mistake entirely.

This is indeed a letter to Ms Hilton from Mr Curtis dated 31 May; is that right?

A. That's right, yes.

Q. Ms Hilton was the compliance officer of Clydesdale Bank European Group, wasn't she?

A. That's right, yes.

Q. Now, if you look at this letter, do tell me if you want to take a moment just to remind yourself of its contents, but if you see the fourth paragraph, you will see -- well, in the first paragraph Mr Curtis thanks her for some diagrams that he's sent reflecting his understanding of the transaction and then there are discussions of possible further material. And in the fourth paragraph:

"As I explained over the telephone, the suggestion now is that the Sheikh will purchase the beneficial interest of Boris Berezovsky and Arkady Patarkatsishvili in installments."

Now, it looks, does it not, as if there had been a previous telephone conversation between Mr Curtis and Ms Hilton at which -- see the following paragraph -- Ms Hilton had expressed some concerns about the new form of the transaction? Would you agree with that?

A. Yes.

Q. Now, why -- you'll see that in the next paragraph:

"I have passed on to Eyhab your concerns with regard to the exposure of the Sheikh and we have similarly advised him of the potential dangers."

Now, can you help us on: why would a compliance officer like Ms Hilton have been concerned with the exposure of the sheikh?

A. I've no idea.

Q. Well, on the face of it -- would you agree -- this was an incredible transaction, wasn't it, because the sheikh was apparently going to buy for \$1.3 billion an undocumented equitable interest in a Russian oil company in circumstances where the registered owner of the shares was not prepared to acknowledge the existence of their interest?

A. That's right.

Q. Now, would you agree that on the face of it that's an incredible transaction?

A. It does seem quite incredible.

Q. Now, even if Sheikh Sultan had a back-to-back deal with Mr Abramovich to sell this interest on to him, the sheikh was exposed, wasn't he, unless security was given by Mr Abramovich to ensure that Mr Abramovich did duly buy and pay for the shares as and when the sheikh exercised his options?

A. I think that's right, yes.

Q. Now, the bank's concern -- is this right -- was that the oddities of this transaction, as described, raised the possibility that the sheikh was not really buying the interest at all but recycling the money; that was the possibility that was concerning the bank, wasn't it?

A. They were interested in the source of the funds, yes.

Q. Yes. They were concerned that there wasn't a real sale, just a roundabout method of getting the money to them?

A. Well, they didn't want Mr Abramovich's funds.

Q. No.

Now, was it in order to allay these concerns that Mr Curtis said, in the fifth paragraph on this page, that Mr Abramovich was going to make advance deposits with the Abu Dhabi Commercial Bank which the sheikh would draw down on as and when he purchased each instalment? Do you see that statement is made in the last paragraph on page 2?

MRS JUSTICE GLOSTER: Did you know that at the time?

A. No.

MR SUMPTION: Did you not see this letter at the time that it was written?

A. No. I would have seen it afterwards but I didn't see it at the time.

Q. How long afterwards? Shortly afterwards or --

A. Pretty shortly afterwards.

Q. Sorry?

A. I think I sent it to counsel.

Q. Yes.

Well now, it must have struck you that that concern of the bank was the reason why Mr Curtis told the bank that Mr Abramovich would be making deposits with the Abu Dhabi Commercial Bank to be drawn down by the sheikh as and when he exercised options to buy more shares?

A. I think that's right, yes.

Q. Now, can you tell us what steps, so far as you know, Mr Curtis took to satisfy himself that Mr Abramovich would be making advance deposits with the Abu Dhabi Commercial Bank?

A. I don't know whether he did.

Q. You don't know whether he did. In fact he didn't, did he?

A. No.

Q. Now --

MRS JUSTICE GLOSTER: Did you know that at the time?

A. No.

MR SUMPTION: But it's obvious now, isn't it, looking at the file?

A. I -- there's nothing on the file that suggests that he did.

Q. No. There's nothing on the file that records any

contact between the firm and Mr Abramovich or his staff that could have justified such a suggestion, is there?

A. No. He just says:

"... I am advised that Mr Abramovich will..."

So someone has told him.

Q. And equally I'm sure you can confirm that there's nothing on the file which records any contact between the firm and Sheikh Sultan or Dr Jumean which might have justified that statement?

A. Well, I'm assuming he got his instructions from Dr Jumean.

Q. Well, what makes you assume that?

A. Because that's where he got his instructions from.

Q. Well, he got his instructions partly from Dr Jumean but partly also from Mr Fomichev, didn't he?

A. Well, up until a certain date, yes.

Q. The sheikh was never asked, was he, for written confirmation of either the existence of a matching deal with Mr Abramovich or the security deposits? That's correct, isn't it?

A. I don't know.

Q. Well, I think I can help you with this. If you turn in bundle 34 to page 133 H(A)34/133, you'll find your own list of things which the sheikh was to be asked for or Dr Jumean, on behalf of the sheikh, was to be asked for.

This was a list you prepared, isn't it?

A. It is, yes.

Q. What you included in this list was confirmation that Mr Curtis was not instructed on any back-to-back deal with Mr Abramovich; is that right?

A. Yes, that's number 2.

Q. Yes. But you weren't asking him for a confirmation that such a matching deal was in place, were you?

A. No, I don't think so.

Q. And you intended to ask him, and indeed did ask him, for confirmation that he would be using his own funds to pay Mr Berezovsky and Mr Patarkatsishvili but not that there would be any security deposits; that's correct, isn't it?

A. And that there would be no intermingling with Mr Abramovich's funds coming in.

Q. Yes. But you didn't ask for confirmation that there would be security deposits?

A. No, I don't think so.

Q. Now, the sheikh, as you point out, confirmed that he would be paying money into Clydesdale's accounts from his own funds. If you could turn backwards to H(A)34/62, you will see that at page 62 there are the versions as sent. You may remember I showed you the drafts this morning which were sent to Clydesdale Bank

and these are the final versions, as signed and sent, at 62 and 64, both dated 1 June.

Do you agree?

A. These were the final letters sent, yes.

Q. Yes. And can you confirm that copies of these documents were sent to the Clydesdale Bank?

A. Yes, I believe they were.

Q. Now, the firm ceased to act for Mr Patarkatsishvili and Mr Berezovsky -- is this right -- on 1 June; was that the date?

A. That's the date of the letter, yes.

Q. And is it right that Reid Minty were appointed to act for Mr Berezovsky and Mr Patarkatsishvili on 3 June?

A. I don't know the exact date.

Q. Right.

A. But it was afterwards, yes.

Q. Well, was Reid Minty introduced to Mr Berezovsky and Mr Patarkatsishvili by Mr Curtis?

A. I imagine so, yes.

Q. When you say you imagine so, was that because Reid Minty was a firm that had an established association with Curtis & Co?

A. It did, yes.

Q. So that when you wanted to find someone else to advise a client, they were one of a number of obvious

possibilities?

A. Yes.

Q. Now, you're aware, are you not, that the agreement was actually executed by Mr Berezovsky and Mr Patarkatsishvili on 5 June?

A. I think that's right, yes.

Q. So Reid Minty didn't have much time to get into the transaction, did they?

A. A couple of days.

Q. No.

Now, would it be fair to say that Reid Minty were instructed to represent Mr Patarkatsishvili and Mr Berezovsky on a very limited basis, reflecting the shortage of time?

A. Well, I don't know really. I mean, they would have undertaken their responsibilities if they had to.

Q. Well, can I ask you to look at their retainer letter. You may not have seen it at the time, in which case do say.

Page 213 of this bundle H(A)34/213 is a letter dated 4 June, which is the retainer letter sent on that date by Mr Moss of Reid Minty to Mr Berezovsky and it refers to a meeting that had previously occurred between Mr Curtis and Mr Fomichev.

A. I didn't see this at the time.

Q. You didn't see this at the time. Were you aware of that meeting between Mr Curtis and Mr Fomichev at the time? Can you help us on when it happened, apart from the fact it was before this date?

A. I can't.

Q. Understood.

If you look at the next page of the letter, the second page, there's a description of the transaction and a heading in the side of the letter "Issues Involved" and the second paragraph under "Issues Involved" says:

"Advice so far as the ownership and interest of your shares in SIBNEFT has been given to you by your Russian lawyers, namely [Mr] Ivlev of ALM -- Feldmans and we are not providing any advice in relation to that interest or other applicable law to the actual ownership of the shares. Similarly, so far as any transactions is concerned that relates to the shares after the signing of this agreement in Abu Dhabi or elsewhere, you will seek separate advice should it be needed."

Now, that's why I suggested to you that they were instructed on a limited basis. But you may not have been involved; the letter may have to speak for itself.

A. I think so.

Q. Understood.

Were you aware that Reid Minty had no part in drafting the agreement? It was drafted entirely within Curtis & Co's office, was it not?

A. It was -- I think there was a few amendments we made on their suggestion.

Q. Yes.

MRS JUSTICE GLOSTER: Were you responsible for drafting the agreement?

