Neutral Citation Number: [2016] EWHC 192 (Ch)

Case No: HC-2014-000262

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/02/2016

Before:

MRS JUSTICE ROSE

- -

Between:

(1) JSC MEZHDUNARODNIY PROMYSHLENNIY BANK

(2) STATE CORPORATION "DEPOSIT INSURANCE AGENCY" **Applicants**

- and –

SERGEI VIKTOROVICH PUGACHEV **Defendant**

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- -

Stephen Smith QC, Ben Griffiths, Anna Scharnetzky (instructed by Hogan Lovells International LLP) for the Applicants
Stuart Isaacs QC, Nicholas Cherryman and Moeiz Farhan (instructed by King & Spalding International LLP) for the Defendant

Hearing dates: 8, 9, 10, 11, 15 and 22 December 2015

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Approved Judgment

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

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MRS JUSTICE ROSE

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transferred to Safelight Enterprises Ltd

MRS JUSTICE ROSE:

1. The Applicants have issued two applications to commit the Defendant, Mr Pugachev, to prison for contempt of court. The application lists 17 allegations of contempt made against Mr Pugachev, 13 of which relate to breaches of orders of the court and four of which relate to evidence given by Mr Pugachev in the course of these proceedings that the Applicants say is false and was dishonestly given by him.

2. These proceedings have already given rise to many judgments of the High Court and the Court of Appeal and many orders made by different judges. It is not necessary to relate the whole of the factual and procedural background to the claim in order to understand the committal applications. The account that follows therefore focuses on those parts of the proceedings that are most relevant. Annex 1 to this judgment sets out the allegations of contempt using a numbering system adopted by the parties and used in this judgment. Annex 2 sets out the orders which are relevant to the alleged contempts showing the abbreviations adopted in this judgment.

3. The hearing of the committal applications took place over six days. Mr Pugachev did not attend the hearing in person but was represented by leading and junior counsel. At the start of the hearing I ruled that Mr Pugachev should be able to listen to the proceedings by video link from what I was told was a conference room in central Paris. I ruled subsequently that he should be cross-examined over that video link.

4. Evidence in support of the applications was provided primarily in three witness statements of Christopher Hardman, a partner in Hogan Lovells International LLP, solicitors acting for the Applicants ('Hogan Lovells'). Evidence in opposition to the committal applications was mainly set out in Mr Pugachev's 11th and 12th affidavits and given by Mr Pugachev during the course of his cross-examination. Both sides also referred to some of the many other witness statements and affidavits that have been lodged with the court during the course of the proceedings.

The background to the claim

5. In the early 1990s Mr Pugachev founded JSC Mezhdunarodniy Promyshlenniy Bank ("the Bank") in Russia. It grew to become one of Russia's largest privately owned commercial banking groups. He describes himself as at the heart of power in Russia for many years and as having had a close relationship with President Putin and others within his inner circle. However, beginning in early 2009 Mr Pugachev says that he fell foul of President Putin's desire to expropriate the significant business assets and investments that Mr Pugachev owned, and that President Putin determined to destroy him 'economically, politically and, ultimately, personally'.

6. On 4 October 2010 the Russian Central Bank revoked the Bank's licence. On 30 November 2010 the Bank was declared to be insolvent by the Russian court and placed into temporary administration. The court appointed liquidator is the Second Claimant ("the DIA"). The Bank and the DIA are the two claimants in the action. The DIA is a Russian "state corporation", a non-profit organisation established by the Russian state for the benefit of the public welfare and accountable to the Russian Central Bank. The Russian liquidation of the Bank has been recognised by this court pursuant to the Cross-Border Insolvency Regulations 2006 (SI 2006/1030). The

deficiency in the Bank's assets at the date of its entry into liquidation is said to be approximately RUR 70.1 billion (US$2.2 billion).

7. The DIA brought proceedings against Mr Pugachev in Russia alleging that, following receipt by the Bank of substantial loans from the Russian Central Bank in order to recapitalise it in about December 2008, Mr Pugachev who was then in control of the Bank carried out a scheme designed to extract money from the Bank for the benefit of himself and other companies under his control. The amounts claimed exceed US$2 billion. Mr Pugachev left Russia in early 2011. He strongly disputes the claims brought against him in Russia. However a civil judgment was awarded against Mr Pugachev in the Russian proceedings in April 2015. There have been two appeals by Mr Pugachev to successive appellate levels both of which have been dismissed. Mr Pugachev's application to appeal to the Russian Supreme Court was pending at the time of the committal hearing.

8. In support of those Russian proceedings the Applicants sought relief from the English court pursuant to section 25 of the Civil Jurisdiction and Judgments Act 1982. That gave rise to the first order made in these proceedings and the first order of which it is alleged that Mr Pugachev is in breach. On 11 July 2014 Henderson J made the Ex Parte Freezing Order. The provisions in that order which froze Mr Pugachev's assets were superseded by the Return Date WFO but some provisions of the Ex Parte Freezing Order are relevant to the committal application. Paragraph 9 of the Ex Parte Freezing Order required Mr Pugachev to inform Hogan Lovells, to the best of his ability, of all his assets worldwide exceeding £10,000 in value as at the time the order was served "whether in his own name or not and whether solely or jointly owned, giving the value, location and details of all such assets". The deadline set for compliance with paragraph 9 was at the latest by 5 pm on the third working day after the service of the order. Further, paragraph 10 of the Ex Parte Freezing Order provided that within two working days after that deadline, Mr Pugachev must swear and serve on Hogan Lovells an affidavit setting out that information.

9. Mr Pugachev's first response to the Ex Parte Freezing Order was a letter from his then solicitors Stephenson Harwood sent on 23 July 2014 ('the 23 July Letter'). The 23 July Letter contained a Schedule in different sections setting out Mr Pugachev's assets. These included various cars, yachts, houses and other properties in the United Kingdom and overseas and different businesses. The sections of the Schedule of Assets which are relevant to the committal application are those dealing with:

    i) two cars, which it is alleged in Allegation B4 Mr Pugachev has disposed of in breach of the Return Date Freezing Order;

    ii) shares in a company called Petrovka-Rent LLP which it is alleged in Allegation B1 that Mr Pugachev has disposed of in breach of the Return Date Freezing Order;

    iii) the proceeds of sale of a grocery business in France called Hediard which it is alleged in Allegation B3 Mr Pugachev has disposed of in breach of the Return Date Freezing Order;

    iv) Mr Pugachev's shareholding in a company called Luxury Consulting of which he is the sole shareholder and of which he claims to be a creditor in respect of

loans made. It is alleged further in Allegation B3 that Mr Pugachev procured or permitted Luxury Consulting to dispose of part of the proceeds of sale of the Financiere Hediard business when those monies were transferred to Luxury Consulting.

v) Mr Pugachev's interest in claims against the Russian state arising out of the loss of businesses including his interest in a company referred to as EPK which I shall describe later. This is relevant to Allegation B5 that he has disposed of part of his interest in a claim by assigning it to another company in breach of the Return Date Freezing Order.

10. The return date for the Ex Parte Freezing Order was 29 July 2014 and on that date Henderson J made the Return Date Freezing Order. Paragraph 2 provided that the freezing order was to last until 5 pm on the fifth working day after the Moscow City Commercial Court handed down its judgment in the proceedings in support of which the relief had been granted under section 25 of the CJJA. The Return Date Freezing Order prohibited Mr Pugachev from removing assets from the jurisdiction up to the value of £1,171,490,852 and froze his worldwide assets to that value, whether the assets were within or outside the jurisdiction. The prohibition applied in particular to the assets set out in Schedule C to the Return Date Freezing Order; that Schedule C reflected the bank accounts and some of the other assets in the Schedule attached to the 23 July Letter.

11. Paragraph 2(4) of the Return Date Freezing Order made provision for the application of the order to companies owned or controlled by Mr Pugachev. The freezing order was said to apply:

> "2(4) in respect of bodies corporate which are directly or indirectly owned and/or controlled by the Respondent and have no or no substantial trading activities (including for the avoidance of doubt any bodies corporate which are directly or indirectly owned and/or controlled by such bodies corporate and have no or no substantial trading activities), … and without prejudice to the generality of the foregoing for the purposes of this order the bodies corporate listed in Schedule B are (without limitation) to be taken as being directly or indirectly owned and/or controlled by the Respondent and having no or no substantial trading activities."

12. Schedule B to the Return Date Freezing Order included various companies which are relevant to the committal application in particular Limebury Investments Ltd, Petrovka-Rent LLC, Safelight Enterprises Ltd and Luxury Investments SA.

13. Paragraph 3 of the Return Date Freezing Order provided for the application of the order to assets that are not owned either beneficially or legally by Mr Pugachev but which are still caught by the injunction:

> "3. Paragraph 2 applies to all the Respondent's assets whether or not they are in his own name and whether they are solely or jointly owned and whether the Respondent is interested in them legally, beneficially or otherwise. For the purpose of this order

> the Respondent's assets include any asset which he has the power, directly or indirectly, to dispose of or deal with as if it were his own. The Respondent is to be regarded as having such power if a third party holds or controls the asset in accordance with his direct or indirect instructions."

14. The Return Date Freezing Order was not served personally on Mr Pugachev. During the course of the opening I heard submissions from the parties following which I waived the requirement for personal service.

15. The Moscow court delivered its decision on 23 April 2015 meaning that the Return Date Freezing Order was due to expire on 30 April 2015. The Applicants applied to the court for that order to be continued and Peter Smith J made an order on 30 April 2015 continuing the Return Date Freezing Order in force until further order of the court.

16. The freezing orders made by Henderson J made provision, as is usually the case, for the payment of reasonable living expenses and legal fees to be exempted from the operative provision. Those provisions were superseded by the Living Expenses Order of Peter Smith J made on 14 August 2014 setting up a regime for the payment by Mr Pugachev of his living expenses. The regime set up by the Living Expenses Order provided:

> "4. Nothing in the Injunction Order shall prohibit the Respondent from:
>
> (a) spending an average of £50,000 (or any equivalent sum in a foreign currency) a week towards his ordinary living expenses, such amounts to be averaged over a period of two months, and also a reasonable sum on legal advice and representation ("legal expenses"), in each case in accordance with the terms of this Order and
>
> (b) paying any sum to the tax authorities in any jurisdiction in respect of proper payments of tax due and payable by the Respondent ("tax liabilities").
>
> But before spending any money pursuant to paragraph (a) or (b) above the Respondent must tell the Applicants' solicitors where the money is to come from."

17. We now move forward to orders made in the course of 2015. In March 2015 Peter Smith J made two orders requiring Mr Pugachev to deliver up his passports and other travel documents. He made the Ex Parte Passport Order on 2 March 2015 and this was served personally on Mr Pugachev on 4 March 2015 in circumstances giving rise to a conflict of evidence that I will describe later. The order was made in the context of a pending application by the Bank to cross-examine Mr Pugachev on the evidence he had given about his assets. The Ex Parte Passport Order provided that:

> "**1.** In order to ensure compliance with the order of Mr Justice Henderson dated 25 July [2014] and any order which may be made on the Cross-Examination Application –
>
> (1) [Mr Pugachev was restrained from leaving the jurisdiction]
>
> (2) the Respondent shall immediately identify and deliver up all of his passports (and any other documents of like nature which permit him to enter or leave any country) to the solicitors for the Applicants, to hold those passports and/or other documents to the order of the Court until 5 pm on the third working day after the End Date (or such other date as is provided for by further order of the Court), whereupon they shall be returned to the Respondent"

18. The End Date was defined in paragraph 1(1) as the date on which Mr Pugachev was cross-examined, if cross-examination on his disclosure affidavit was ordered.

19. The Ex Parte Passport Order set a return date of 6 March 2015. At the hearing before Peter Smith J on that day, Mr Pugachev disclosed that he had a French passport that he had not handed over. This failure forms the basis of Allegation A1. In the Return Date Passport Order, Peter Smith J ordered that, to the extent that Mr Pugachev has not done so already pursuant to the Ex Parte Passport Order, Mr Pugachev should by 4 pm on 13 March 2015 identify and deliver up his passports and identity cards etc. including, for the avoidance of doubt the French passport referred to at the hearing. That date was extended by order of Arnold J, made on 11 March, requiring Mr Pugachev to hand over his French passport by 18 March 2015. The French passport was handed over by Mr Pugachev to Hogan Lovells before 18 March 2015.

20. The passport orders made by Peter Smith J were initially made to ensure the enforcement of any order that Mr Pugachev attend to be cross-examined on the evidence he had given about his assets. However, the Return Date Passport Order has remained in force since 2 March 2015, continued in effect by various orders in an attempt to ensure compliance with those orders made subsequently.

21. Mr Pugachev was cross-examined on his disclosure of assets before Hildyard J on 23, 24, 31 March and 2, 15, 20 April and 6 May 2015. During the course of those hearings, when Mr Pugachev did not have legal representation, information was provided by Mr Pugachev not only when he was formally in the witness box being cross-examined but when he was making his submissions to Hildyard J as well. Following those hearings, Hildyard J made his order of 12 June 2015 ('the Hildyard Order') in which amongst other things, he ordered Mr Pugachev to swear an affidavit:

> "(d) (after studying the transcripts of the hearings) confirming (or otherwise) the truth of all facts related by him to the court during submissions on 23, 24, 31 March and 2, 15 and 20 April and 6 May 2015"

22. Mr Pugachev swore his 5th affidavit on 13 July 2015. In paragraph 31 of his 5th affidavit Mr Pugachev stated that he had reviewed the transcripts of the hearings and

confirmed the truth of the facts related by him to the Court during his submissions, subject to two clarifications neither of which is relevant for our purposes.

23. The cross-examination before Hildyard J forms the basis of Allegations E1, E2 and E3 in which it is alleged that Mr Pugachev made various statements in relation to his assets, knowing those statements to be false.

24. Two applications were made by Mr Pugachev for the return of his passport to enable him to leave the jurisdiction. The first application was made on 2 April 2015 during the course of Mr Pugachev's cross-examination and was refused by Hildyard J. The basis for the application was the supposed need for Mr Pugachev to gain access to a bank account operated by him in France. In support of that application Mr Pugachev submitted to Hildyard J that he needed the money in that bank account to pay his living expenses. That submission is the subject of Allegation E4 in that the Bank alleges that Mr Pugachev knew that that submission was false. The second application for the return of his passport was made by Mr Pugachev to Hildyard J on 21 May 2015. The basis for this application was Mr Pugachev's assertion, set out in his 11th witness statement made on 20 May 2015, that he needed to go to France because he had received a summons to a hearing before investigating judges to give evidence in relation to criminal proceedings that had been started by Mr Pugachev in relation to alleged serious criminal acts by officials of the DIA and other Russian individuals. Hildyard J refused Mr Pugachev's application and this refusal was upheld by the Court of Appeal in a judgment handed down on 29 May 2015: [2015] EWCA Civ 1108.

25. The Hildyard Order dealt with various applications made by the Bank following the completion of the cross-examination. Paragraph 1 of the order required Mr Pugachev to swear an affidavit within 21 days setting out to the best of his belief and having made all reasonable enquiries, certain information about, amongst other things, his interests in various entities that had been referred to in the course of his cross-examination. The Hildyard Order also prohibited Mr Pugachev from leaving the jurisdiction by paragraph 4(a):

> "In order to ensure compliance with this Order –
>
> (a) the Defendant is restrained from leaving England and Wales until 5 pm on the third working day after the day of service upon the Claimants of the affidavit required by paragraph 1 above (or such other date as is provided for by further order of the Court)"

26. The expiry date for that injunction was 3 July 2015. However, on about 23 June 2015 Mr Pugachev left England and has stayed in France since that date. That departure from the jurisdiction forms the basis of Allegation A2 and also Allegation A3 in that the Bank alleges that in order to leave the jurisdiction, Mr Pugachev must have some other travel document that he has failed to hand over in breach of the Ex Parte Passport Order and the Return Date Passport Order.

27. Once it became apparent at the end of June 2015 that Mr Pugachev might have left England, the Bank came back to court seeking a search and seizure order to permit the search of various premises where Mr Pugachev lived or where he had offices. I made

the Ex Parte Search Order on 1 July 2015. The Ex Parte Search Order was made against Mr Pugachev and Luxury Consulting. It provided for:

i) Named solicitors referred to as the Supervising Solicitors together with other solicitors from Hogan Lovells and two forensic computer specialists to enter four separate premises to search for 'Schedule B Items' and to take copies of data stored on any computers or other devices found there.

ii) Each Respondent to the order to hand over to the Supervising Solicitors any of the Schedule B Items which were in their possession or control save for any computer or hard disk drive integral to any computer. It was stated in paragraph 19 of the Order for the avoidance of doubt that the obligation included an obligation to return any Schedule B Items that had been removed from the jurisdiction after 1 June 2015.

iii) Each Respondent was obliged to give effective access to the IT Equipment with all necessary passwords and to all email accounts on which any Schedule B Items may be stored. Mr Pugachev was required to hand over passwords for his email accounts as soon as reasonably practicable and in any event by no later than 4 pm on 3 July 2015.

iv) Each Respondent was obliged to inform Hogan Lovells so far as he was aware of where Schedule B Items will be found and to whom items found in the premises searched belong.

v) Each Respondent was prohibited from removing, destroying or tampering with any Schedule B Items.

28. Schedule B Items were defined as 'any document, material or information howsoever recorded or stored which is relevant to any Pugachev Asset' and 'Pugachev Asset' was in turn defined as in effect all of his assets. The "saving for any computer or hard disk integral to any computer" reflected the earlier provisions in the order which provided for an IT consultant participating in the search to take copies of data sorted on any computer or other device that holds computer-readable information on or around the premises searched: see paragraph 7(2) of the Ex Parte Search Order.

29. The Ex Parte Search Order forms the basis for Allegations C1 and C2 in which the Bank alleges that Mr Pugachev failed to deliver up his iPad and his mobile phone and failed to hand over the passwords as ordered.

30. The return date hearing for the Ex Parte Search Order took place before Henderson J on 9 July 2015. He made the Return Date Search Order in which he set a new deadline on 10 July 2015 by which Mr Pugachev had to provide the password for his email accounts. On or about 17 July 2015, Mr Pugachev's solicitors King & Spalding handed the Supervising Solicitors a sealed envelope said to contain the passwords but on condition that the Supervising Solicitors undertake not to open the envelope without further order of the court. There was an inter partes hearing before me on 27 July 2015 at which Mr Pugachev, by this time represented by leading counsel, sought to set aside the Return Date Search Order. I refused to set that order aside and made a number of further orders. I made the Rose Order which, amongst other things, followed up elements of the Hildyard Order requiring Mr Pugachev to swear an

affidavit saying what had happened to various payments identified in the order. The Rose Order forms the basis of Allegations D1, D2 and D3, where the Bank alleges that Mr Pugachev has failed to provide information about what has happened to the payments.

31. Also on 27 July 2015 I made the Search Protocol Order dealing with the handling of the material that had been seized during the searches made pursuant to the Rose Order. The Search Protocol Order did not contain a penal notice and was not served personally on Mr Pugachev. During the course of the committal application, Stephen Smith QC appearing for the Bank, asked me to waive retrospectively the requirement for the attachment of the penal notice. The Search Protocol Order provided in paragraph 3(a) that the supervising solicitors could open the envelope given to them by King & Spalding. The Search Protocol Order is relevant to Allegation C1 concerning Mr Pugachev's alleged failure to hand over his mobile phone and iPad.

32. It is convenient to deal with this point here. CPR 81.4 provides

> (1) If a person—
>
> (a) required by a judgment or order to do an act does not do it within the time fixed by the judgment or order; or
>
> (b) disobeys a judgment or order not to do an act,
>
> then, subject to .. the provisions of these Rules, the judgment or order may be enforced by an order for committal."

33. CPR 81.9 provides:

> "(1) Subject to paragraph (2), a judgment or order to do or not do an act may not be enforced under rule 81.4 unless there is prominently displayed, on the front of the copy of the judgment or order served in accordance with this Section, a warning to the person required to do or not do the act in question that disobedience to the order would be a contempt of court punishable by imprisonment, a fine or sequestration of assets."

34. CPR 81.8 deals with dispensing with service:

> "(1) In the case of a judgment or order requiring a person not to do an act, the court may dispense with service of a copy of the judgment or order in accordance with rules 81.5 to 81.7 if it is satisfied that the person has had notice of it—
>
> (a) by being present when the judgment or order was given or made; or
>
> (b) by being notified of its terms by telephone, email or otherwise.
>
> (2) In the case of any judgment or order the court may—

> (a) dispense with service under rules 81.5 to 81.7 if the court thinks it just to do so; or
>
> (b) make an order in respect of service by an alternative method or at an alternative place."

35. The Practice Direction for CPR 81 provides:

> "16.2 The court may waive any procedural defect in the commencement or conduct of a committal application if satisfied that no injustice has been caused to the respondent by the defect."

36. Mr Smith referred me to the decision of Vos J in *Gill v Darroch* [2010] EWHC 2347 (Ch). That case concerned a committal application for breach of a freezing order where the issue arose whether the court had a discretion to dispense with service of a copy of the freezing order and hence with the requirement for attachment of a penal notice. I note that Vos J emphasised that the penal notice had been prominently displayed on the second though not the front page of the order in question and that it would be impossible to read the contents of the order without seeing the penal notice displayed (paragraph 27 of his judgment). The defendant in that case had also received an email prior to receiving the order and the email had made clear that he would be in contempt of court if he failed to comply. The breach was, in that case, entirely technical. Vos J cited from a number of authorities including from the judgment of Lord Woolf MR in *Nichols v Nichols* a decision of the Court of Appeal handed down on 20 December 1996 where he said:

> "The court itself has a very substantial interest in seeing that its orders are upheld. If committal orders are to be set aside on purely technical grounds which have nothing to do with the justice of the case, then this has the effect of undermining the system of justice and the credibility of the Court orders. While the procedural requirements in relation to applications to commit and committal orders are there to be obeyed and to protect the contemnor, if there is non-compliance with the requirements which does not prejudice the contemnor, to set aside the order purely on the grounds of technicality is contrary to the interests of justice ..."

37. The principles Vos J applied in *Gill v Darroch* were that although the power to waive procedural defects in the Practice Direction might not apply on its terms to the service of the original order, the spirit of that paragraph should nonetheless be taken into account and gives the court guidance in dealing with technical objections of the kind raised in that case: "The new CPR is very focused on furthering the overriding objective and dealing with the substance of claims and applications and not with technicalities". He also held that the power to dispense with service of the original order included a power to dispense with the provision of the penal notice and so could be used for that purpose even where the original order had in fact been served: "By dispensing with the service of the copy of the order the court is simply relaxing or not insisting on compliance with the service requirement and with the requirement for service of a copy of the order including the penal notice on its face" (paragraph 33).

This was confirmed by the judgment of the Court of Appeal in *Jolly v Hull* [2002] FLR 69 where Judge LJ noted that the dispensing power did not expressly extend to the provision for a penal notice, but that given the power to dispense with service of the judgment or order on which the penal notice was to be endorsed, it follows that as a matter of discretion the court was similarly empowered to dispense with the requirement of a penal notice, or, more precisely, to proceed to consider a proper notice of application to commit notwithstanding the absence of a penal notice on the judgment itself. Judge LJ noted, as have other judges, that the jurisdiction to dispense should not be exercised too readily, lest what should be a dispensing power for use in exceptional cases may gradually undermine the express requirement for a penal notice to be attached.

38. Mr Smith also relied on the decision of Kenneth Parker J in *SOCA v Hymans* [2011] EWHC 3599 (QB) where the facts were rather similar to these. In that case a freezing order was made which did contain a proper penal notice. The order was later varied to include more assets. The variation order did not contain the penal notice but it was accepted that the claimant's solicitor had explained the terms of the variation to the contemnor and had read out to him on that occasion the penal notice attached to the first order. Acknowledging that the requirements should not be lightly set aside, Parker J held that where he was entirely satisfied that the contemnor knew the consequences of breach of the order as varied, it would not serve the interests of justice to allow him to escape those consequences because no penal notice was expressly endorsed on the variation order.

39. Mr Pugachev opposed the waiver of the requirement for personal service and the attachment of a penal notice. He relied on the judgment in *Leicester City Council v Saracen Dyers Limited* [2002] EWHC 2068 (QB), where Pitchford J doubted whether the power to waive a procedural error referred to in the Practice Direction entitled him to waive the requirement for a penal notice but in any event declined to exercise any such discretion in favour of the claimant. His judgment on that point has been superseded by the later cases making clear that the power to dispense with service is the appropriate route also to dispense with the need for a penal notice. The exercise of his discretion may have been justified on the facts before him but I must consider the position in the present case when deciding how to exercise my discretion.

40. I consider that it would be in the interests of justice to waive the requirement for personal service, and thereby to dispense retrospectively with the requirements for a penal notice in this case broadly for the reasons put forward by the Applicants. The provisions of the Search Protocol Order that are relied on for the allegation of breach essentially continue the Ex Parte Search Order which was endorsed with a penal notice and properly served (by alternate means, personal service having been dispensed with). The Search Protocol Order was expressed to be without prejudice to the relevant provisions of the Ex Parte Search Order. Mr Pugachev's solicitors and leading counsel were provided with drafts of the Search Protocol Order prior to the contested hearing before me and were involved in settling the draft order after judgment had been handed down. The Search Protocol Order was served on Mr Pugachev under cover of a letter from Hogan Lovells to King & Spalding by email and post on 29 July 2015. By this time, of course, Mr Pugachev had left the jurisdiction in breach of the court order, thereby making personal service difficult. There is no reason to believe that King & Spalding did not comply with their

professional obligations and explain the terms of the order as well as the possible consequences of non-compliance to Mr Pugachev. Although I accept that it is for the Applicants to satisfy me that the penal notice should be dispensed with, it is significant that Mr Pugachev did not suggest that he had been prejudiced in any way by the absence of the penal notice or that he thought that the consequences of disobeying this court order were any different from the consequences of disobeying the orders of the court previously served on him which did have penal notices attached.