A. I didn't draft the first one but thereafter I did, yes.

MR SUMPTION: Equally Reid Minty suggested, did they not, that Mr Berezovsky and Mr Patarkatsishvili should not be asked to give warranties of their title because their title was a matter of some doubt? That was a point that Reid Minty made, did they not?

A. I think that's right, yes.

Q. And that suggestion was firmly rejected by Mr Curtis, was it not?

A. Yes.

Q. Now, is it also right that in recognition of the limited role that they had played, Reid Minty agreed to charge a significantly reduced fee?

A. I've no idea.

Q. You don't know?

A. No.

Q. Well, I'll tell you the basis on which I say that and if

it's not something that you can help on, do say so.

H(A)35/240. I hope that that is Ms Minty's attendance note of 5 June. Is that what it is?

A. Yes, I do --

Q. Is this a document that you've seen before?

A. I've seen it before but obviously didn't see it at the time.

Q. But not at the time, okay. Well, in that case you may not be able to help us. But the basis on which I made the last suggestion was the last paragraph on page 240.

A. Okay. It's also been amended in the retainer letter.

Q. I'm sorry?

A. It's also been amended in the retainer letter.

Q. What has been amended in the retainer letter?

A. The fee. It looks like it was 100,000 reduced to 60.

Q. Yes, you're quite right.

Now, the Devonia agreement was executed by Mr Berezovsky and Mr Patarkatsishvili on 5 June and by the sheikh on about 11 June. I think the latter date we have established this morning.

A. That's correct.

Q. Now, you say in your witness statement that:

"... the first payment... under the Devonia Agreement [was made] on 12 June..."

And I'm referring to paragraph 234 of your witness

statement D2/16/147. I thought I was, but hang on.

A. That's right, yes.

Q. 234, yes.

A. Yes.

Q. Now, when you say you understand that that is so, is that something that you have extracted from the document that you then refer to, your fax to Mr Keeling on 22 November?

A. I think it was the first time -- well, it was when the first consideration payment was made.

Q. Yes. Well now, is that a reference to payments made from Devonia's account with the Abu Dhabi Commercial Bank to the accounts of the two trusts at Clydesdale Bank?

A. Yes, that's right.

Q. Right. Now, did you have any knowledge or did, so far as you know, Mr Curtis have any knowledge about the payments that were made into Devonia's Abu Dhabi account from the Latvian Trade Bank account?

A. No.

Q. Did you have any knowledge about the payments that were made into the Latvian Trade Bank account by Mr Abramovich's companies?

A. No.

Q. Right.

MRS JUSTICE GLOSTER: When you say "no", you were asked not only in relation to your own knowledge but also in relation to --

A. To Mr Curtis.

MRS JUSTICE GLOSTER: -- Mr Curtis's knowledge.

A. So far as I'm aware, yes, that was --

MRS JUSTICE GLOSTER: That was the position?

A. Yes.

MR SUMPTION: So all you knew was that the payment had been made into the Clydesdale Bank accounts on 12 June and you knew that presumably because you had access to those accounts, as you told us this morning?

A. That's right.

Q. So you would have known that at some earlier stage, but how much earlier you wouldn't have known, money had arrived in the Abu Dhabi account from somewhere?

A. I probably -- well, I wouldn't have applied my mind to it at the time, but it sounds logical.

Q. Now, the Devonia agreement was, I suggest, simply produced for the consumption of the Clydesdale Bank, wasn't it?

A. In what sense?

Q. Well, if -- I don't want to try and use you as an expert witness, but if the payments had been made to Devonia by Mr Abramovich before the agreement was executed then it

looks as if this agreement was simply a piece of paperwork to show the bank, doesn't it?

A. If that was the case, yes.

Q. Now, are you familiar with the terms of the Devonia agreement as executed?

A. Some of it, yes.

Q. Well, let me know if you want actually to see the agreement but I think this part of it is something you won't need to look at it for.

The proposal involved the sale of a one-thirteenth part of the Sibneft shares, or the interest in them, for 100 million and the grant of 12 options, each for a further thirteenth, exercisable over a period of a year. Do you recognise that as a description of the transaction?

A. That's right, yes.

Q. Now, would that mean that Mr Berezovsky and Mr Patarkatsishvili were only assured of getting the first 100 million, because the sheikh didn't have any obligation to exercise the option in relation to the other 12 thirteenths?

A. I think that's right.

Q. Now --

A. I think that's -- sorry.

Q. -- did you think that was what Mr Berezovsky and

Mr Patarkatsishvili wanted, only 100 million being assured to them?

A. I've no idea.

Q. Could I ask you to take, please, bundle H -- you can put away the bundles you've got in front of you, apart from your witness statement. Could I ask you to be given bundle H(D)2/61.

Hold on, I've given you a mistaken reference.

I will give you the right one in a minute. Page 59, I'm told. (Pause)

I seem to have two different versions of H(D)2. Is your version at page 61 a fax from Mr Curtis to the National Australia Group, attention Leigh Hilton, on 1 August?

A. No.

MRS JUSTICE GLOSTER: Are we in H(D) or H(A)? There's a confusion.

MR SUMPTION: H(D)2, I'm sorry.

MRS JUSTICE GLOSTER: The witness may have H(A). That was the earlier reference.

MR SUMPTION: I think the witness has got H(D) but the trouble is this bundle has been changed so often because of the arrival of new documents.

MRS JUSTICE GLOSTER: Perhaps the witness can look at it on the screen.

THE WITNESS: Yes, I've got it here.

MRS JUSTICE GLOSTER: It's on the screen.

MR SUMPTION: So does that mean that H(D)2/61 is the reference recognised by Magnum? I see.

MRS JUSTICE GLOSTER: It's H(D)2/29, page 147 H(D)2/29/147. Is that right?

MR SUMPTION: Yes.

Right. This is a letter from Mr Curtis to the Clydesdale Bank dated 1 August. Now, you may not have seen this letter before; it's not something that has been produced, I think, with your assistance. It comes from the files of the Clydesdale Bank.

Have you seen it before?

A. Well, it's from Curtis & Co so I assume I would have seen it.

Q. Well, the reason I say you may not have done is that it's a document we have not seen until the Clydesdale Bank produced it as a result of a summons about a week ago.

A. Okay.

Q. So you wouldn't necessarily have seen it. We haven't seen it among the documents that you prepared for disclosure in this action.

A. Okay.

Q. So would you just remind yourself of what it says.

(Pause)

A. Yes, I've read it.

Q. Do you think, having read it, that it's a document you've seen before?

A. I imagine I would have seen it before, yes.

MRS JUSTICE GLOSTER: At the time of the transaction?

A. Well, yes, I was more involved so I couldn't discount that I hadn't seen it.

MR SUMPTION: Right.

Do you see that the subject of the letter is the fact that the flow of payments into the Clydesdale Bank account doesn't correspond to what's in the agreement?

A. Yes.

Q. That's what it's talking about, isn't it?

A. That's right, yes. Yes.

Q. And therefore what Mr Curtis is telling the bank is that:

"All parties have agreed that they will enter into a variation agreement in relation to the agreement effective on 12th June..."

Now, the agreement effective on 12 June is the Devonia agreement as executed by the sheikh, isn't it?

A. That's correct, yes.

Q. And were you aware, being somebody who was rather more involved at this stage, that all parties had agreed to

enter into a variation agreement of that kind?

A. It doesn't ring any bells with me.

Q. No. We have found no other trace of the parties having agreed with that, but you can't help us on it?

A. I can't remember, no.

Q. Can you help us on why in fact no variation agreement of the kind suggested in this letter was in fact subsequently drawn up, so far as the documents we have show?

A. I think possibly because of the issues with the Clydesdale became a lot more important after --

Q. Was that because at the end of this very month the Clydesdale Bank refused to deal with the money any longer?

A. That's right, yes.

Q. Yes.

Now, at paragraph 272 of your witness statement D2/16/155 you deal with Mr Curtis's discovery in 2002 that the instalments in which money was being paid to Mr Berezovsky's and Mr Patarkatsishvili's various trusts bore no relation to those provided for in the Devonia agreement. That's the subject you're dealing with from paragraph 272 onwards, isn't it?

A. Well, he's talking about payments being made, not instalments, as in not the amount of the instalment,

just payments being made.

Q. Well, there were two problems, weren't there? First of all, the payments were being made to an account other than the one specified in the Devonian agreement?

A. That was the only problem.

Q. Well, secondly, the amounts of the payments didn't correspond to the instalments in which the options were being exercised; isn't that right?

A. That's true, but I don't remember that being such an issue. It was more about that payments were being made without reference to a document.

Q. Mr Jacobson, so far as you can recall, with or without the aid of any documents, were these 12 options granted to Devonian ever exercised?

A. Well, the first three or four were, I think. I think we've got certificates for the -- if I remember, for the first ones relating to Clydesdale Bank.

Q. Well, you got certificates a long time afterwards for some of them, didn't you, but no evidence of any exercise of the option?