The law

41. There was little dispute between the parties as to the test that the court must apply when considering whether allegations of contempt have been made out. The burden of proof falls on the Bank and the criminal standard of proof applies so that a finding of contempt can be made only if I am satisfied beyond reasonable doubt that the breach of the order alleged has occurred. This has been confirmed recently in a decision of the Court of Appeal that is particularly relevant to Allegations E1 to E4 concerning alleged false statements made in the course of evidence given under oath. In *JSC BTA Bank v Ereshchenko* [2013] EWCA Civ 829 the Court of Appeal was considering allegations that Mr Ereshchenko had lied in written evidence he provided to the court. The Court of Appeal upheld the decision of Vos J (as he then was) in dismissing the application for committal. Vos J set out the principles to be applied in paragraph 132 of his judgment. So far as relevant to the present application these were as follows:

i) the burden of proving the contempt that it alleges lies on the Bank. Insofar as Mr Pugachev raises a positive defence he carries an evidential burden which he must discharge before the burden is returned to the Bank.

ii) the criminal standard of proof applies, so that the Bank's case must be proved beyond reasonable doubt – or so that the court is sure. In case the meaning of this formulation were unclear, Phipson on Evidence (17th edition, 2009 at paragraph 6.51) cites the Privy Council in *Walters v. R* [1969] 2 A.C. 26 as indicating that "[a] reasonable doubt is that quality or kind of doubt which when you are dealing with matters of importance in your own affairs you allow to influence you one way or another".

iii) The court needs to exercise care when it is asked to draw inferences in order to prove contempt. The law in this respect is summarised in a passage in the judgment of Teare J in *JSC BTA Bank v. Ablyazov* [2012] EWHC 237 (Comm). Circumstantial evidence can be relied on to establish guilt. It is however important to examine the evidence with care to see whether it reveals any other circumstances which are or may be of sufficient reliability and strength to weaken or destroy the Bank's case. If, after considering the evidence, the court concludes that there is more than one reasonable inference to be drawn and at least one of them is inconsistent with a finding of contempt, the claimants fail. Where a contempt application is brought on the basis of almost entirely secondary evidence, the court should be particularly careful to ensure that any conclusion that a respondent is guilty is based upon cogent and reliable evidence from which a single inference of guilt, and only that inference, can be drawn.

42. In the remainder of this judgment, where I make findings of fact or state that I have concluded that an allegation has been proved, I make such findings and arrive at such conclusions on the basis of the criminal standard of proof.

43. As regards the mental element, Mr Smith drew my attention to the relevant passage in McGrath *Commercial Fraud in Civil Practice (2nd edn)*. That emphasises that contempt of court is, in general, a strict liability offence. Provided that the alleged contemnor intended to carry out the conduct which was prohibited, it is no answer to say that there was no direct intention to disobey the order. The court is not interested in examining the motive or intent behind the actions of an individual breaching the terms of an injunction. However Mr Smith accepted that the Court of Appeal in *Ereshchenko* approved of the approach taken by Vos J where the alleged contempt was the giving of false evidence. At paragraphs 18 and 19 of his judgment, Lloyd LJ (with whom Elias and Beatson LJJ agreed) said:

> "18 ... It was therefore necessary for the Bank to prove beyond reasonable doubt that each of Mr Ereshchenko's statements relied on was untrue at the time it was made, and that Mr Ereshchenko did not have an honest belief in its truth at that time. The judge attached importance to the need to focus on Mr Ereshchenko's state of mind at each relevant date, and it seems to me that this was clearly right and necessary. Mr Ereshchenko has been able to give more information at a later stage of the process than he did previously, but it does not follow from this that he could have done so at the earlier stage and that he was therefore concealing information earlier of which he was aware, and was thus dishonest in asserting that he had said all he could at that time.
>
> 19 In essence the Bank alleges, and must prove to the criminal standard, that at the time of the December witness statement, and on each later relevant occasion, Mr Ereshchenko knew more than he was admitting to, and knew that he did, and was therefore consciously and deliberately holding back information which he had and which he knew he was required by the Disclosure Order to reveal."

44. I also bear in mind Vos J's note of caution at paragraph 159 of his judgment in *Ereshchenko* that "[f]inely balanced judgments about a witness's state of knowledge at particular times against the backdrop of years of complex documentation have no sensible place in such an application".

Mr Pugachev's evidence

45. Mr Pugachev was cross-examined over three days during the hearing. In assessing his credibility I have made due allowance for the difficulties that arise first from the fact that Mr Pugachev was cross-examined over a video link and also that every question and answer and every relevant passage in a document had to be translated to or from Russian.

46. In his 12th affidavit responding to the allegations of contempt Mr Pugachev said that he wishes to apologise unreservedly for any and all matters where he accepts he is in breach of court orders or where he is held to be in contempt of court. He asks the court to take into consideration evidence relating to the reasons for his conduct and his state of mind at the time of the matters complained of. Any breaches he has committed have not been committed dishonestly or with any motive of concealing information from the court or the Applicants. He refers to the huge psychological pressure that he has been under dealing with many different orders of the court at the same time as having concerns as to his personal safety and the safety of his family and the various proceedings he is party to in several different jurisdictions.

47. At the start of his closing submissions on behalf of Mr Pugachev, Mr Cherryman went into some detail about Mr Pugachev's view of the underlying dispute between himself and the current Russian Government. There is no doubt that in his own mind, Mr Pugachev is the injured party. He has described these proceedings as part of a 'wider war waged relentlessly' against him and referred to 'a witch hunt improperly and mechanistically being pursued' against him by various legal and extra-legal means. That said, he has engaged and is still engaging with the Russian proceedings brought against him by the Bank and he has brought his own claim against the Russian Government to recover the assets which he says have been illegally expropriated from him. In their closing submissions, Mr Pugachev's counsel submit that the bitter conflict between Mr Pugachev and his adversaries within the Russian state explains the actions and singular motivations of Mr Pugachev, and his unique mind-set. This is relevant when considering why Mr Pugachev has acted the way he has, the nature and quality of his evidence before this court, and additionally goes to issues of mitigation in so far as they may arise. I agree with that but in my view it causes Mr Pugachev to feel justified in taking steps to avoid giving access to his assets or to information about his assets and that includes disobedience to court orders and giving false evidence.

48. As to the relevance of those matters to the present proceedings, I adopt the same approach as was adopted by Teare J and the Court of Appeal in *Ablyazov v JSC BTA Bank* [2011] EWCA Civ 1386, paragraph 5. There has been no successful challenge to these proceedings on the grounds that they are an abuse of process. The existence or otherwise of a collateral purpose behind the Bank bringing these proceedings does not affect Mr Pugachev's obligation to abide by the orders of this court. Whatever 'swirling cross-currents' there may be (to adopt the Court of Appeal's phrase) between Mr Pugachev and the Russian Government, they have only tangential relevance to the issues I have to decide.

49. Having heard Mr Pugachev's evidence, and read a large number of witness statements and affidavits made in the past by him or by his legal advisers on instruction, I have concluded that I cannot safely rely on any evidence he gave during the hearing. It is clear that his evidence on many topics changes depending on what he perceives to be the most useful version of events at any given time. I have therefore approached the evidence in this case on the basis that where Mr Pugachev's evidence conflicts with that of another witness, I prefer the evidence of that other witness. Where the evidence given on behalf of Mr Pugachev by his legal representative on instruction conflicts with evidence given directly by him either in his own affidavits or witness statements or in oral evidence, then I prefer the evidence presented on his behalf by

his lawyers. Although this evidence may appear to be less direct, the information gathering exercise carried out by his own legal team is more likely to have got closer to the truth than the cross-examination process.

Allegation A1: Mr Pugachev failed to deliver up his French passport in breach of paragraph 1(2) of the Ex Parte Passport Order

50. The Ex Parte Passport Order made by Peter Smith J on 2 March 2015 provided in paragraph 1(2) that Mr Pugachev shall immediately identify and deliver up all of his passports (and any other documents of like nature which permit him to enter or leave any country) to the Bank's solicitors Hogan Lovells.

51. The Ex Parte Passport Order was served personally on Mr Pugachev on the morning of 4 March 2015 at his house in Glebe Place in London. The order was accompanied in the envelope by a covering letter drafted by Hogan Lovells in both English and Russian dated 4 March 2015.

52. Evidence as to what happened was provided in the 13th witness statement dated 5 March 2015 of Michael Roberts, a partner in Hogan Lovells. At this point Mr Pugachev was not legally represented. Mr Roberts describes what happened when he attended Mr Pugachev's house at Glebe Place accompanied by Ms Wales, also of Hogan Lovells, a translator Ms Edwards and the Deputy Tipstaff and Assistant Tipstaff. On Mr Roberts ringing the door buzzer, the first person to appear from the house was a bodyguard. Following several unsatisfactory discussions between Mr Roberts and the bodyguard, two uniformed police constables from the Metropolitan Police arrived. At about 12:15 the police climbed over the railings and pushed their way into the house before the bodyguard could close the door against them. The Deputy Tipstaff and the Assistant Tipstaff also entered the property at this point, taking with them the envelope containing the Ex Parte Passport Order and the covering letter. The translator followed them in a few moments later taking with her a box of documents provided by Mr Roberts including the documents which the Ex Parte Passport Order required to be served on Mr Pugachev.

53. Mr Roberts remained outside the house so the rest of his evidence as to what happened was a report of what was told to him by those who went inside. He accepts in his witness statement that it was difficult for him to take notes whilst standing on the pavement and he may have been confused as to which person told him what. But he believes that his evidence is an accurate account of what he was told. The police and the Tipstaff's team were in the property for about 45 minutes. Towards the end of that period, the Deputy Tipstaff and one of the police constables emerged holding two Russian passports. The Deputy Tipstaff asked whether Mr Roberts thought Mr Pugachev might have any other passports and Mr Roberts replied that he might well have a French or British passport but that he could not be sure. A further Russian passport was then produced followed by an identity card. Mr Roberts then says:

> "I understand that Mr Pugachev was subsequently asked to confirm whether he had any further passports and he confirmed that he did not. PC Jones appeared satisfied that Mr Pugachev had understood the question and that he had clearly confirmed that he had no other passports, including (specifically) any French passport"

54. Mr Roberts says that the translator also then came out of the house and 'she also confirmed that Mr Pugachev had said that he did not have any further passports'. Both the Deputy Tipstaff and the translator confirmed to Mr Roberts that Mr Pugachev had read the covering letter and the Ex Parte Passport Order.

55. The passports and other items that were handed over by Mr Pugachev at Glebe Place were an expired Russian passport issued in January 1995, an expired diplomatic passport, a diplomatic passport due to expire on 2 June 2015, an expired identity card and a photocopy of Mr Pugachev's birth certificate. Mr Roberts notes in his witness statement that the valid passport did not appear to contain any visa permitting entry to either the UK or France. Hogan Lovells therefore wrote to Mr Pugachev by letter dated 5 March 2015 asking him to confirm whether this was indeed his only valid passport and that he does not have either a French or British passport. The letter was drafted in both English and Russian. The letter described the documents that were delivered up at Glebe Place the previous day. The letter then says:

> "We understand from the Tipstaff that these documents were said by you to be the only passports or documents of like nature which permit you to enter or leave any country in your possession. Please confirm that position is correct in writing by return. If you have other passports or other documents of like nature which permit you to enter or leave any country that you did not deliver up to the Tipstaff yesterday, please provide full details of those documents and arrange for them to be delivered up to this firm without delay. In particular, please confirm whether you have a French passport, or French residence or leave to remain in France, or a British passport, or British residence or leave to remain in Britain."

56. Mr Pugachev did not reply to that letter.

57. On 6 March 2015 Mr Roberts made his 14th witness statement for the return date hearing of the passport order before Peter Smith J. He explained that the holder of a Russian diplomatic passport generally does not require a visa to enter, leave or transit through the Schengen Area. This would explain the absence of any visa to enter France but not the absence of a visa to enter the UK if that passport had been used by Mr Pugachev to enter this jurisdiction. He makes various other points, in relation to visa requirements and media reports of extensive travelling by Mr Pugachev, that led him to believe that Mr Pugachev must have an undisclosed further passport.

58. During the return date hearing before Peter Smith J on 6 March, Mr Pugachev was asked directly by the judge whether he had a French passport and he said that he did but that it was in a safe in his residence in France. Peter Smith J made the Return Date Passport Order as I have described earlier and Mr Pugachev handed over his French passport within the deadline as extended by Arnold J.