A. The option was exercised by virtue of the payment being made before.

Q. Well, are you talking about the first payment?

A. As soon as payments were made, the very fact there was a payment, then the next option would have been

exercised.

Q. Are you saying that the price was paid before the option had been exercised?

A. I think how I remember it was that the payment would be made and on the payment the next option would be ready to go.

Q. That's the opposite of the order one would normally expect, isn't it?

A. I don't know.

Q. Well, normally --

A. I'd have to look at the agreement.

Q. -- you exercise the option, that means that you're entitled to buy the interest as to one thirteenth, and once you exercise the option, somebody pays you for it?

A. Yes, and then on -- when that payment has been received, the next option becomes exercisable maybe.

Q. The next option, exactly.

A. Yes.

Q. But it's slightly odd, isn't it, to -- the payment, as I understand your evidence, gave rise to the exercise of the option and not the other way round.

A. I think that's right, yes.

MRS JUSTICE GLOSTER: Sorry, I'm not understanding this.

Are you saying that there was no formal service of a notice exercising the option?

A. I never saw any notices for exercising options.

MRS JUSTICE GLOSTER: Not for any of the 12 tranches?

A. No.

MRS JUSTICE GLOSTER: So what you're saying is that the actual payment was in effect an exercise of the option?

A. I think that's -- that was right. I'd have to check the documents but I think that's my recollection of how it's supposed to work.

MRS JUSTICE GLOSTER: And was that provided for in the agreement, that mere payment would constitute effective exercise of the option?

A. I don't know. I can't remember. I think we'd have to look at the letters to Leigh Hilton.

MR SUMPTION: Now, does it look therefore as if what happened was that a payment was made and somebody then produced the documentation to identify it as a contractual payment afterwards?

A. Insofar as, what, the certificate is being made?

Q. The certificate was produced after the payment was made but there was no receipt of any document exercising the option?

A. I don't remember any documents, no.

Q. Right. And the certificates of transfer had all been signed in advance on 5 June by Mr Berezovsky and Mr Patarkatsishvili, hadn't they?

A. I don't think I was aware of that.

Q. Right.

Now, when, in 2002, Mr Curtis appreciated that there was a discrepancy between the payments as made and the payments as provided for by the agreement, he suggested, didn't he, that there should be a retrospect amending agreement which would bring the obligations of Devonian into line with what had already happened?

A. That's right, yes.

Q. And as I understand it, Mr Curtis told you -- I'm taking this from paragraph 307 of your witness statement D2/16/162 -- that Reid Minty, who had acted for Mr Berezovsky and Mr Patarkatsishvili briefly on the original agreement, had declined to act for them on the amending agreement. Does that suggest that Mr Curtis had asked them to act for Mr Berezovsky and Mr Patarkatsishvili on the amending agreement?

A. I think that's -- in paragraph 306 there were some conversations with Mr Curtis and Mr Moss at Reid Minty.

Q. Yes. Now, why did Reid Minty feel uncomfortable?

A. I've no idea.

Q. No idea?

A. No. They just didn't want to do it.

Q. They were beginning to feel that there was something fishy about this transaction, were they not?

A. Well, I don't know what "uncomfortable" really means.

They may not have been paid enough money.

Q. It's the word you use in describing what Mr Curtis told you.

Now, I think you also learnt in 2002, did you not, that Mr Curtis received, on top of the professional fees of his firm, a commission of \$13.8 million from the Itchen Trust? And you refer to that at paragraph 335 of your witness statement D2/16/166.

A. This is for the fund.

Q. Sorry?

A. For the fund.

Q. When you say "for the fund", what do you mean?

A. In relation to his bonus for the fund.

Q. You mean the Rainbow Fund?

A. Yes.

Q. Well, have you seen the documents which record the agreements involving Mr Berezovsky and the sheikh to the payment of those sums?

A. The letters that they signed?

Q. The letters that they signed relating to separate sums of \$13.8 million --

A. Yes.

Q. -- and \$4.5 million.

A. Yes, I've seen those.

Q. Yes. Now, those indicate that the commission was being paid for Mr Curtis having introduced the Devonia transaction; that's right, isn't it?

A. I think so, yes.

Q. And they were only paid in respect of the Rainbow Fund because Mr Curtis in 2002 decided to move to Gibraltar and wanted them attributable to his work in Gibraltar because that would reduce his tax bill?

A. I think that's the -- that's probably the idea, yes.

Q. Right.

Now, were you aware at the time that, in addition to commissions being paid to Mr Curtis, commissions were also paid to Dr Jumean? Were you aware of that?

A. I wasn't, but I kind of guessed that there probably were.

Q. What made you guess that Dr Jumean was getting a cut?

A. I just assumed that him and Mr Fomichev would be receiving commissions.

MRS JUSTICE GLOSTER: From whom?

MR SUMPTION: Well, why did you assume that?

MRS JUSTICE GLOSTER: Sorry, could you answer my question.

Who did you assume that they would be getting commissions from?

A. From the sheikh.

MR SUMPTION: Did you assume that the sheikh would be

granting them those commissions or that they would simply be taking the commissions from the money as it went through? You didn't have any view on that?

A. I didn't have any idea. It was just a feeling.

Q. Now, something must have given you the impression that Mr Fomichev and Dr Jumean were going to get, from whatever source, a commission out of this. What was it?

A. I don't know. It was just a feeling. I can't be precise, but there was -- I just got a feeling.

Q. You just got a feeling that there was -- part of the iceberg was under the sea?

A. Hmm.

Q. Right. What about Mr Joseph Kay: were you aware that he was getting a commission as well?

A. I don't think so, no.

Q. I see.

Now, just a couple of other minor matters, Mr Jacobson. Can you confirm that Mr Curtis did not speak Russian?

A. He didn't speak Russian, no.

Q. Secondly, on Curtis & Co's headed notepaper in 2001, we see that they had the legend "In association with Streathers". Do you remember that?

A. I do, yes.

Q. Can you tell us what the nature of the association

between Curtis & Co and Streathers was?

A. Similar to the one with Reid Minty.

Q. Right. Which was what?

A. Just the referrals of work between the firms.

Q. Yes, I see.

Now, you subsequently went to work for Streathers after Curtis & Co closed down; isn't that right?

A. That's right, yes.

Q. And can you help us with the role played by Streathers: did they act at any stage as solicitors for Mr Berezovsky and Mr Patarkatsishvili?

A. During what period? Ever?

Q. In the period when you were aware of these matters, ie before you moved to Gibraltar.

A. Yes, they did, yes.

Q. They did. In relation to this dispute?

A. I think Jim Lankshear was involved.

Q. Sorry?

A. Jim Lankshear from Streathers was involved.

Q. Yes, but was it in relation to the dispute which is now before this court?

A. I think they're instructed with Carter Ruck, yes.

MR SUMPTION: Yes, I see. Thank you very much, Mr Jacobson.

MR MALEK: No questions, my Lady.

MR ADKIN: My Lady, very briefly.

Cross-examination by MR ADKIN

MR ADKIN: Mr Jacobson, if you could take up your witness statement, please, and turn to paragraph 147.

A. Did you say 47?

Q. 147, which is at page 126 of the bundle D2/16/126.

You're talking here, as I understand it, about instructions which Mr Curtis gave to counsel, Jonathan Fisher, in May 2001 in relation to the Devonia transaction. That's right, isn't it?

A. That's right, yes.

Q. And you say in this paragraph that:

"Mr Curtis confirmed that he understood that Mr Abramovich was expecting to use profits from one of his aluminium operations in Russia to pay for [the Sibneft] shares."

That's right, isn't it?

A. That's right, yes.

Q. And that is in fact reflected in the note of the conference call with counsel which, for the transcript, is at H(A)32/19.

Now, you told us this morning that, so far as you were aware, at around this time, that is May 2001, Mr Curtis was not having direct contact with Mr Abramovich. Do you recall that?

A. Yes, I do.

Q. Is it therefore fair to assume that Mr Curtis's information as to where the purchase monies for Sibneft were to come from is information he derived from Mr Berezovsky, Mr Patarkatsishvili or one of their advisers?

A. That's correct, yes.

MR ADKIN: Thank you.

My Lady, I have no further questions.

MRS JUSTICE GLOSTER: Thank you. Mr Mumford?

MR MUMFORD: No questions, my Lady.

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

Re-examination by MR RABINOWITZ

MR RABINOWITZ: Just this, Mr Jacobson. You were asked earlier this morning, by reference to certain documents, to speculate as to why Mr Curtis did not want to be involved or see material in relation to the second part of the transaction. Just to explain what I mean, if the first part was the transaction between Mr Berezovsky and the sheikh, the second part would be the transaction between the sheikh and Mr Abramovich. Do you remember that?

A. I do.

Q. Can I ask you, please, to go to bundle H(A)38, page 91 H(A)38/91. You should have at H(A)38, page 91, a letter from Mr Curtis to Mr Keeling dated 13 September

but sent on 26 September. If you go to the second page of that letter, about two-thirds of the way down, do you see a paragraph beginning, "With regard to your request in relation to the background of Sibneft...?"

A. Yes.

Q. Can I just ask you to read that to yourself, please.

(Pause)

A. I've read it.

Q. Does that assist you in terms of answering the question as to why Mr Curtis did not want to be involved in the second part of the transaction?

A. Well, he does state that he's not in a position to control it or check on the background of the transaction.

MR RABINOWITZ: Thank you very much. No more questions.

Thank you.

MRS JUSTICE GLOSTER: Yes, thank you very much.

THE WITNESS: Thank you, my Lady.

MR GILLIS: My Lady, Mr Berezovsky calls his next witness, Mr Stephenson of Carter Ruck.

MRS JUSTICE GLOSTER: Very well.

MR GILLIS: My Lady, while he comes to the witness box, if I could just say this.

The court is aware that it's been held that there was a collateral waiver in relation to privilege in

relation to various of the Badri proofing sessions and that is the subject matter fundamentally of Mr Stephenson's witness statement.

Mr Stephenson obviously owes obligations to his former clients to maintain privilege in relation to all other matters and he is conscious that, as he takes the oath, he is taking the oath subject to the obligation to maintain privilege in relation to matters affecting his former client and is concerned that that may have consequences that there are questions that he cannot answer.

MRS JUSTICE GLOSTER: Well, if an issue arises as to privilege, I will have to rule on it having heard argument from the parties.

MR GILLIS: Exactly so.

MR STEPHENSON: My Lady, can I just clarify on that in relation to the wording of the oath, where I must say, of course, that I give the oath to tell the truth and the whole truth. This is the concern that I have.

MRS JUSTICE GLOSTER: Well, you take the oath and if an issue arises where you feel you are in difficulty, raise it with the court and I will rule on it.

MR STEPHENSON: Certainly.

MRS JUSTICE GLOSTER: Right. Silence, please.

MR ANDREW STEPHENSON (sworn)

MRS JUSTICE GLOSTER: Do sit down if you wish to.

Examination-in-chief by MR GILLIS

MR GILLIS: Mr Stephenson, can I just start by confirming that you don't have a telephone with you or any form of electronic device?

A. No, I don't.

Q. Could the witness please be provided with bundle D1 and if that could be opened at tab 11. Could I ask you to turn to page 256 of the bundle, so that's page 10 of the witness statement D1/11/256.

A. Mm-hm.

Q. And can you confirm that that is your signature?

A. That's my signature.

Q. And could you please confirm that this is your second witness statement in these proceedings? We can see that from the first page of the witness statement.

A. That's correct.

MR GILLIS: My Lady, just for the record, Mr Stephenson's first witness statement concerned service of the claim form on Mr Abramovich and we have that at bundle J1, tab 1, at page 2 J1/1.02/3.

MRS JUSTICE GLOSTER: Thank you.

MR GILLIS: Could you confirm that the contents of this, your second witness statement, are true to the best of

your knowledge and belief?

A. They are.

MR GILLIS: If you could wait there, please. I think Mr Jowell has some questions for you.

Cross-examination by MR JOWELL

MR JOWELL: Mr Stephenson, in your witness statement you mention five occasions when you met Mr Patarkatsishvili in connection with this litigation: twice in Georgia in 2005, once in England in April 2007 and then two more meetings in England in June 2007.

A. The one -- the middle one, I'm not clear that I discussed that Mr -- Badri was present on that occasion, when we had a discussion with Mr Berezovsky in April 2007.

Q. I see. But aside from those four or five occasions, there were no other meetings with Mr Patarkatsishvili in connection with this litigation?

A. I don't recall any discussion with him at all aside from those, concerning the matters in issue here, apart from the four meetings.

Q. Yes.

Now, can I take you back to your first meeting in Georgia that took place on 29 June 2005. Now, before that first meeting with Mr Patarkatsishvili, you had already acted for Mr Berezovsky previously; that's

right?

A. Correct.

Q. You'd acted for him on the litigation against Forbes and in the extradition proceedings and in a number of other matters; that's right?

A. That's correct.

Q. So you must have been already reasonably familiar by that time with Mr Berezovsky's business affairs and his personal history?

A. Most of the other matters I dealt with were of a political nature, I would say, rather than his business affairs.

Q. But before this meeting with Mr Patarkatsishvili you had been told by Mr Berezovsky that Mr Berezovsky alleged that he and Mr Patarkatsishvili had once held a joint interest in Sibneft and Rusal; that's right?

A. Yes, I was aware of that.

Q. And you'd been instructed by Mr Berezovsky to investigate potential claims against Mr Abramovich in relation to, amongst other things, Rusal, Sibneft and ORT?

A. Correct.

Q. And you were accompanied on the visits in 2005 to Tbilisi in Georgia by Mr Lankshear, who is an experienced litigation partner at Streathers?

A. Yes.

Q. And he'd also acted for Mr Berezovsky in the past?

A. Yes.

Q. Now, on the occasion of that first meeting you met with Mr Patarkatsishvili first over lunch, and then after lunch you also interviewed him in a private room in his residence; that's right?

A. I think it's the office, I'm not sure it's the residence. I think he has a residence nearby. This is the Wedding Palace, we call it, which I think he uses as an office -- or used as an office rather than a residence.

Q. I see. But in a private office after lunch?

A. Yes.

Q. And for the lunch but not the interview his wife was present?

A. That's my recollection, yes.

Q. And Dr Nosova was present for both the lunch and the subsequent interview?

A. Most of the time. I can't recall she was present throughout.

Q. But Mr Berezovsky was not present at all?

A. Not at all.

Q. And as far as you're aware, Mr Patarkatsishvili didn't speak with Mr Berezovsky on the phone during the

meeting?

A. Not as far as I know.

Q. And there was nobody else there who could interrupt or correct Mr Patarkatsishvili?

A. No.

Q. And at the meeting you asked him to give his account of his and Mr Berezovsky's dealings with Mr Abramovich, in particular those relating to ORT, Rusal and Sibneft; that's right?

A. Yes.

Q. And you encouraged Mr Patarkatsishvili to speak entirely freely about these transactions?

A. Correct.

Q. And as far as you're aware, he appeared to respond freely to your questions?

A. Yes.

Q. Now, you've said in your witness statement that the second half of the interview, after lunch in this private office, lasted about two hours. Is that right?

A. To the best of my recollection, yes.

Q. And you and Mr Lankshear took a careful note of the meeting?

A. Yes, we took notes.

Q. And presumably it would be your ordinary practice in a meeting like this, to interview a potential witness,

to try and take a note of anything important they said?

A. Yes. I ought to make clear now, if not later, although this document is headed "Proof of Evidence", or words -- or "Draft Proof of Evidence", the purpose was much more exploratory than that. I really wanted to find out a narrative of the sequence of events from Badri's point of view.

Q. Yes, I see that. I was just asking you about your notes, though. In your notes that you were taking at the time, it would be your ordinary practice to try and take a note of anything important that the witness said?

A. Yes. Yes, of course.

Q. So if there had been a comment made at the meeting that was not something said by the witness, by the potential witness or the interviewee, but rather something said by one of the lawyers, by you or Mr Lankshear, and you'd made a note of that comment, then you would be likely to indicate in your note that it was said by you or Mr Lankshear rather than Mr Patarkatsishvili?

A. I'm not sure I followed the question entirely.

Q. Well, I'm asking you: when you take a note, would you attribute the comment to the person speaking? And if the comment was made by a lawyer rather than the person you're interviewing, would you make sure to record that the comment was by the lawyer rather than attributing

it, confusingly, to the person you're interviewing?

A. I think in the circumstances where one is interviewing a witness, is the way you put it, you take a note of what the witness is telling you. So it may be that if a lawyer puts a question to say, "Do you agree with this?", then you don't put the question down, you put down the wording of the witness, if you follow me.

Q. Yes.

A. So it was prepared that way. I think both of us are -- both Mr Lankshear and I are experienced litigators and you tend to write down when you are speaking to a potential witness his words rather than yours. It's different when you are interviewing a client, where it's important that you get down the advice given to the client as well as what the client says in response.

Q. Yes, indeed.

So if it was the fact that, say, you yourself or Mr Lankshear had made a comment on a piece of factual information rather than a question, you would have made sure to attribute that to you or Mr Lankshear rather than to the person you were interviewing?

A. I'm sure we would have sought to do so if there was some issue about it. But the purpose of the meeting was to find out what Badri had to say.

Q. Yes.

Now, after the meeting in June you returned to England and you agreed with Mr Lankshear that he would prepare a first draft of a typed note of the meeting; that's right?

A. Correct.

Q. And you've explained in your witness statement that a few days later Mr Lankshear sent you a note in the form of a proof of evidence and you reviewed that and you made some amendments to it and those amendments, they were based on your own notes of the meeting and your own presumably fresh recollection of what had been said?