59. The Bank contends that Mr Pugachev's failure to identify and deliver up his French passport when the Ex Parte Passport Order was served on him on 4 March 2015 was a breach of that Order. This breach was not cured by the extension of time granted for the delivery up of the French passport first by Peter Smith J and then by Arnold J. Further, they submit that Mr Pugachev could not have been under any

misapprehension that his French passport was covered by the wording of the Ex Parte Passport Order because Mr Roberts' evidence is that during the course of serving the order, Mr Pugachev was specifically asked whether he had a French passport and he denied that he did. Further, he was specifically asked in the 5 March 2015 letter sent to him by Hogan Lovells whether he had a French passport and he did not reply to that letter.

60. Mr Pugachev's answer to this allegation raises two issues. The first is whether, on its proper construction, the Ex Parte Passport Order required him to deliver up his French passport. If it did not, then there can be no question of him being in contempt. If the order did require him to hand over the French passport then he clearly failed to do so. The question whether he honestly believed that he was not required to hand over the French passport is relevant only to the seriousness of the breach but I shall consider it here too.

Does the Ex Parte Passport Order require Mr Pugachev to hand over passports not immediately in his possession?

61. Mr Pugachev submits that as a matter of the proper construction of the Ex Parte Passport Order, it did not cover the French passport. The obligation imposed was that he 'immediately identify and deliver up all of his passports' to Hogan Lovells. The order could only have required the 'immediate' identification and delivery up of passports that were immediately in his physical possession. That is because the word 'immediately' should be read conjunctively so that it applies to both to his obligation to identify and to his obligation to deliver up. Mr Pugachev argues that it is only possible to deliver up immediately a document which a person has in his physical possession there and then. The Order could have been expressed to require the identification and deliver up of all passports in Mr Pugachev's power or control; it could have made clear that it applied to all passports wherever they may be. It did not do so and this means the French passport therefore fell outside the scope of the order.

62. Mr Pugachev also argues that this construction is consistent with the covering letter that accompanied the Ex Parte Passport Order [B/8/1] and which was provided to Mr Pugachev on 4 March 2015. That letter states (emphasis in the original)

> "**This letter encloses, by way of service, a Court Order which prohibits you from leaving the jurisdiction and requires you to immediately surrender your passport(s) and other travel documents to Hogan Lovells. The Tipstaff of the High Court of Justice has been granted the power to enter, if necessary by force, and search the premises where he believes such documents will be found. The Court has also granted a bench warrant in support of the order. If you fail to comply with the order you will be arrested and sanctions may be imposed against you by the Court, including a custodial sentence.**
>
> In summary (and without prejudice to the terms of the Order which prevail and which you should read carefully and consider with the benefit of legal advice), **the Order prohibits you from leaving the jurisdiction and requires you to**

> **immediately surrender all of your passports (or other documents of a like nature which would permit you to enter or leave any country) to Hogan Lovells International LLP ("Hogan Lovells").**
>
> You have the right to apply at any time to vary or set aside the Order, and we recommend that you seek urgent legal advice on the terms of the Order. **In the meantime, however, you must immediately comply with its terms. If you do not comply with the Order you will be arrested and brought before the Court, which could impose a custodial sentence.**"

63. In Russian, which I assume is the version that Mr Pugachev read, I was told that it also says 'immediately hand over or deliver up'. Mr Pugachev relies on the stress that the letter places on the immediacy of his obligation.

64. Mr Cherryman, appearing for Mr Pugachev, referred me to the judgment of the Supreme Court in *JSC BTA Bank v Ablyazov (No 10)* [2015] UKSC 64 where the Court was concerned with the construction of a freezing order. The Court stressed that where the question of the proper construction of the order arises in the context of an allegation of contempt by breach of the order, it is important not to succumb to the temptation "to stretch legal analysis to capture what are seen as the merits or lack of merits of the case before it" (paragraph 17). An application for committal for breach of provision of an order which has adopted a standard form order may serve to point up deficiencies in the wording of the order. That may be a justification for revising the wording of that particular order in that case or for revising the wording of the standard form for the future. But it does not justify an expansive construction of the wording which actually binds the alleged contemnor. The Supreme Court approved the 'strict construction principle' namely that, because of the penal consequences of breaching a freezing order and the need for the defendant to know where he stands, such orders should be clear and unequivocal, and should be strictly construed. Mr Cherryman submitted that there is at the very least an ambiguity in the Ex Parte Passport Order as to whether "immediately" is to be read conjunctively with "identify" and "deliver up" (that is, both the identification and the delivery up have to be immediate), and consequently as to whether the French passport fell within the scope of the order. That ambiguity should be resolved in Mr Pugachev's favour.

65. Even taking the Supreme Court's admonition fully into account, I do not accept that the obligation to deliver up passports and other travel documents 'immediately' means that the order is limited to those passports or travel documents which are readily to hand at the business or residential premises where it so happens that the order is served. That would make the efficacy of the order a matter of chance depending on where the respondent was when the order was served and which, if any, of his travel documents were there with him. The purpose of the order could be easily defeated if the respondent kept his passports or other travel documents in different places. I asked Mr Cherryman whether he contended that the Ex Parte Passport Order would catch only passports that were kept at Glebe Place so that passports held at Mr Pugachev's other residences or offices in London or elsewhere in England were similarly excluded from its scope. His response was that it caught only those passports which were kept at Glebe Place. In my judgment either the word 'immediately' relates to the identification of the passports but not to their delivery up

or, if the word 'immediately' applies also to delivering up, then it must be construed consistently with the purpose of the obligation. That purpose is clearly expressed in the paragraph imposing the injunction as being to ensure compliance with the orders of the court. The passport obligation comes directly after an injunction restraining him from leaving the jurisdiction and is deliberately drafted to catch every kind of travel document. There is no point ordering someone to deliver up the comprehensive range of travel documents he possesses, but only those which happen to be at the place where the order is served. That leaves him with an easy means of frustrating the prohibition on leaving the jurisdiction.

66. The word 'immediately' here if it applies to the obligation to deliver up does not therefore connote any particular period – or rather the period it connotes depends on where the relevant document is located. The use of the word 'immediately' did not have the effect of restricting the scope of the Ex Parte Passport Order to those passports which were in the house where the order was executed or to those passports which could be delivered up within any particular time. It applied to all Mr Pugachev's passports and travel documents and his obligation was to take steps immediately to identify them and deliver them up. Even if the French passport was in a safe in France, it would not have taken Mr Pugachev very long on 4 March 2015 to give instructions for its retrieval and it could have been delivered up to Hogan Lovells either in France or in England within a short time. If he had taken such steps, no one could have accused him of being in breach of the Ex Parte Passport Order merely because it took some time to deliver up the French passport. I am satisfied that Mr Pugachev's failure to identify and deliver up the French passport before the hearing on 6 March 2015 was therefore a breach of the Ex Parte Passport Order.

67. The question whether Mr Pugachev genuinely misunderstood the scope of the Ex Parte Passport Order and believed that it did not cover the French passport is relevant to the seriousness of the breach rather than to whether there was a breach of the order at all. Mr Pugachev gave evidence about the service of the Ex Parte Passport Order in his 12th affidavit and when being cross-examined by Mr Smith.

68. In his 12th affidavit, Mr Pugachev said that there was no intent on his part not to comply with the Ex Parte Passport Order. He accepts that at the time of the service of the order he was asked a number of questions but he said he was never asked at the time of service as to the whereabouts of his French passport. Had he been asked, he would have advised then, as he did later before the court, that it was in France and he had difficulty retrieving it from a safe in France. He said:

> "38. I accept that I did not immediately identify my French passport when served with the Ex Parte Passport Order. I was not allowed to even read the Ex Parte Passport Order. Confronted at my home as I was with several solicitors and others in a position of authority and without legal representation my state of mind was such that I did not recall to mind the French passport, which as I have previously explained was not in my possession. I did not know what the Ex Parte Passport Order even meant. I asked why they needed to take my expired passport since I could not travel with such a document and they took it anyway. Importantly, it was public knowledge that I was a French citizen. The use of enquiry

> agents would easily confirm this fact. I was never asked for my French passport when they came to house. It was not my intention in any way to conceal the existence of my French passport. In any event, I understood that the Ex Parte Passport Order only required me to hand up those travel documents that were in my physical possession in England."

69. During his cross-examination he said that he was ill in bed at the time the order was served on him and that he was told that he had five minutes to deliver up his passport:

> "Q. At some stage that day, the police officers entered your house, I think they came into your bedroom, and somebody gave you a copy of Mr Justice Peter Smith's order and you read it, didn't you?
>
> A. Definitely not. This did not happen. What happened was that one of the ladies passed the order to the police officers in an envelope and asked the police officers to pass it on to me. And she said that I have five minutes to deliver up the passport. After that, I got dressed and obviously, I did not read the order and I gave her, I think, the two passports that I had in my safe. Importantly, while that lady and myself were in the room where my safe was located, and I mean the safe where the passports were, the other lady was rummaging through my personal belongings and apparently, as we found out later, she picked up some old documents, something like the birth certificate, some passes, badges and other documents which, you will recall, you then returned to me later on.
>
> Q. And at some point PC Jones asked you specifically, "Do you have a French passport?" and you said you didn't?
>
> A. This is a lie. And people are literally lying through their teeth. That is a lie. How on earth would you imagine a police constable, who had just been summoned from the local police station, how on earth would you expect him to know whether I had other passports, such as French, Spanish, Turkmen, or any other?"

70. I reject Mr Pugachev's evidence that he honestly believed that the French passport was not covered by the Ex Parte Passport Order because it was not readily to hand at Glebe Place. I accept that the way in which the Ex Parte Passport Order was served was inevitably intrusive and disruptive. I recognise the caveats that Mr Roberts fairly included in his account of what the people who went inside the house told him. Although he can only report what he was told by the Tipstaffs and the police officer, all those involved were exercising their official duties and were well aware of the importance of being accurate in their account to him of what happened. I do not see that they would have either the motive or the inclination to lie about what happened.

71. In any event, by the time Mr Pugachev received the letter of 5 March 2015 he can have been under no misapprehension that Hogan Lovells suspected that he had an

undisclosed French passport and he chose not to reveal it at that point. It is true as he has said, that everyone knew that he was a resident of France or a French citizen – that is why Mr Roberts was surprised that no French identity documents were handed over. I do not regard Mr Pugachev's admission in answer to the direct question from Peter Smith J during the return date hearing on 6 March 2015 as an instance of candour on his part. Having regard to the discussion that had gone before it had become obvious to everyone present at that hearing that there must be another passport that Mr Pugachev was concealing. Certainly Peter Smith J did not regard Mr Pugachev's conduct at that hearing as open and straightforward.

72. I also reject the submission that the extension of time granted by Arnold J exonerates him from the earlier breaches. It is often the case that a court will set a further deadline for compliance when an order has been breached. That does not erase the earlier breach.

73. I am therefore satisfied that Allegation A1 is made out. I am further satisfied that this was a serious breach of the Ex Parte Passport Order by Mr Pugachev because he did not honestly believe that the French passport fell outside the scope of the Order.

Allegation A2: Mr Pugachev left the jurisdiction in breach of the court-imposed travel restriction in breach of paragraph 4(a) of the Hildyard Order

74. Paragraph 4(a) of the Hildyard Order of 12 June 2015 restrained Mr Pugachev from leaving the jurisdiction until 5 pm on the third working day after compliance with paragraph 1 of that Order. Paragraph 1 required him to swear an affidavit in relation to various matters by no later than 3 July 2015. It is common ground that he had not sworn that affidavit by the time he left the jurisdiction on or about 23 June 2015. It also appeared to be common ground that he was therefore in breach of the Hildyard Order. The dispute between the parties as regards this Allegation was whether the reason why Mr Pugachev left the jurisdiction and travelled to France was because of fears for his safety here in England. Mr Pugachev's submission is that he should not be treated as being in contempt of the Hildyard Order in circumstances where the conduct of the Bank and those behind them in Russia has generated the genuine fear and the concerns for his life and safety that led him to leave the jurisdiction.

75. On this point I find that Mr Pugachev does have a genuine fear that his life is in danger from agents of the Russian state. But I am also fully satisfied that there was no link between his fears for his safety and his decision to leave England.

76. There are two main strands to Mr Pugachev's explanation of his decision to leave England. The first strand relates to a general assertion that Russian assassins operate outside Russia murdering people who have fallen out of favour with those currently in power. Mr Pugachev relied on the evidence of Professor Mark Galeotti dated 13 July 2015. Prof Galeotti holds, amongst other academic positions, the Professorship of Global Affairs at New York University's Center for Global Affairs as well as being director of its Transnational Security programme. He is one of the principal experts in the field of researching and writing on post-Soviet security policing and crime since 1991 and has worked with the UK Government, Interpol and other public bodies. He describes the trend of attacks and murders carried out abroad by Russian state agents and 'powerful interests' in Russia and lists murders and suspicious deaths starting with that of Alexander Litvinenko in 2006. He also refers to the widespread

belief among the Russian expatriate community, whatever the objective truth about the scale of such attacks, that such targeted killings take place.