A. Yes, plus my familiarity with some of the names and places that Mr Lankshear may not have been familiar with.

Q. Yes.

Now, if I could ask you to take up the R(D) bundle, or be given the R(D) bundle, and to go to tab 6 of that. That's R(D)1/06/68. In your witness statement you state that, subject to two typographical corrections, that proof accurately reflects the substance of what Mr Patarkatsishvili told you at the meeting in June 2005. Do you recall giving that evidence in your witness statement?

A. Right.

Q. If you turn to page 74 of this R(D)1/06/74, you will see a heading entitled "Sale of ORT".

A. Yes.

Q. I don't plan to read these, but if you then turn to page 78 R(D)1/06/78, you'll see a passage headed "Sale of Sibneft".

A. Yes.

Q. Now, after this meeting, the next meeting that you had with Mr Patarkatsishvili was in December 2005; that's right?

A. Yes.

Q. And that meeting was specifically concerned with Rusal, was it not?

A. Correct, yes.

Q. And as far as you recall, Sibneft was not discussed at that meeting?

A. Not as far as I recall.

Q. And ORT was not discussed either?

A. Not as far as I recall.

Q. So all of the information of importance that Badri conveyed to you in the two meetings in Georgia about Sibneft transaction and the ORT transaction is what we have in these passages of this first proof of evidence whose accuracy you've confirmed?

A. From Badri, yes.

Q. Yes, thank you.

Could I ask you now to turn to paragraph 29 of your witness statement, which is in the D1 bundle at page 254 D1/11/254. Now, in this paragraph you make a number of comments about your view of the meaning of your note of the third meeting that you had with Mr Patarkatsishvili in England in April 2007.

A. Mm-hm.

Q. But I'd like to start, if I may, just with the fourth sentence of this paragraph, after the words "On the contrary". Do you see the words "On the contrary", about a third of the way down the page?

A. Yes, I do.

Q. "... at the time of preparing the draft letter of claim, I suggested that Mr Patarkatsishvili, who I had been told would know better than anyone else, the true market value of Sibneft at the relevant time, should be asked his opinion on the figure we proposed to include."

Now, just pausing there, the letter before action was sent on 14 May 2007 and this meeting was on 29 April 2007, so obviously this meeting occurred before the letter before action was sent. That's right?

A. Correct, yes.

Q. Now, I don't think we need to turn it up but there is a reference in the letter before action to Sibneft

having a supposed value in 2001 in excess of \$8 billion.

Do you recall that?

A. Yes.

Q. But you didn't show the letter before action to Mr Patarkatsishvili before it was sent, did you?

A. I didn't, no.

Q. So the figure of \$8 billion in the letter before action was not provided to you by Mr Patarkatsishvili?

A. No.

Q. Now, in the next sentence of your paragraph 29 you say:

"Subsequently, at a later meeting (I believe on 11 June 2009) at Downside Manor, I was told by Dr Nosova, in Mr Patarkatsishvili's presence, that his view was that the sum in our letter if anything represented an undervalue, given Sibneft's known oil reserves."

A. Correct.

Q. Now, the main purpose of both of the meetings in June 2007 was to get information together to prepare the particulars of claim; that's right?

A. Correct.

Q. And the market value of Sibneft in 2001 was an important piece of information that you needed to know or ideally would like to know for the claim that you were putting together for Mr Berezovsky because it was relevant to

the quantum of the claim on Sibneft.

A. Right.

Q. Do you agree with that?

A. Yes, it's one of the things we would look at. I'm not sure the market value would be -- what Badri is talking about here, through Natalia Nosova, is about, you know, the evaluation of the oil company. It's not necessarily to base it on the market price is what I'm saying. Perhaps it may be one indicator, more so probably in this country on a recognised stock exchange, where there is a market for it. It's a different situation to value an oil --

Q. But the valuation of Sibneft, the information that is referred to here, would have been important information for the particulars of claim?

A. Well, you can base the valuation, as I understand it, of an oil company in terms of its reserves.

Q. And in the particulars of claim you do mention an estimate of, I believe --

A. Yes.

Q. -- \$8.5 billion, do you not?

A. I can't remember the figure. I don't have it in front of me.

Q. Now, Mr Stephenson, if you turn back to the R(D) bundle, to tab 17 of that, that's R(D)1/17/124, we find your

notes of the meeting of 11 June 2007.

A. Yes.

Q. Or this is your typed-up version.

A. The transcript, yes.

Q. Your transcript.

Now, there are five pages of notes that you made and I've read through them myself and I have not found any mention at all of an \$8 billion valuation of Sibneft, whether on the part of Dr Nosova or Badri or anyone else at that meeting.

A. Yes.

Q. Isn't it likely that if this important information had been provided at that meeting on 11 June, you would have made a note of it?

A. No. I explained that it was actually over the lunch that we had, was where I had the discussion with Natalia Nosova specifically about the valuation. As far as I was concerned -- I mean, I am in difficulty, I'm not sure whether this will be covered by -- I would be bound by privilege in this respect, but the figure -- we had that figure from other sources. All I was looking for was whether Badri would agree with that figure because I'd been told that he was the person that I needed to check it with.

Q. Yes. Then wouldn't you have taken a note of it?

A. So I wouldn't have made a note of it.

Q. Why wouldn't you have made a note of it?

A. Well, I didn't make a note of it. I mean, it's for my information. I would have been concerned if he'd come up with a different figure. But by then the letter had already gone.

Q. You see, Mr Stephenson, are you aware that Mr Lindley also took a manuscript note of the meeting of 11 June?

A. Yes. But to explain also, my Lady, there's a very different situation here at the meetings in Leatherhead than I'd been in Georgia, where I'd been sitting one to one -- with Jim Lankshear -- one to one with Badri to take a statement from him.

What we had at Leatherhead, from my point of view, in terms of taking information down, there were a lot of people present, there were a lot of different discussions going on in relation to different matters. I was working with my pad for a lot of the time on my knee and I was not taking notes. There were some discussions that were informal over lunch as well.

Q. I see. But Mr Lindley's note, Mr Lindley actually -- there are two notes: there is a manuscript note and a typed attendance note. And again, as far as I can see, there is nothing in either of those notes that refers to a \$8 billion valuation of Sibneft.

A. Well, I don't know whether he would have heard my conversation with Natalia over the lunch.

Q. Well, Mr Stephenson, I would suggest that if this important information about an \$8 billion valuation wasn't reflected in either of the notes of the meeting, it is unlikely that it was conveyed at that meeting.

A. Well, I assure you it was, over the lunch.

Q. Very well. We'll have to agree to differ on that.

There was only one other subsequent meeting that you attended, on 13 June 2011, and you don't suggest that it was conveyed at that meeting, do you?

A. Sorry, can you ask the question again.

Q. There was one other subsequent meeting, on 13 June 2007 --

A. Yes.

Q. -- and you don't suggest that the information is conveyed at that meeting, do you?

A. No, I believe it was on the 11th, which was the day that, as I recall, that Badri cooked the barbecue for lunch.

Q. I see. Is it not possible that it was made on some other occasion by Dr Nosova when Mr Patarkatsishvili was not present?

A. I don't know whether Badri would have heard it from where he was standing.

Q. I see.

A. But I believe he would have done.

MRS JUSTICE GLOSTER: Sorry, can I be clear about that. I'm looking at paragraph 29 of your witness statement, where you say:

"... I was told by Dr Nosova, in Mr Patarkatsishvili's presence..."

Are you saying that it's not necessarily the case that Mr Patarkatsishvili would have heard what Dr Nosova said?

A. It was within about five yards, I suppose, maximum.

MRS JUSTICE GLOSTER: What, standing around at a barbecue, is this?

A. He was standing over the barbecue and moving from the barbecue to the table.

MR JOWELL: And it would have been said by Dr Nosova in English, would it?

A. Yes.

Q. You see, if we go back to the proof of evidence that you took in Georgia, I don't think we need to turn it up, but on that occasion Mr Patarkatsishvili gave you an estimate for the total value of Sibneft of \$6-7 billion; do you recall that?

A. I don't recall it. It's in my notes.

Q. It's in your notes, but you have seen it. You see, it

seems a bit surprising that his estimate would have gone up \$1-2 billion so quickly.

A. All I can say is that this is what I was told. The figure was checked with him and I was told specifically -- and I recall this very specifically -- it was because of his understanding of the oil reserves.

Q. I see. But, as you've said, he may well not have heard what she had said?

A. I think it's most unlikely. I think it's very probable that he would have heard. And my point anyway is that it was being said in his presence; now, therefore it would have been open to challenge had he heard it.

Q. Had he heard it, yes.

Could we just now turn to the transcript you made of the meeting note on 29 April 2007, which is in tab 15. Your typed-up version is in tab 15 of the bundle. That's in R(D)1/15/117.

A. Yes.

Q. And you'll see there it says "Meeting BB..."

That's Boris Berezovsky.

"... /Badri. Downside.

"ORT/Sibneft/Rusal --

"Badri thinks deal fair on Sibneft.

"Badri not party -- witness."

Now, could I ask you to come back to the last

sentence of paragraph 29 of your witness statement, where you advance your theory about what the meaning of this note was. What you say is:

"I believe that the note I made on 29 April 2007 related to questions Mr Berezovsky put to me as to the possible effect if Mr Patarkatsishvili did not agree to join in the proceedings as a co-claimant and as to whether he could join later if he so wished."

Now, from the fact that you start this sentence with the words "I believe" and not "I recall" --

A. Mm-hm.

Q. -- I take it that you are here presenting your reconstruction of what you think the conversation meant rather than your laying claim to an actual current recollection of it. Is that right?

A. Well, again, my Lady, this puts me in difficulty in terms of how that is reconstructed.

Q. But you accept it is a reconstruction?

A. It is not simply a matter of my imperfect memory this long after the event, my Lady.

Q. But you accept that you don't have an actual recollection of this actual conversation? It would be very surprising if you did, six and a half years later.

A. I remember where it was, the detail of it. It was extremely short. I can't even remember, and I think it

unlikely but it's possible, that Badri himself was present. I can't recall him being there.

Q. Although the heading does indicate that he was present because it says "Meeting BB/Badri". Does that help?

A. No, that doesn't necessarily -- because it was in Badri's house before the meeting with the representatives from Georgia.

Q. I see.

A. This particular conversation was extremely short.

Q. Could I just ask you one other point of clarification about the line in the attendance notes that records:

"Badri thinks deal fair on Sibneft."

A. Mm-hm.

Q. Now, just to be clear, I'm not asking you yet about what is meant by "fair" in that note or even about the context in which the phrase was used. I just want to understand one very specific thing about your evidence about that.

The "deal" on Sibneft that is referred to in the note, is that on your approach, on your theory, a reference to the deal by which Mr Abramovich agreed to pay \$1.3 billion or is it a reference to some other deal on Sibneft?

A. My recollection of the conversation was a discussion about what it would look like if Badri were not a party

to the proceedings that Mr Berezovsky was contemplating bringing. So therefore would it look -- this is the question -- that he therefore thought the transaction on Sibneft, the \$1.3 billion, was a fair price?

Q. Yes. So the answer to my question is that it was a reference to that transaction?

A. Yes.

Q. And could I ask you just about the last part of the last sentence on paragraph 29 D1/11/254:

"... and as to whether he could join later if he so wished."

That is a reference -- you're talking there about --

A. Sorry, which?

Q. This is the very last clause of paragraph 29.

A. Oh, sorry. Yes.

Q. You say:

"... and as to whether he could join later if he so wished."

A. Yes.

Q. It's referring there to whether Mr Patarkatsishvili could join the proceedings later if he so wished?

A. Yes.

Q. If we just go back to the note in the R(D) bundle, there is no reference in the note there that could be construed as a reference to whether Mr Patarkatsishvili

could join the proceedings later if he so wished, is there?

A. I've got three lines crossed out; I don't know whether that helps.

MRS JUSTICE GLOSTER: Well, before we get into that, your statement, "I believe that the note I made", is your belief based on the redacted lines in that document or any part of your belief that that's what the earlier passages referred to? Is your belief based on the redacted parts of your note?

A. Not on that, but on other...

MRS JUSTICE GLOSTER: What you say is privileged information?

A. Yes, my Lady.

MR JOWELL: But it's not based on these other lines?

A. I don't know what these three lines are because they're redacted. I can't recall.

Q. But there's nothing in the lines that are unredacted that refers anywhere to whether he could join proceedings later if he so wished at all, is there? There's not even a hint of it, is there?

A. Well, there's an indication:

"Badri not party -- witness."

That can be ambiguous. But I agree with you then, there is nothing here that specifically records whether

there was any discussion at that point -- there's nothing here that records that -- any discussion at that point about Badri being joined as a co-claimant.

Q. And again, if I could just try to understand your position, who are you suggesting you were recording when you wrote the words, "Badri thinks deal fair on Sibneft": was it you or Mr Berezovsky or Mr Patarkatsishvili or do you not know?

A. I believe it was a question put to me by Mr Berezovsky: what would it look like if Badri were not also a party?

Q. So you're recording your own advice?

A. No, I'm just -- it was what Mr Berezovsky was asking me: what impression would be conveyed?

Q. But the answer, "Badri thinks deal fair on Sibneft", you're saying those were words that you used?

A. I can't recall whether it's me. I think it's far more likely it is Mr Berezovsky saying to me, "Would it give the impression that Badri thinks the deal is fair on Sibneft if he is not also a party to these proceedings?"

Q. I see.

Now, the proceedings that Mr Berezovsky was at that stage, in April 2007, contemplating included not just a claim in respect of the Sibneft transaction, did it; it also included a claim in respect of Rusal and a claim in respect of ORT, didn't it?

A. Not in relation to ORT.

Q. Well, the letter before action includes a claim in respect of ORT?

A. That was included in effect as the background leading up to the claims in relation to Sibneft and to Rusal, to explain the context in which the discussions took place. As far as my recollection is -- again, this may be taking me into areas where I can't go -- but my recollection is that at the time that the letter of claim went, it was not contemplated bringing a claim in respect of ORT.

Q. But it did include also a claim in respect of Rusal?

A. Yes.

Q. And Mr Patarkatsishvili was a key participant in the events relating to Rusal as well, wasn't he?

A. Yes.

Q. So if Mr Patarkatsishvili had not agreed to join the proceedings, it would have had an effect not just on the Sibneft claim but also on the Rusal claim, wouldn't it?

A. Possibly. All I'm saying is that wasn't a conversation we had. I can't give a --

Q. You see, if you were discussing the effect of Mr Patarkatsishvili not joining proceedings, why would you have specified "deal fair on Sibneft" rather than on the other transactions?

A. I'm not sure I did. I was answering -- I can't recall at this distance, as I've explained, as to whether it is Mr Berezovsky making the point or me making the point in return. Either way, it is the discussion about what is the impression that is conveyed, both publicly and towards the court, if Badri is not a party to the proceedings.

I don't recall as to whether -- because I had my notes simply to rely on -- as to whether we also discussed a separate situation in relation to Rusal rather than simply a conversation about the effect generally using Sibneft as an example.

Q. Well, you see, Mr Stephenson, if you go back to the note, it says "ORT/Sibneft/Rusal".

A. Right.

Q. Now, if you were talking about the effect of him not joining the proceedings, you wouldn't have specified, "Badri thinks deal fair on Sibneft"; you would have said, "Badri thinks deal fair on Sibneft, Rusal and ORT".

A. No, I don't think you can draw that conclusion whatsoever. As I said, this particular conversation, I can assure you, would have been less than five minutes and we were not discussing it in any detail. All we were doing was talking about the effect if Badri was not

to be a party to the proceedings.

Q. You see, Mr Stephenson, I suggest that there's a much more straightforward explanation: the reason that you recorded the words "Badri thinks deal fair on Sibneft" was because, quite simply, you all recognised that Badri thought that the deal in respect of Sibneft was a deal that was freely and fairly negotiated.

A. No, no, no, and you know that because you've also put to me earlier about what he was saying about the valuation when we were in Georgia. I mean, it was a different amount but you know from that, from the question that you put to me earlier, that he didn't think the deal was fair.

Q. Well, as I understand the first part of paragraph 29, the reason that you say the note can't mean what it on its face means is because you say that he didn't consider that he had received a fair price for his interest in Sibneft, by which I think you mean a price that reflected its full market value. That's what you say in the first two sentences of paragraph 29?

A. Well, I didn't say "market value", with respect, and I take issue with that. Do I say "market value"?

Q. Well, you say that he didn't --

A. Do I say "market value"?

Q. You say, "I suggested that Mr" -- you then talk about,

in the third sentence, you talk about "the true market value of Sibneft at the relevant time".

A. Okay, yes.

Q. Do you see that?

A. Yes, I do.

Q. But the precise words in your note are that Mr Patarkatsishvili thinks that there's a fair deal on Sibneft, not that there is a fair price or a fair market price, isn't it?

A. All I can say is that you're putting a completely misconceived -- a misconception approach towards these words, out of context.

MRS JUSTICE GLOSTER: Mr Jowell, I think we've been round this note now. I think I'm going to take the break. Ten minutes.

You're not to talk about your evidence, Mr Stephenson, to anyone, or the case.

(3.22 pm)

(A short break)

MRS JUSTICE GLOSTER: Yes, Mr Jowell.

MR JOWELL: Mr Stephenson, before the break I asked you whether in April you were contemplating proceedings against ORT and you indicated that you were not. Could I ask you to take up or be given, please, bundle K2/01, page 1 K2/01/1. This is the letter before action. It

was sent on 14 May 2007.

Do you see the first paragraph of that, it says:

"We act for Boris Berezovsky. We write in connection with transactions concerning the sale of his beneficial interests in three companies, [ORT, Sibneft and Rusal]... In each case he was forced to dispose of his interests at a very significant undervalue, in each case you unconscionably and improperly took advantage of the threats and persecution he suffered at the hands of the Russian authorities in order, directly in relation to Sibneft and RUSAL, to enrich yourself and your partners."