77. On the comparison between France and the UK, his evidence strikes me as very cautiously worded:

> "***There does now appear to be at least a perception that France is safer for Russian expatriates these days.*** While there is undoubted respect for British law enforcement, I have encountered within the expat community a sense that these days France may be safer for them. There are Russian expats in France who have faced threats from Russian state or criminal sources, such as Renata Lesnik, a defector who has since become a target because of her knowledge of money laundering practices. However, not only have the authorities responded quickly to provide them with protection, but such cases are more infrequent and less well-known than their British counterparts. To an extent, this reflects in my opinion the continuing reverberations of the Litvinenko case, undoubtedly the most high-profile of recent such murders. It also probably reflects the way that the United Kingdom has attracted a higher proportion of resident Russian expats and also perhaps a different kind, with a greater proportion of active business people and also of those engaging in Russian politics. Whatever the reason, the perception is certainly there."

78. I regard that passage as the weakest in his evidence. It may amount to no more than the fact that since the UK has many more active and wealthy Russian expatriates than France, there is a perception that there are more attacks or threats taking place in this jurisdiction. That says nothing about whether a particular expatriate who is likely to be the subject of such threats is safer in France than in England.

79. Prof Galeotti concludes that without knowing more detail about the situation, he cannot express an opinion as to whether there is an objective danger to Mr Pugachev "but were I in his position, I am sure I would fear the worst…".

80. Mr Pugachev's written evidence was primarily set out in his ninth affidavit made on 13 July 2015 but lodged unsworn on 8 July for the purposes of the return date hearing before Henderson J following the making of the Ex Parte Search Order. In that affidavit he refers to the orchestrated campaign of unfair and oppressive treatment to which he was subject in Russia in the run up to him leaving Russia in 2011. He links the increase in his fears for his safety in June 2015 to his claim against the Russian Federation under the Bilateral Investment Treaty between Russia and France in which he seeks to recover many millions of dollars of assets which he says were unlawfully expropriated from him by the Russian state. The procedure laid down by the Treaty requires a letter before action to be sent by the prospective claimant to the Contracting State giving the Contracting State six months within which to put matters right before formal proceedings are lodged. Mr Pugachev had written the necessary letter in December 2014 so that the expiry of the six month period was coming to an end in June 2015. Mr Pugachev gave media interviews in which he referred to his intention to start proceedings and to the fact that the allegations he would make in those

proceedings would accuse senior Russian officials, including Mr Putin, of dishonest and fraudulent conduct.

81. However, the only real evidence of actual threats made against Mr Pugachev is evidence of threats made against him at his residence in Southern France and these threats form the basis, in part, of the criminal proceedings that Mr Pugachev is pursuing in France. In his 12th affidavit he referred to a letter from his French solicitors Bourdon & Forestier to King & Spalding dated 20 November 2015 in which they described ongoing criminal complaints being lodged in France in relation to threats made against him in France of death, personal injury and extortion. The letter states that Mr Pugachev believes he was being followed in France after he arrived there in June 2015. In his closing submissions, Mr Pugachev referred to a visit on 3 June 2011 by 'emissaries of Mr. Miroshnikov', the Deputy General Director of the Second Claimant, who went to see Mr Pugachev in France. He alleges that at that meeting Mr Pugachev was told he had to pay a bribe of US$350 million, US$150 million of which would go to Mr. Miroshnikov. It was explained to Mr Pugachev that this payment was the "price of peace" and that it would ensure his "family's protection"

82. His explanation as to why he felt safer in France than in England does not bear any scrutiny. In his ninth affidavit he states he feels safer there because he is a French national. I do not accept that the police here take threats against non-nationals living in the UK any less seriously than threats to nationals and in any event Mr Pugachev appears to rely primarily on his own hired security guards. He also says in his affidavit that he is less well known in France than here; neither he nor his wife is the subject of such media interest there and it is easier to 'avoid detection'. So far as ease of detection is concerned, there are many places that Mr Pugachev could go within this jurisdiction where he can be confident that no one will recognise either him or his wife; where he will be less conspicuous and easier to protect. He did not have to stay in central London in order to comply with the Hildyard Order.

83. His evidence as to his fears for his safety in England is also directly contradicted by the stance he took when he made an application to Hildyard J for the return of his passport on 25 May 2015. The reason given for wanting to leave England was nothing to do with fears for his safety but rather the supposed need to travel to France for 48 hours to attend a 'convocation' with some judges concerning the criminal complaint he had instigated in France. By the time of this application he was legally represented by a solicitor employed by Luxury Consulting as in-house lawyer and he instructed leading and junior counsel to make the application before Hildyard J. Leading Counsel submitted to Hildyard J, presumably on instruction, that Mr Pugachev was not a flight risk because he felt secure in London and would therefore definitely return. On the Monday following the hearing, Hildyard J announced that he would not accede to the application and would give reasons for his decision at the start of the new term. Hildyard J said in paragraph 45 of his judgment on 12 June 2015 giving reasons for his refusing the application on 25 May:

> "Ms Montgomery also stressed factors against the "flight risk" being other than theoretical: the Defendant's residence, with his young children and their mother in the UK in comparative safety; the unlikelihood of him wishing to hazard all that with an uncertain plan of escape; the Claimants' surveillance

> resources that increase the risks of any such plan; and I would add (though I do not recall this was suggested) the damage to his other claims in the International Tribunal against the Russian state and the DIA, as well as the criminal process in France. However, these have not substantially changed since the Passport Order."

84. During the vacation Mr Pugachev appealed to the Court of Appeal against the ruling. Permission to appeal was granted and the appeal heard on an expedited basis. The appeal was dismissed by the Court of Appeal on 29 May 2015. Again there was no mention during the course of that appeal of any fears for Mr Pugachev's safety.

85. Mr Pugachev did not point to anything in particular that had happened between the date of his application to Hildyard J and his departure on 23 June as prompting his decision, other than a vague reference to an 'intensification' of the threats against him by the Russian state. Given that he had been very explicit in naming the people who allegedly made threats made against him in France, I consider that if there had been any evidence to support this at all, he would have put it forward.

86. I turn now to the tracking devices that were found attached to Mr Pugachev's cars in May 2015. These it turned out were tracking devices placed on his vehicles by a surveillance company ('Diligence') instructed by the Bank. I note here that Hogan Lovells and the Bank deny that they had authorised this or that they were aware that this method of surveillance was being used. I accept that Mr Pugachev did not know at the time he left England that the devices had been put on his cars by Diligence – that was only disclosed to him in Mr Roberts' 22nd witness statement made on 16 July 2015.

87. The main evidence on the discovery of the devices was given by Mr Steven Shepherd who works for a company called Animus Associates Ltd, the London based branch of Animus Associates. The company describes itself as a global risk management and security consultancy providing a diverse range of intelligence-led services supporting their clients to make informed decisions to protect themselves and mitigate risk. Mr Shepherd's evidence was precise and detailed. He states that he was instructed in early May 2015 to conduct a sweep of six vehicles that were used from time to time by Mr Pugachev and his family. These cars were stored in a large shared managed garage in Chelsea. Animus carried out sweeps on 2, 9, and 15 May 2015. The results were:

i) on 2 May, a suspicious device was found underneath a Bentley Arnage car but not under any of the other cars;

ii) on 9 May, suspicious devices were found underneath a Range Rover and a Mercedes Viano;

iii) on 15 May a suspicious device was found under a Rolls Royce Ghost.

88. As to what the devices were, Mr Shepherd's evidence is equivocal:

> "7. It was not obvious exactly what the devices were; whether they only were GSM tracking devices, for example, or possibly

> GSM tracking devices containing also explosive substances that could be detonated remotely at some point. My initial assessment is that they were quite possibly tracking devices, however, it is also possible that they could have been some other form of device altogether, for example containing a hazardous chemical or other potentially lethal substance. As a general matter of probability, I recognise that it may be said that the devices on the vehicles would be less likely to have the ability to cause physical harm, i.e. to contain explosives or some other hazardous material, as opposed to just being tracking devices. But I must emphasise that one can never be sure what most suspicious devices in fact are until definitive forensic testing is carried out by the relevant police, or other experts, such as the police anti-terrorist expert division, SO15. Additionally, the question of probability and risk varies with the circumstances of each client and situation he or she may find themselves in."

89. Mr Shepherd then says that at Mr Pugachev's request, he contacted the police at Belgravia police station and that SO15, the anti-terrorist branch of the police, were immediately informed. He then states that on 29 May 2015 SO15 arranged for the devices to be removed and for all the cars to be checked, but no further devices were found.

90. Although Mr Shepherd does not therefore give the date on which the police were informed, either it must have not been until 29 May 2015 or, if they were informed earlier, they did not arrange for the devices to be removed from the cars until some time later.

91. Mr Pugachev's evidence on this matter had I consider been rather embellished by the time he was cross-examined before me. At times his evidence seemed to be that the SO15 had been summoned immediately that the devices had been discovered. At times he seemed not to accept even now that the devices were only tracking devices and hinted that they may after all have contained explosive or other noxious material. However, the upshot of Mr Shepherd's careful evidence is that at the time that Mr Pugachev's counsel was submitting to Hildyard J on 25 May that Mr Pugachev felt safer here and could be trusted to return to the jurisdiction if he were allowed to travel briefly to France, Mr Pugachev was already well aware that devices had been found on his vehicles. This did not cause him either immediately to contact the police or to mention this during the court hearing.

92. SO15 must have been fully satisfied that the devices were not dangerous. If there had been any possibility of the devices posing a danger to Mr Pugachev, his family, or members of the public using the garage where the cars were stored then their discovery would have led to their immediate isolation and removal. No one would have left them in place for days or weeks. In my judgment Mr Pugachev has seized on the discovery of these devices as a purported justification for his departure from the jurisdiction and has accorded them an importance for the purposes of this committal application far beyond any significance that he or anyone else accorded them at the time.

93. I therefore find that Mr Pugachev committed a serious breach of the Hildyard Order by leaving the jurisdiction towards the end of June 2015 and his fears for his personal safety provide no excuse or justification for his conduct. However I recognise the point Mr Pugachev makes in his 12th affidavit that he did remain in the jurisdiction until his cross-examination was completed and that even after he left the jurisdiction he provided further witness statements and affidavits and was engaged in the proceedings as I describe below.

Allegation A3: Mr Pugachev failed to identify and deliver up further travel documents in breach of paragraph 1(2) of the Ex Parte Passport Order, paragraph 1(2) of the Return Date Passport Order and paragraph 3(d) of the Rose Order

94. I have already described the terms of the Ex Parte Passport Order, the Return Date Passport Order and the obligation imposed on Mr Pugachev to hand over his passports and other travel documents. Those provisions were maintained in force by the Hildyard Order and the Return Date Search Order.

95. The basis for this allegation is that the Bank invites me to draw from the fact that Mr Pugachev left England and entered France at the end of June 2015 the inference that he must have a passport or other identity card or travel document that he has not handed over as required. Before the hearing of the committal application Mr Pugachev had not explained the means by which he left the country and entered France. In answer to Mr Smith's questions at the hearing before me, Mr Pugachev's evidence was that he left by first hailing a taxi on the street in central London, and being driven to a London airport. He was not able to recall which airport he left from except that it was an ordinary, commercial airport, - though not Heathrow - rather than a private airport. He bought a ticket at the airport. He was unable to recall which airline he flew but he could remember that he flew to Paris. He could not remember what time of day this was except that it was still light – unsurprising since this took place in the middle of June. He was asked by Mr Smith what travel document he used and he said that he had with him only a colour photocopy of his passport. However, he said that no one asked him to show a travel document during the course of his journey.

96. I find that evidence impossible to believe. Anyone who has travelled through a major airport in recent years will be aware that passengers are asked repeatedly to show a travel document at each stage of their passage through the terminal and on entering another country. I am satisfied that the only possible inference that can be drawn from Mr Pugachev's evidence as to how he left London on 23 June 2015 is that he must have retained a valid passport which he presented at the airport on leaving the UK on a flight to France. There is no other inference that can be drawn which would be consistent with compliance with the orders. The retention by him of whatever travel document he was using was a breach of the Orders cited. It was a deliberate and serious breach of at least the Return Date Passport Order.

Allegation B1: Mr Pugachev procured and/or permitted the transfer of shares in LLC Petrovka-Rent held by Limebury Investments Ltd to another company in breach of paragraphs 2(1), 2(2), 2(3) and/or 2(4) of the Return Date Freezing Order

97. I turn now to the first of the allegations that Mr Pugachev has dealt with his assets, or procured or permitted dealing with his assets, in breach of the Return Date Freezing Order.