Then there's a long description of the ORT transaction and if you see over the page, I don't think it's necessary to read it all, but you'll see in the penultimate paragraph there is a description of the Spectrum arrangement. And then, in the last paragraph, above "Sibneft":

"Your assurance that Mr Glushkov would be released, without which our client would not have agreed to sell his interest, proved to be false. The price our client was forced to accept for the sale of the shares represents, we are advised, a substantial undervalue."

Then you'll see there's a reasonably long description of Sibneft and then Rusal. And then do you

see on the final page, on page 3, the final paragraph, "Commencement of proceedings":

"Our client's intention is to commence proceedings against you in order to recover the losses identified above, if you do not intend to compensate him fully. Our client is prepared to agree..."

And so on.

That seems to me to indicate that at that stage you were certainly leaving open the possibility that you would be claiming in relation to ORT as well as Sibneft and Rusal, doesn't it?

A. I take your point. That was not the intention at that time. It was already understood on my instructions that the claim would be in relation to Sibneft and to Rusal.

Q. And you're sure that was understood even by April, by the meeting on 29 April?

A. That's my recollection, yes.

Q. Mr Stephenson, just two final questions.

Do you still continue to act for Mr Berezovsky on any other ongoing matters?

A. Yes, we do.

Q. You do. And I'm sure you appreciate that, in light of the revelations that have come to light, I have no choice but to ask this: could you please confirm that neither you nor your firm stand to gain financially if

Mr Berezovsky is successful in this litigation?

A. We have no commission arrangement at all with Mr Berezovsky.

Q. And you don't stand to gain financially if he's successful?

A. Well, indirectly, I suppose, if Mr Berezovsky were to lose the claim, as to whether, since we were involved in advising at the outset, whether there could be some indirect value to us in him winning it. You follow?

Q. But no direct financial value?

A. No, no. No.

MR JOWELL: I'm grateful. Thank you, Mr Stephenson.

MRS JUSTICE GLOSTER: Yes, thank you very much. Is there any further cross-examination?

MR MALEK: I have no questions.

MR ADKIN: There is very briefly from me, my Lady.

MRS JUSTICE GLOSTER: Very well, Mr Adkin.

Cross-examination by MR ADKIN

MR ADKIN: Your Ladyship is already aware that we had obtained in the Chancery actions unredacted versions of a lot of these documents and I propose to take the witness to the unredacted version of the note of the meeting on 29 April 2007. We will, of course, make sure that this goes into the trial bundle.

MRS JUSTICE GLOSTER: Are they available for use in this

action?

MR ADKIN: My Lady, yes.

MRS JUSTICE GLOSTER: There's no dispute about that,

Mr Gillis, is there?

MR GILLIS: My Lady, no, so long as it is in relation to an overlap issue.

MRS JUSTICE GLOSTER: Yes.

MR ADKIN: My Lady, yes. If I could pass...

MRS JUSTICE GLOSTER: Usher, could these be handed up, please. (Handed)

THE WITNESS: Shall I put this with the redacted one?

MR ADKIN: This is the unredacted version of the document that you were being --

THE WITNESS: Should I put it in the bundle after that?

MR ADKIN: Yes, we will insert it in -- this is for the transcript -- we'll insert it at bundle

R(D)1/15/117.001; in other words behind the document that has the redacted -- behind the redacted version.

Mr Stephenson, you'll see that the last four lines were redacted and they are unredacted in this. Can I firstly ask you this: as far as the last four lines that you now see in unredacted form are concerned, would you accept that they don't deal with the impression that Mr Patarkatsishvili's not being a party to the proceedings would give to the court or the public, do

they?

A. No, it doesn't relate to that at all.

Q. No. And if one looks at the third line from the bottom, one sees:

"ORT/plus evidence of loss -- advertising revenue."

We understand therefore that you were still discussing a possible claim on 29 April 2007 in relation to ORT. Would you accept that now, having had your memory jogged from the unredacted note?

A. Yes, that is helpful. I think to put it at that -- obviously now that we have this note and it makes it easier for me to answer. There were, as I understood it, clear limitation issues regarding the position of Sibneft. It was something that we -- sorry, with ORT.

Q. With ORT?

A. Yes. There were wider issues as well which I am --

MR GILLIS: My Lady, if I could just --

MRS JUSTICE GLOSTER: Yes, just a second. Yes, Mr Gillis.

MR GILLIS: The effect of the collateral waiver is that there has been a waiver of privilege in relation to what was said at this meeting in the presence of Badri because it was on that basis that the court held that there was a collateral waiver. So that is the extent of the collateral waiver: what was being discussed in Badri's presence at this meeting. It is not a waiver in

relation to anything which is the subject matter of this note such that there has been a waiver in respect of any discussion there may have been in respect of limitation periods.

MRS JUSTICE GLOSTER: Okay. So the waiver is just in relation to what was discussed with Badri in his presence?

MR GILLIS: Exactly so.

MRS JUSTICE GLOSTER: Well, Mr Adkin, please be careful in your cross-examination.

MR ADKIN: My Lady, yes. I'm not sure that we would necessarily accept that analysis of the waiver but in any event I think it doesn't matter because, as we understand it from paragraph 28 of Mr Stephenson's statement, this was a meeting at which Mr Patarkatsishvili at least may well have been present, although you don't recall whether he was an active participant in the brief discussion.

Is that a fair summary?

MRS JUSTICE GLOSTER: Well, I don't think the unredacted four lines require any further cross-examination if they're going into disputed areas of privilege. We can all see what they say and those are issues that may or may not be around --

MR ADKIN: Well, I was going to ask a question on the last

line.

MRS JUSTICE GLOSTER: You ask the question and I'll rule on it.

MR ADKIN: Well, let me ask a prior question which may help.

Mr Stephenson, do you recall whether Badri was present when you were discussing the issues that are noted at the last four lines and in particular in the last line?

A. I don't recall Badri being present at all, specifically.

Q. You don't have any specific recollection of whether he was or whether he wasn't present for that; is that right?

A. That's correct.

MR ADKIN: That's correct.

Well, I'll ask my question, my Lady, if I --

MRS JUSTICE GLOSTER: Right.

MR ADKIN: The question I have relates to the last line of this note, Mr Stephenson.

Is it right that at this meeting you were discussing with those present, whoever they may have been, the question of whether the Rusal claim would be time-barred?

A. Well, it's clear from the note. It speaks for itself.

Q. Yes. You agree? The transcript doesn't pick that up, Mr Stephenson, sorry.

A. Sorry, it is clear from the note. I mean, I have no particular recollection of discussing it, but it is clear from my note that it was something that was discussed.

Q. And it's also clear from your note that the reason why there was a concern over limitation in relation to the Rusal claim was because it was understood to be governed by Russian law?

MR GILLIS: I'm afraid I don't think that's a legitimate question because it's not in relation to what was being discussed at the meeting but is trespassing upon questions of what was understood, which must flow from discussions between the client and the solicitor.

MRS JUSTICE GLOSTER: Well, I don't think it's going to help me further. There obviously is an issue about the Russian law of limitation.

MR GILLIS: Yes.

MRS JUSTICE GLOSTER: I just don't think this is helpful.

MR ADKIN: My Lady, your Ladyship has the note and the witness can't recollect, so it probably is as far as I can sensibly take it.

MRS JUSTICE GLOSTER: Thank you.

MR ADKIN: My Lady, no further questions.

MRS JUSTICE GLOSTER: Mr Mumford?

MR MUMFORD: No questions.

MRS JUSTICE GLOSTER: Mr Gillis, do you have any
re-examination?

MR GILLIS: My Lady, I have no re-examination.

MRS JUSTICE GLOSTER: Thank you very much indeed for coming
along, Mr Stephenson.

(The witness withdrew)

Discussion re housekeeping

MR SUMPTION: My Lady, we understand there are no further
witnesses available this afternoon. Can I raise with
your Ladyship the position of three witnesses who are
due to be heard in the following days.

First of all, Mr Chernoi. We have been informed
that Mr Chernoi is, for various reasons, not willing to
give evidence even by video-link.

MRS JUSTICE GLOSTER: Even by video-link?

MR SUMPTION: Even by video-link. I'm not sure it's
necessary to go into the reasons that he has given for
that, but that is his position.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: In those circumstances we assume that it is
common ground that his witness statement will be
withdrawn from the bundle, no application having been
made to put it in as hearsay evidence, and we would
rather assume that it's accepted that it would not be
appropriate since he's --

MRS JUSTICE GLOSTER: Well, that may be an optimistic assumption. I assume I'll have an application to have it received as hearsay evidence but I can't anticipate that.

MR SUMPTION: Well, if there's a difference about that, your Ladyship will have to hear argument on the subject. But I think that your Ladyship should be told that he will not be appearing and it may therefore be sensible not to study his witness statement pro tem.