98. As I have already described, paragraph 9(1) of the Ex Parte Freezing Order required Mr Pugachev to disclose his worldwide assets exceeding £10,000. Mr Pugachev swore his first affidavit in response to the order on 31 July 2014 and provided the 23 July Letter with its asset schedule (see paragraph 9 above). In section D of the asset schedule were listed a number of office premises at 34 Petrovka Street and 1 & 3 Petrovsky Boulevard in Moscow. Mr Pugachev explained in that letter and Schedule that these were owned by LLC Petrovka-Rent, a Russian company; 99.97% of the shares of Petrovka-Rent were held by Limebury Investments Ltd, a BVI company ('Limebury') and 100 per cent of the shares in Limebury Investments Ltd are owned by Eastwork Business Ltd, a Panamanian company ('Eastwork'). Mr Pugachev accepted that he owns or controls Eastwork. The value attributed to those properties, at current rouble values, is about £2 million.

99. In early 2015, it appears that Limebury transferred its 204 million shares in Petrovka-Rent to a company called Dekston Corporation. Mr Hardman (of Hogan Lovells) exhibits to his first affidavit an English translation of an extract from the Russian State companies register recording that this transfer took place on 13 May 2015. Mr Pugachev denied any knowledge of this and so was not in a position to gainsay it. I find as a matter of fact that Limebury did transfer its shares in Petrovka Rent to Dekston Corporation.

100. Mr Pugachev in his 10th affidavit made on 22 July 2015 says that having made inquiries, the position is that in around December 2014, Petrovka-Rent was placed in a Russian court supervised insolvency procedure akin to an English administration. At about the time alleged by the Bank, but without any involvement on his part, it was sold. He denied that he was aware that the majority of shares in Petrovka-Rent had been transferred to Dekston. He did know, however, that the director of the company sold it for $1 'just to get rid of the headache' and because Mr Pugachev did not have funds to finance proceedings that the company might want to bring against Mr Pugachev's adversaries for destroying the value of the company. His evidence was that although the company used to hold valuable assets that was no longer the case. The only valuable asset that the company held was its claims against the Russian state for having pushed it into insolvency. He has no interest in Dekston and received no monies from the sale.

101. One difficulty with that supposed explanation, as Mr Hardman points out, is that even if Petrovka-Rent was placed into administration that would not entitle the administrator to sell the shares in the company but only to deal with the assets of the company. But the Bank primarily relies on other factors as proving that Mr Pugachev must have been involved with this sale.

102. First there is the evidence given in the fifth witness statement of John Fordham dated 8 September 2014, a solicitor in Stephenson Harwood. That witness statement was

made on Mr Pugachev's behalf, in connection with an application for fortification of the cross-undertaking in damages given by the Bank in support of the Return Date Freezing Order. Mr Fordham states in the opening paragraphs of his witness statement that his evidence is given on the basis of information provided by Mr Pugachev. He states that the freezing order was causing various difficulties for Mr Pugachev in his dealings with Petrovka-Rent. That was part of the basis of Mr Pugachev's application for fortification because he was likely to call on the cross-undertaking to make good that loss if he was ultimately successful in the litigation. Mr Fordham gives the following as one of the examples of where Mr Pugachev has already suffered loss as a result of the freezing order:

> "First, on 3 February 2014, Mr Pugachev's company 000 Petrovka-Rent entered into an Investment Agreement with another Russian company called 000 Depozitarny Trust ("DT") (pages 104-113). The agreement related to the construction of a large complex of office buildings in central Moscow. Petrovka-Rent agreed to contribute the necessary land, and DT agreed to finance the project up to approximately RUB 350 million (US$9.5 million) in return for a 40% stake in the project.
>
> On 25 July 2014, after the freezing order had been served on Mr Pugachev and publicised by the DIA, DT wrote to Petrovka-Rent to inform it that it was withdrawing from the agreement, and demanding compensation of RUB 25.4 million (US$690,000) and damages. DT subsequently filed a claim in the Moscow Arbitrazh Court which on 20 August 2014 gave judgment in favour of DT and ordered Petrovka-Rent to pay RUB 20 million plus RUB 1,418,210.97 in interest and court fees (page 121).
>
> Mr Pugachev estimates that if this project had come to fruition Petrovka-Rent would have made a significant profit, and that its 60% share in the project would have been worth US$25 million or more. This represents a loss which he may potentially look to recover from the DIA pursuant to the cross-undertaking. He will also, if appropriate, claim compensation in respect of any liability that Petrovka-Rent may incur towards DT, which could also be substantial and which could ultimately result in the loss of the properties that Petrovka-Rent contributed to the project in the event that a judgment were to be enforced against them."

103. Mr Fordham also indicated in his evidence that the shares in Petrovka-Rent were held by Limebury *on behalf of* Mr Pugachev so that Mr Pugachev's relationship with Petrovka-Rent was more direct than the indirect shareholding through Eastwork disclosed in the 23 July Letter.

104. The Bank submits that in the circumstances where either all the shares in Petrovka-Rent were held by Limebury for Mr Pugachev beneficially or where all the shares in Limebury were indirectly owned by Mr Pugachev via Eastwork Business, the transfer of what appears to be Limebury's sole asset must have been procured or permitted by Mr Pugachev. This is particularly the case since Limebury is a non-trading company

whose sole existence is as a vehicle for Mr Pugachev to manage his wealth and where Mr Pugachev knew that that company was specifically mentioned in Schedule B to the Return Date Freezing Order as being a frozen non-trading company.

105. In his response on this allegation, Mr Pugachev relies on a letter from Vitaly Moukhordykh dated 20 November 2015 on headed paper of Limebury giving a BVI address. Mr Moukhordykh confirms that he is "empowered to represent Limebury Investments" and states that he can confirm that in relation to the disposition of shares in Petrovka-Rent, the company received no instructions from Mr Pugachev, directly or indirectly. He says: "I also would like to state that I have never spoken with Mr Sergei Pugachev"; that the transaction was completed in the interests of Limebury and that no monies have been distributed to the shareholder, Eastwork. He does not refer in that letter to Limebury being in any insolvency procedure.

106. Mr Hardman provides some evidence about Mr Moukhordykh's background. Mr Moukhordykh used to work as a security guard for a Russian company which provided security services to the Bank and which was majority owned by the Bank. He has also been the director of three companies to which the Bank made loans – the suggestion being that these were among the companies which were owned or controlled by Mr Pugachev and received loans from the Bank during the time Mr Pugachev was in control. The Bank argues that these companies are of no substance and their failure to repay their loans makes up a large part of the deficit in the Bank.

107. Mr Pugachev denied knowing Mr Moukhordykh. He thought it entirely possible that a man who had been a security guard at the Bank during his tenure there might now – 15 years later - be the director of a company. He said that he did not have the slightest idea who was in charge of operations at Petrovka-Rent and dismissed the suggestion that Mr Moukhordykh acted as his nominee as 'preposterous'. However he went on to describe what happened to Petrovka-Rent:

> "You will appreciate that because of the freezing order and because of the involvement of DIA and the pressure that DIA was bringing to bear on the investor who had an agreement with Petrovka-Rent, in my capacity as an investor, I sustained loss and damage to the tune of somewhere between $20 million and $50 million. That was the reason behind my application to have DIA's funds transferred to Great Britain, so that then I could apply for interlocutory interim relief to have that money frozen. At the end of the day, this never happened and the company became bankrupt."

108. Mr Smith asked Mr Pugachev in cross-examination what steps he had taken to ensure generally that the companies he had disclosed as being owned by him in the schedule of assets to the 23 July Letter did not dispose of assets in breach of the freezing order. Mr Pugachev said:

> "I personally took measures to make sure that none of the assets could be disposed of without prior approval from Hogan Lovells or the court and ever since, I do not believe I have signed a single document with respect to the disposition, sale, acquisition or otherwise, of any assets, without obtaining all the

> approvals set out in the freezing order. The way I understand it, there are no other steps that I could have possibly taken."

109. As to what he did particularly as regards Limebury to make sure it did not dispose of its assets, he said that he did not know Limebury and that he had not signed any documents in his capacity as a shareholder, to allow or procure or permit the disposition of any assets, and that is the only thing he could do in his capacity as a shareholder.

110. I reject that evidence as wholly unconvincing. Although the Bank is not able to point to a particular email or phone conversation in which Mr Pugachev instructed Limebury to transfer its shares in Petrovka-Rent, I am fully satisfied that this step would only have been taken if he had instigated or at the least consented to it. I base this conclusion on the following facts. First Mr Pugachev is the sole owner of Limebury and that the company is a non-trading company which exists solely to manage his interest in the Moscow properties. Its interest in Petrovka-Rent was its only asset. Mr Pugachev knew that from July 2014 those properties were frozen by the Return Date Freezing Order. It is inconceivable that those with nominal control of the company would divest its assets without his knowledge and permission. Even if, as he says, he never signed a document to effect the transaction I am sure that he instructed those who needed to execute the necessary documents to do so.

111. Secondly, the transfer took place in early 2015 and was registered on 13 May 2015, only a few months after Mr Fordham had made his witness statement in support of the fortification application describing recent dealings by Mr Pugachev with the Petrovka-Rent assets. This shows that shortly before the transfer of Limebury's shares in Petrovka- Rent Mr Pugachev had been well aware of what was happening to the company and its assets.

112. Thirdly, although Mr Pugachev and Mr Moukhordykh denied that there had been any contact between them, or that Mr Pugachev had any involvement in the operation of the company, this has been demonstrated to be false by an email found by the Bank. This was sent on 30 June 2015 from the email address [*redacted]* to Frank Nelson at Petrovka-Rent at a Russian email address. The email requests bank statements relating to Petrovka-Rent's accounts and appears to be signed off by Mr Pugachev himself. Certainly Mr Nelson thought he was being emailed by Mr Pugachev as he replied 'Dear Sergey' and it also appears that Mr Nelson thought that Mr Pugachev was in a position to ask Petrovka-Rent to disclose its company's bank statements. Mr Pugachev denied that he had sent the email. He says that over the past 18 months his legal team (not necessarily King & Spalding) have access to this email account. He did not know why it was sent but it was definitely not sent by him. I find that Mr Pugachev sent this email. Even if solicitors were able to send emails from that account, they would not have signed them using Mr Pugachev's name. If they are authorised to request documents from Petrovka-Rent then there is no reason why they should not disclose their own identity. I do not believe that a solicitor would write an email pretending to be Mr Pugachev.

113. I find it is inconceivable that Mr Pugachev was not involved in the transfer of the shares in Petrovka-Rent and at the very least he procured or permitted Limebury to deal with them. This was a serious breach of the Return Date Freezing Order.

Allegation B2: Mr Pugachev removed or alternatively procured or permitted the removal of the Motor Vessel Victoria from the jurisdiction in breach of paragraph 2(1) and/or 2(2) of the Return Date Freezing Order

114. The MV Victoria is a 67 foot Princess motor yacht which until early July 2015 was moored at St Katherine Docks in London. On 10 July 2015 it was removed from the jurisdiction and is now said by the Bank to be moored in Southern France, close to the chateau where the Bank believes Mr Pugachev now resides. This removal took place shortly after Mr Pugachev left the jurisdiction at the end of June. The Bank's researches have established that the registered owner of the MV Victoria is a BVI company called Walur Ltd, and that it is managed by a company called Oakhill Management Ltd under a yacht management agreement. There is no evidence as to who owns either Walur or Oakhill Management other than a statement by Mr Pugachev's assistant Natalia Dozortseva in her 2nd affidavit that Oakhill is not owned by Mr Pugachev or any company in which he has an interest. This point was not put to Mr Pugachev in cross-examination.

115. Paragraph 3 of the Return Date Freezing Order provides that for the purposes of the prohibition on dealing with assets, Mr Pugachev's assets include any asset he has the power to dispose of or deal with as if it were his own. The Bank says that the evidence establishes that Mr Pugachev treated the MV Victoria as if it were his own when it was moored in London, using it as a recreational boat for him and his family sailing up and down the Medway. They say that the inevitable conclusion to draw from its removal is that Mr Pugachev must have procured or at least permitted this to happen in breach of the Return Date Freezing Order.

116. The Bank relies on evidence from Mr Glen Goodey who was the Captain of the MV Victoria between mid-2014 and June 2015. Mr Hardman's third witness statement exhibits an attendance note of a meeting between Mr Roberts of Hogan Lovells and Mr Goodey on 11 September 2015. Mr Goodey describes how he was engaged as captain of the MV Victoria with a seasonal contract following an interview at the offices of Luxury Consulting in Knightsbridge. In the first year the MV Victoria was managed by a yachting company and his contact was with them. In the second season his contact was with people in the Knightsbridge office.

117. The attendance note records Mr Goodey as saying:

> "9. The Victoria was exclusively used by Mr Pugachev, who was usually accompanied by his bodyguard and his doctor. He would sometimes bring an overnight bag with him. Occasionally his family, i.e. his three young children, or guests would board the Victoria with him. GG never heard any reference to Mr Pugachev having adult children, and the names "Victor" and "Alexander" meant nothing to him. They did not use the Victoria at all during the period of his involvement with the vessel. Indeed, nobody took out the Victoria other than Mr Pugachev and his guests.
>
> 10. Mr Pugachev was always very pleasant to deal with, although their communications were purely on a business level

> and they did not talk very much during his trips on the Victoria.
> ….
>
> 11. GG knew that Walur formally owned the Victoria but his clear impression was that it was Mr Pugachev's yacht. GG said that, in practice, it was at Mr Pugachev's disposal and there was never any suggestion that anyone else was interested in the Victoria."

118. After the main evidence before me was completed, Mr McCoy, an associate in King & Spalding provided a witness statement exhibiting an attendance note of a discussion he had with Mr Goodey on 8 December 2015. This records that Mr Goodey said that he wished to clarify that whilst he only saw the boat being used by Mr Pugachev, it is possible that others had use of it at other times without his knowledge possibly with their own captain or crew. Mr Goodey was aware that Mr Pugachev had adult sons though he could not remember their names.

119. In his evidence Mr Pugachev accepted that he, his family and friends used the MV Victoria when he was in London. He claims that the boat belongs to his son Victor who is 33 years old. During his cross-examination, the following exchange took place.

> "A. This boat was used by me in England. By me and by my family and by my friends. And this boat belongs to my son Victor, who is 33 years of age.
>
> Q. Well, as you know, Mr Pugachev, we don't accept that the boat belongs to Victor. But just staying with your evidence for the moment, can you explain, why would Victor want to have a boat on the Thames?
>
> A. Yes, of course I can explain it. As you know, I possess a boat DB9 which is approximately 60 meters in length, which naturally, does not fit into the Thames and can't be berthed there. So I left DB9 for Victor when he visited children and family and he, in return, left the small boat with me.
>
> Q. Why did he have a small boat, as you describe it, in London? Did he live in London?
>
> A. As I just said, in exchange of him -- very much like the rest of my family, using my boat in Cote d'Azur, he allowed me to use his small boat in London. I do not see any paradox in this.
>
> Q. No, but it doesn't answer my question. Why did Victor have a small boat in London, if he didn't live here?
>
> A. I think that if Victor had a right hand drive vehicle in London, he would have allowed me to use it, despite the fact that he is not living there.

> Q. Does he have any property in the UK, Victor, or any assets in the UK?
>
> A. I think you can ask Victor this question. I don't know.
>
> Q. When did you reach this swap arrangement with Victor?
>
> A. I don't recall that. Do you know, it is not an issue of major importance in my life."

120. Mr Pugachev accepted that before he left England, he would give instructions to the boat manager and the crew as to where and when the boat would sail. He said that since the imposition of the Return Date Freezing Order he had not communicated with the crew about the movements of the MV Victoria. He did not instruct the MV Victoria to leave and he does not know who did.

121. The Applicants invite me to reject that evidence. They point to the fact that during his cross-examination before Hildyard J on 31 March 2015. Mr Pugachev said that his son was 22 at the time Mr Pugachev separated from his then wife, Victor's mother. He said that they had not been in contact since then other than receiving the occasional photograph of Victor's children or birthday greetings. It is inconsistent with that evidence, they say, for Mr Pugachev to say that he arrived at an arrangement with Victor to 'swap yachts' or that Victor would be prepared to allow Mr Pugachev and his new family to use the MV Victoria as their own. It emerged during Mr Pugachev's cross-examination that there may have been some confusion in this evidence between the separation of Mr Pugachev from his first wife which was some time ago and the formal divorce which was much more recently. Mr Pugachev also said that his evidence before Hildyard J about his estrangement from Victor was given in the context of questions about his shared business interests with Victor and that he was saying only that they were not as close as before. His evidence before me was that it was only in the last year and a half his relationship with his son cooled so far as their family relationship was concerned, since about March 2014.

122. I am not satisfied to the necessary standard that Mr Pugachev is responsible for the removal of the MV Victoria from the jurisdiction. There is no evidence of any ownership by Mr Pugachev of any legal or beneficial interest in the boat. There is evidence that he used the boat when he was in England but that is not enough to establish that he was able to instruct the boat to sail to France or otherwise dispose or deal with it as if it were his own. It is true that Mr Pugachev's evidence about his estrangement from his son Victor is contradicted by various other evidence of their close business dealings, some of which evidence is accepted and relied upon by the Bank. But it is entirely plausible that following the break up of Mr Pugachev's first marriage and the creation of his new family in London, the closeness of his relationship with his eldest son waxed and waned over time. The apparent inconsistencies in Mr Pugachev's evidence are, to my mind, just as consistent with the complexities of Mr Pugachev's family dynamics as they are with the kind of control envisaged in the Return Date Freezing Order.

123. I therefore find that the Bank has not established that Mr Pugachev breached the Return Date Freezing Order by procuring the removal of the MV Victoria from the jurisdiction.

Allegation B3: Mr Pugachev dealt with the proceeds of sale of Financiere Hediard in that he

(1) procured or permitted the transfer of €3,750,000 owed to Luxury Investments to a bank account of Luxury Consulting and thereafter procured and/or permitted payments to be made from that sum to other persons in breach of paragraphs 2(1), 2(2), 2(3) and/or 2(4) of the Return Date WFO;

(2) procured or permitted the transfer of £994,416.33 owed to Luxury Investments to a bank account of Luxury Consulting and thereafter procured and/or permitted payments to be made from that sum to other persons in breach of paragraphs 2(1), 2(2), 2(3) and/or 2(4) of the Return Date WFO;

Further, in so far as Mr Pugachev contends that such payments were within the exceptions to the order in respect of living expenses, legal expenses or tax payments then in respect of each such payment Mr Pugachev acted in breach of paragraphs 4, 5(a), 5(b), 5(c), 5(d) and/or 10 of the Living Expenses Order in making the payments without complying with the conditions imposed in those paragraphs.

124. In the Schedule of Assets attached to the 23 July Letter Mr Pugachev disclosed that Luxury Investments owned shares and receivables in Financiere Hediard SA which in turn owned Hediard SA, the corporate entity behind the French grocery business Hediard. Luxury Investments was included in Schedule B to the Return Date Freezing Oder as one of the companies taken to be a non-trading company controlled by Mr Pugachev. In the 23 July Letter Mr Pugachev disclosed that the grocery business had been sold for €10 million and the proceeds were being held in escrow pending the resolution of claims.

125. The allegations of breach here are in two stages. The first stage is the transfer of monies from Luxury Investments to Luxury Consulting; €3,750,000 transferred on 11 December 2014 into Luxury Consulting's euro bank account and £994,416.33 transferred on 12 December 2014 into Luxury Consulting's sterling bank account. The second stage is the dissipation of almost all of those monies by payments out of Luxury Consulting's bank accounts to a large number of people. Luxury Consulting is not included in the schedule of non-trading companies because Mr Pugachev has always maintained that it operates a business of which he is only one of its clients – the Applicants do not accept that this is true.

126. Looking first at the two transfers from Luxury Investments to Luxury Consulting, the Bank relied on evidence given by the director of Luxury Consulting, Margarita Kristof in her first affidavit made on 27 August 2015. She says there that there was a deposit of €3,750,000 by Luxury Investments into Luxury Consulting's bank account and that she regarded the money as held by Luxury Consulting on behalf of Luxury Investments. Ms Kristof later corrected some of the information in her first affidavit by her second affidavit sworn on 4 September 2015 where she discloses that £994,416.33 was transferred to Luxury Consulting by Luxury Investments. By the time she made her affidavits, however, the monies had been largely dissipated. The balance of the Luxury Consulting sterling bank account was about £77,000 and the euro account held only about €176,000 as at 27 August 2015.

127. Mr Pugachev's evidence on this was in my judgment wholly unsatisfactory. He initially refused to answer questions about the holding of Luxury Investments in the Financiere Hediard business saying that such questions should be directed to a director of the company. He was asked how much of the €10 million disclosed in the schedule to the 23 July Letter had been released but said he did not know because the lawyers and directors of the company which did the sale transaction were dealing with it. He was not able to say who the director of Luxury Investments was and he said that he had no knowledge of the transfers of the two sums, in euros and in sterling either at the time they were made or since then – this was an operational matter that the directors would have dealt with. Although I accept that a businessman with very wide interests such as Mr Pugachev does not know what is happening in every company in which he has an interest, I do not accept that he did not know about the release of the €10 million. First he had disclosed the existence of this asset in the 23 July Letter in response to a freezing order. He knew that the funds were therefore frozen by the Return Date Freezing Order. Luxury Investments was a non-trading vehicle whose sole purpose was to hold and deal with his assets. It is inconceivable that whoever was nominally in charge of Luxury Investments would have directed that large sums due to Luxury Investments should be paid to a different company in those circumstances without Mr Pugachev's knowledge and consent. Secondly, his evidence is that the sums that were released to Luxury Consulting were then used for his own personal expenses and legal fees. He must have known about the transfer of the money so that he could give directions as to the subsequent payments made from the proceeds. Thirdly the single director of Luxury Consulting is Margarita Kristof and Mr Pugachev is the sole shareholder of that company. She was a former personal assistant to Mr Pugachev. It is inconceivable that she would have carried out these very substantial transactions without any consultation with Mr Pugachev. Indeed, his evidence is directly contradicted by that of Ms Kristof who clearly states that she was told the reason why the money was transferred by Mr Pugachev himself, namely because Luxury Investments did not have a bank account. There was no reason for her to fabricate such a discussion with Mr Pugachev about the transfers.

128. I am therefore satisfied that Mr Pugachev procured or permitted the disposal by Luxury Investments of part of the Hediard proceeds to Luxury Consulting.

129. As to the second stage of the dissipation, that is the payments out of those monies made by Luxury Consulting, it appears that Mr Pugachev accepts that these were made to meet his living expenses. He gave evidence about some of the payments to cover legal fees and other weekly expenses in his 12th affidavit and gave further evidence in answer to questions put in cross-examination by Mr Smith before me. Mr Pugachev was shown the bank statements of the Luxury Consulting sterling bank account for January 2015 and was asked about various payments made in January and March 2015 to different payees. Mr Pugachev denied any knowledge of many of the payments out of the Luxury Consulting bank account saying that any such queries should be put to the company's directors. However, in his 12th affidavit Mr Pugachev responds to Mr Hardman's comments on various payments disclosed in the bank statements of the Luxury Consulting accounts. He accepts that payments made from these monies to Silver Enterprise, Belkin & Strelkin, Wladyslaw Teliki and Michael McNutt were made in respect of litigation advice provided to him in respect of certain claims.

130. Mr Smith put to him that he must have arranged for his general expenses to be paid by Luxury Consulting. Similarly with regard to the euro account which shows that there were €3.4 million there. There are debits on 4 March 2015 of about €35,000 including about €26,000 to Latham and Watkins. Mr Pugachev said he did not know what this payment was and was unable to comment on any payments.

131. Some of the payments were to King & Spalding, two in excess of €720,000. I find that these must have been made at his request. That is the evidence of Ms Kristof in her 2nd witness statement; namely that Mr Pugachev instructed her to pay $1.6 million in respect of legal fees in early July 2015 via Luxury Consulting's bank account. Mr Pugachev must have given the instructions for his legal fees to be paid out of the monies transferred to Luxury Consulting from Luxury Investments from the proceeds of the sale of the Financiere Hediard business.

132. Whether Mr Pugachev knew the precise details of each and every payment made by Luxury Consulting on his behalf is not important. I am fully satisfied that Luxury Consulting would not have made these payments unless the people working there had been generally instructed by Mr Pugachev to use the former Luxury Investments funds to pay his expenses. That instruction by him was an instruction to dispose of assets which were frozen by the Return Date Freezing Order and he thereby procured or permitted a breach of that order.

133. Mr Pugachev says that he was a substantial creditor of Luxury Consulting because the company owed him about £4 million which debt was due in October 2013. Luxury Consulting defrayed his expenses as a way of reducing this debt. This is inconsistent with Ms Kristof's evidence that she thought the money still belonged to Luxury Investments even though it was held within Luxury Consulting's bank accounts. The fact that he may have been owed money by Luxury Consulting does not provide any justification for these payments. It was not suggested by Mr Pugachev that Luxury Consulting had any entitlement to the money – the money belonged to Luxury Investments as Ms Kristof acknowledged so there could be no justification for using it to pay down a debt owed by Luxury Consulting to Mr Pugachev, assuming such a debt exists.

134. Mr Pugachev's other defence to this allegation of breach was that the Return Date Freezing Order in conjunction with the Living Expenses Order entitled him to spend up to £50,000 per week in ordinary living expenses. That cannot justify the dissipation of these monies in this case where a careful mechanism was put in place in the Living Expenses Order to enable the Bank and the court to exercise some control over the operation of this exception to the injunction.