MRS JUSTICE GLOSTER: Right. Just a second. Mr Gillis, what's the position in relation to Mr Chernoi?

MR GILLIS: We're certainly content that your Ladyship should not look at the statement for the present time. We were just notified, I think it was on Friday, that Mr Chernoi --

MRS JUSTICE GLOSTER: Well, I've read it already.

MR GILLIS: I'm sure your Ladyship has. I'm happy that you do not refresh your memory then.

We were just told on Friday that he was not willing to give evidence. There is a letter from his solicitors. As your Ladyship will recall, it's a slightly complex situation in that Mr Chernoi is involved in litigation with Mr Deripaska.

MRS JUSTICE GLOSTER: Was the position that I made a video order in relation to him some time ago?

MR GILLIS: I think you did.

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: My Lady, we'll consider the position, if we may, and whether we wish to make an application for that evidence to be admissible as hearsay evidence.

MRS JUSTICE GLOSTER: Okay.

MR GILLIS: But we'll deal with that at a later stage if that's convenient.

MRS JUSTICE GLOSTER: Well, I'll deal with that application as and when it's made and as and when objection is taken to it. But I think if you are going to apply for the evidence to be admissible as hearsay evidence, the sooner you do so, the better.

MR GILLIS: Certainly.

MR SUMPTION: My Lady, the second witness that I wanted to mention was Mr Dubov.

We received late last night from Ghersons, who acted in the asylum proceedings, Mr Dubov's witness statement of 2009 in support of Mr Glushkov's asylum application. This is a statement that your Ladyship may recall I asked Mr Dubov whether he was prepared to release.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: He has obviously consented to its release because otherwise we presume we would not have got it from Ghersons. It does raise an issue which I have

mentioned to my learned friend Mr Rabinowitz we need to ask for Mr Dubov to be recalled to deal with. We would have dealt with it if we'd had that statement before. It's not going to take very long and I understand arrangements are being made for Mr Dubov to attend for that purpose on Thursday or Friday, when your Ladyship is next sitting.

MRS JUSTICE GLOSTER: Right.

MR SUMPTION: Thirdly, there is the position of Mr Reuben. There is a witness summons extant in his case and we therefore assume that he is obliged to turn up at a time which is convenient for the general progress of the trial. We also assume that that will be either on Thursday or on Friday.

We are concerned that we should not be in the position either of having to defer the start of our own evidence or of having to interpose Mr Reuben's evidence after Mr Abramovich has given evidence. The position is that there are a number of other solicitors involved in the taking of the Badri notes who are due to give evidence on Monday morning because they can't give evidence any earlier. We would therefore assume that it will be possible to proceed to Mr Abramovich's evidence on Monday afternoon, but that very much does depend on there being no undue delay in hearing Mr Reuben's

evidence.

MR GILLIS: My Lady --

MRS JUSTICE GLOSTER: Just a second. I've got the timetable for witnesses in my room. Could either you or Mr Gillis give me an update on who we've still got to go before the defendant starts?

MR SUMPTION: Yes, we've got Mr Giroud and Mr Ivlev who are expected to give evidence on Thursday, along with Mr Lindley.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: There is then Mr Nevzlin, who is expected to give evidence on Friday. It has to be the afternoon because he is giving evidence by video-link from New York and it is an unsocial hour of day in New York in the morning.

That leaves as witnesses Mr --

MRS JUSTICE GLOSTER: Dubov again?

MR SUMPTION: Well, Mr Dubov will give evidence, we think, in one of the vacant slots on Thursday or Friday.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: That leaves as witnesses Mr Lankshear, Ms Duncan and Mr McKim. They are all short witnesses. We expect that their evidence would be completed -- they can't give evidence before Monday because they're away for the school half-term. We would expect their

evidence to be completed by about the midday break on Monday.

MRS JUSTICE GLOSTER: Yes.

MR SUMPTION: Meaning that we would proceed to our own evidence on Monday afternoon. Our first witness would be Mr Abramovich.

My reason for raising this timetable now is that we would very much like to know when Mr Reuben is going to appear and we would very much hope that it will not be at a time which will either delay Mr Abramovich's evidence or involve interposing him after that.

MRS JUSTICE GLOSTER: Mr Gillis, can you help me?

MR SUMPTION: There's also, I should say, Mr Pompadur. He is going to have to be interposed anyway but it would not be inconvenient to interpose him after Mr Abramovich's evidence so that if that's necessary, we have no concerns about it. We are much less relaxed about the possibility of interposing Mr Reuben after Mr Abramovich has given evidence.

MRS JUSTICE GLOSTER: Yes, very well. Mr Gillis, can you help on this?

MR GILLIS: My Lady, we're thankful for the confirmation in respect of Mr Pompadur.

In respect of Mr Reuben, the position, as I understand it, is that the witness summons has to be

issued for a returnable date and that's 3 October (sic). That's obviously inconvenient because matters have moved more quickly.

MRS JUSTICE GLOSTER: 3 November, you mean?

MR GILLIS: 3 November, I'm sorry.

The position is, as we understand it, that Mr Reuben is in France. We're trying to contact him in order to encourage him to come and give evidence on Thursday or Friday of this week, but at the present time we have not had a response from him.

Because the summons has been issued for --

MRS JUSTICE GLOSTER: You can't issue a witness summons that is effective in France, can you?

MR GILLIS: No, I don't think we can. Exactly.

So we served him with the witness summons when he was in England for 3 November. That is the only date that he is presently compelled to come. We are seeking to prevail upon him to come on Thursday or Friday this week. If your Ladyship indicated that that would assist trial management, we would certainly pass that on to Mr Reuben.

MRS JUSTICE GLOSTER: Well, it certainly would be very helpful if he could come on Thursday and Friday and we can slot him in on one of those days.

MR GILLIS: Exactly so. So we are doing what we can do in

order to have Mr Reuben here on Thursday or Friday.

MRS JUSTICE GLOSTER: Well, perhaps to speed things up a bit it might be helpful if I were to say I would like to be notified not later than 4.00 pm tomorrow afternoon as to what the position is in relation to Mr Reuben.

MR GILLIS: We will do that.

My Lady --

MRS JUSTICE GLOSTER: With, obviously, copies to the other parties.

MR GILLIS: Yes, and we will notify our learned friends as soon as we can do.

My Lady, there is just one point in relation to the video conference link. Two of the witnesses, Mr Ivlev and Mr Nevzlin, are giving evidence from New York as you've heard by video-link on Thursday and Friday. It's probably not the most interesting point your Ladyship has had to consider so far, but paragraph 15 of annex 2 to the practice direction 32, dealing with video -- I wasn't going to ask your Ladyship to turn it up; it's on page 997 -- indicates that a video recording should be made of the evidence.

In circumstances where we have a LiveNote transcript being made of the evidence, we wonder whether your Ladyship requires a video recording also to be made or whether you're happy to dispense with that, given the

fact that we're going to have the transcript of the evidence in any event.

MRS JUSTICE GLOSTER: Do I also have a sound recording automatically of the video recording? I think an email has been sent to me today raising the issue.

MR GILLIS: I think that comes through automatically with the --

MRS JUSTICE GLOSTER: LiveNote?

MR GILLIS: -- LiveNote. Certainly there is an audio recording. I will check that. My question to your Ladyship is certainly put on the premise that there is an audio recording that is being made as part and parcel of the LiveNote transcript.

MRS JUSTICE GLOSTER: Yes. I mean, one doesn't have normally a visual recording of a witness either for the assistance of the judge or the parties.

MR GILLIS: No. So provided there is an audio recording made, is your Ladyship content with that?

MRS JUSTICE GLOSTER: Well, I'll hear what the others say.

Mr Sumption, do you want a --

MR SUMPTION: We think that is a sensible suggestion. There is no reason why he should be singled out for having a video recording as well as an audio.

MRS JUSTICE GLOSTER: No. Does any other counsel want to mention anything? No.

Mr Gillis, I'm happy to dispense with the requirement that there should be a video recording of his evidence. If any questions do arise, we'll have it on the transcript and we'll have it on the audio recording.

MR GILLIS: I'm obliged.

MRS JUSTICE GLOSTER: But perhaps somebody could check that it is all right for the audio recording. It should be.

MR GILLIS: We will do.

MRS JUSTICE GLOSTER: Very well.

Right. Now, do you want to start earlier on Thursday because of the two days we're missing?

MR GILLIS: My Lady, we're very much in my learned friend's hands.

MR SUMPTION: My Lady, I don't believe that will be necessary. We are likely to go short on both Thursday and Friday anyway because of the availability of witnesses and the constraints on the time at which they can give evidence.

MRS JUSTICE GLOSTER: Yes, I see, because there is no possibility of getting the half-termers back for Friday.

MR SUMPTION: Exactly.

MRS JUSTICE GLOSTER: Very well. Then I'll sit again at 10.15 on Thursday morning. Thank you very much.

(4.00 pm)

(The hearing adjourned until
Thursday, 27 October 2011 at 10.15 am)

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