135. The regime put in place provided that Mr Pugachev had to swear an affidavit each month disclosing what his likely expenses would be for that month and inform Hogan Lovells where he would get the money from. I was shown Mr Pugachev's monthly statements for the first six months of 2015. *[REDACTED]* The bank statements now disclosed for the Luxury Consulting euro and sterling bank accounts show many payments of living expenses were made in earlier months and this source was concealed from the Bank and from the court. In his 12th affidavit Mr Pugachev says that because the Applicants were aware of the existence of Luxury Consulting and the payments were made directly by that company and not by him, he did not believe he was obliged to make notifications of those payments. I reject that evidence. Mr

Pugachev must have realised the purpose of the regime put in place by the Living Expenses Order. He knew that the Applicants did not know of the transfers of the Luxury Investments monies to Luxury Consulting and he concealed it in his monthly statements.

136. Mr Pugachev also says that even if this is a technical contempt, the payments were genuine living expenses and would have been authorised by the court if an application had been made. However, I am satisfied that if Mr Pugachev had proposed to the Bank or to the court that he should be permitted to release a large part of the frozen Finaniciere Hediard monies to Luxury Consulting and use it to cover his living expenses, the Bank would have objected strongly to such a proposal and the court would have refused to permit it. I note that the Bank was by this time owed a substantial amount in unpaid costs orders made in its favour in respect of earlier successful applications by the Bank against Mr Pugachev. If Mr Pugachev had wanted to release monies to pay for his own legal expenses, the Bank would most likely have required their own legal costs to be met at the same time.

137. Secondly, the court will not allow monies which have been identified and frozen by a court order to be used for living expenses where it is likely that other monies continue to be concealed by the defendant. In *Tidewater Marine International v Phoenixtide Offshore Nigeria Ltd* [2015] EWHC 2748 (Comm) Males J was considering an application by two respondents against whom a freezing order had been made to use monies in a frozen bank account to meet their legal expenses. Males J confirmed that a defendant is entitled to defend itself and, if necessary, to spend the frozen funds, which are after all its own money, on legal advice and representation in order to do so. However, he went on:

> "37. Two points should be noticed here. The first is that even where the defendant has no other assets, its right to use the frozen funds is only "the ordinary rule". It is therefore capable of being outweighed in an appropriate case by other considerations. Ultimately it is the interests of justice which must be decisive. The second point represents an important qualification on the defendant's right to choose how it spends its own money. That qualification is necessary in order to strike a fair balance between the parties. It is that in order to be permitted to use the frozen funds, the defendant must demonstrate "that he has no other assets with which to fund the litigation". This places an onus on the defendant to demonstrate that there are no other assets available, not frozen by the order, which he could use to pay for legal advice and representation in defence of the claim."

138. It is necessary that the defendant should have this burden in part because it is the defendant, not the claimant (at any rate in the usual case), who knows the facts, but also because the court has already concluded that there is a risk of disposal of assets outside the ordinary course of business or it would not have granted the injunction in the first place. He also noted that judges are entitled in an appropriate case to have a "very healthy scepticism" about unsupported assertions made by a defendant about the absence of assets. Males J approved the statement in *Gee on Commercial Injunctions* to the effect that the correct test is to consider objectively the overall

justice of allowing the payment to be made including the likely consequences of permitting it on the prospects of a future judgment being left unsatisfied, and bearing in mind that the assets belong to Mr Pugachev and that the injunction is not intended to provide the claimant with security for his claim or to create an untouchable pot which will be available to satisfy an eventual judgment: see paragraph 46.

139. Mr Cherryman argued that the *Tidewater* decision was not relevant here because there has been no finding as yet that Mr Pugachev is in contempt of court. I do not regard the principles set out in the first part of Males J's judgment as limited to that situation although I accept that his assessment of the overall justice of the case was influenced by that fact.

140. In Mr Pugachev's case, no court would have been persuaded by Mr Pugachev that the Luxury Investments monies held in the Luxury Consulting accounts were the only sums available to him to meet his living expenses. On the contrary, the assets so far disclosed by Mr Pugachev fall very far short of the sums which were transferred by the Bank to him or to companies controlled by him before the Bank became insolvent. The Bank is convinced that there is considerable undisclosed wealth which Mr Pugachev has refused to reveal.

141. In conclusion on this allegation I have no doubt that Mr Pugachev directed or permitted not only the initial payments from Luxury Investments to Luxury Consulting but also the use by Luxury Consulting of those funds to defray his general expenses. This was in breach of the Return Date Freezing Order. It was a serious breach because a court would not have allowed him to make use of those monies for that purpose if he had applied for permission to use the frozen money.

Allegation B4: Mr Pugachev sold two motor cars in breach of paragraphs 2(1), 2(2) and/or 2(3) of the Return Date Freezing Order

142. The Schedule to the Return Date Freezing Order listed a number of vehicles owned by Mr Pugachev. These included seven luxury cars including a blue Bentley Continental GTC V8 car registration number CN12 AOB first registered in June 2010 and a black Rolls Royce Ghost V12 EWB registration number HX12 AUN first registered in April 2012.

143. During the execution of the Ex Parte Search Order the V5 registration documents for the two vehicles were found and seized. They were handed over by the Supervising Solicitors tasked with implementing the Search and Seizure order to King & Spalding on condition that they were not used to dispose of the vehicles. However, Mr Pugachev thwarted this safeguarding of these assets by obtaining duplicate V5 registration documents; he sold the cars and transferred the monies to his bank account in France in breach not only of the order but of the undertaking that his solicitors had given to Hogan Lovells.

144. King & Spalding wrote to Hogan Lovells on 28 August 2015 advising them that Mr Pugachev wanted to sell the Bentley car which had been disclosed in the Schedule of Assets in the 23 July Letter. The proposed purchaser was the well-known luxury car dealer H R Owen plc. King & Spalding proposed that the sale proceeds be paid to Luxury Consulting's sterling account with Barclays Bank for the purposes of funding Mr Pugachev's ordinary living expenses. They asked for Hogan Lovells' consent by

4 pm on 1 September 2015. Mr Pugachev denied in cross-examination that he was aware that King & Spalding were asking for this consent for the sale. His evidence was that he pays his lawyers so that they will deal with these issues instead of him. I reject that evidence. King & Spalding would not have raised this issue on their own initiative. Mr Pugachev must have told them that he intended to sell the cars and I find that they would have kept him fully informed of the correspondence that then ensued.

145. Hogan Lovells replied on 2 September 2015 confirming that the Bank gave its consent to the sale of the Bentley on two conditions, namely that the full proceeds of sale be remitted to Luxury Consulting's sterling bank account with Barclays Bank and that it was confirmed prior to the sale that the purchaser H R Owen would be made aware of the terms of the Return Date Freezing Order dated 29 July 2014. On 2 September 2015 King & Spalding confirmed that the two conditions would be complied with. Mr Pugachev again claimed that King & Spalding did not tell him that they were agreeing these matters with Hogan Lovells – he said that he did not go into such minute details with his lawyers. Again I reject that evidence as wholly implausible.

146. On 9 September 2015 King & Spalding wrote to Hogan Lovells saying that in fact Mr Pugachev intended to pay the total proceeds of sale not into Luxury Consulting's sterling account with Barclays' Bank but to Mr Pugachev's HSBC account in Cannes. But by that date it is clear that the car had already been sold. The purchase invoice on H R Owen note paper shows that the car was sold for £87,000 on 8 September 2015. Further, it is clear that the sale of the Bentley was agreed with H R Owen without telling them about the Return Date Freezing Order. Either Mr Pugachev or someone on his behalf told them to transmit the proceeds of sale to his account in Cannes.

147. The money was sent to the bank account in France because although his assets there are frozen by the order, this did not, it appears, prevent him from operating the bank account in practice.

148. As far as the Rolls Royce Ghost car is concerned, there was no attempt to seek consent prior to sale. King & Spalding wrote to Hogan Lovells on 28 September 2015 notifying them that Mr Pugachev wanted to sell a Rolls Royce car to HR Owen and proposing that the proceeds of sale be remitted to Cannes. However, it is now apparent that the sale of the car to H R Owen had already taken place on 24 September 2015 and the proceeds of sale, £115,000, had been remitted to his HSBC Cannes account. The V5 registration certificate for the Rolls Royce shows Mr Pugachev as the registered keeper with his Chelsea address. It is signed by Mr Pugachev and dated 23 September 2015. He said when challenged about this that he 'had not the slightest idea about it'.

149. I find that this was an egregious breach by Mr Pugachev of the Return Date Freezing Order. I entirely reject the suggestion that King & Spalding gave the confirmations in their letter without expressly discussing it with him or that he was unaware of the sale of the cars. I am satisfied beyond reasonable doubt that Mr Pugachev obtained the duplicate vehicle registration certificates to replace the ones being held by King & Spalding so that he could sell the vehicles to H R Owen and transfer the money to an account held with a bank so that the money was effectively beyond the control of the court.

150. I should make clear that there is no suggestion that King & Spalding knew that Mr Pugachev had obtained replacement registration documents and that the correspondence they were conducting with Hogan Lovells was a charade.

151. Mr Cherryman sought to rely on the decision of Hildyard J in *Bank St Petersburg and another v Arkhangelsky and others* [2014] EWHC 574 (Ch). One of the issues considered by the court was whether the defendant was in breach of a freezing order by realising the surrender value of a life insurance policy and using the proceeds to pay legal fees where the policy was governed by French law and would not, under that law, be available to creditors in any enforcement proceedings in France. The application before Hildyard J was not an application for committal for breach but an application for a declaration of breach. Hildyard J decided as a matter of discretion that it would not be appropriate to grant a declaration. He went on however to consider the issue of breach. Having set out the arguments relied on by the parties, the judge concluded, subject to certain caveats, that the effect of the French law was that even if the policy or surrender value would otherwise qualify as an asset, it was not one that could be turned to account or value for the benefit of creditors, and on that basis must fall outside the scope of the freezing order. He referred to the dictum of Patten LJ in *BTA v Solodchenko* [2011] 1 WLR 888 at [32], where he held "the purpose of a freezing order is to prevent the dissipation of assets which would otherwise be available to satisfy a judgment in favour of the claimant". Further, Hildyard J went on to state that even if the policy itself was an asset, the surrender of the policy in accordance with its terms and for a fair value did not amount to a dealing or disposition of an asset contrary to the objectives of the freezing order. This was because the proceeds of the realisation were, the defendant accepted, caught by the freezing order, so that the exercise of the right of surrender, far from alienating or dissipating an asset which would otherwise be available to creditors, resulted in assets being made available to creditors which otherwise would not have been available.

152. I do not consider that that decision provides any support at all for the proposition on which Mr Pugachev seems to rely, namely that it is not a breach of a freezing order for a physical asset caught by the Return Date Freezing Order to be converted into cash provided that the cash remains frozen. The decision was restricted to the particular circumstances of that case where the French insurance policy was not an asset that could be available to satisfy any judgment but that the proceeds of surrender would be. In the present case, there is no question but that the cars would be available to satisfy any judgment sought to be enforced in England and the proceeds of sale have been put out of the reach of the Bank.

153. As to the argument that those proceeds were used for living expenses as envisaged by the Return Date Freezing Order, the answer to that is the same as it is in relation to the dissipation of the Luxury Investments monies from the bank accounts of Luxury Consulting.

Allegation B5: Mr Pugachev disposed of part of the proceeds of any recoveries from his Bilateral Investment Treaty arbitration claim in breach of paragraphs 2(1), 2(2) and/or 2(3) of the Return Date Freezing Order.

154. Paragraph 4 of the Return Date Freezing Order provides that the assets covered by the injunction include any choses in action vested in him including any claim against a third party. Mr Pugachev has lodged a claim under the Bilateral Investment Treaty between France and Russia ('the BIT Claim') alleging unlawful expropriation of his assets by the Russian state. These assets, the combined value of which ran into many billions of USD, have Mr Pugachev claims been taken away from him with nothing being paid in return to him: he describes this as a classic modern day case of Russian Government orchestrated expropriation, under Kremlin rules. The main assets which are the subject of the BIT claim include a Red Square real estate development, a number of shipyards in St Petersburg, the EPK coke deposits which I describe further below and plots of land in the Krasnogorsky District of the Moscow Region.

155. Allegation B5 arises from an agreement that Mr Pugachev entered into for the funding of his legal and other expenses in pursuing the BIT Claim. The funding agreement has been disclosed in redacted form by Mr Pugachev to the Bank. It is dated 27 July 2015 and headed Assignment of Proceeds and Investment Agreement. The parties to the funding agreement are

    i) Wiltshire Residence Trust ('WRT') as Assignee; WRT is one of the New Zealand trusts disclosed in the Schedule of Assets to the 23 July Letter and Mr Pugachev is a discretionary beneficiary of that trust;

    ii) Maru Ltd, as guarantor; Maru is a New Zealand company currently the trustee of the WRT;

    iii) Mr Pugachev as Assignor.

156. The funding agreement recites the fact that Mr Pugachev has brought his BIT claim and has retained King & Spalding to act for him in those proceedings. It also recites that WRT is prepared (i) to make a $800,000 upfront payment to King & Spalding and (ii) to make additional payments for litigation expenses as agreed in future in return for a portion of Mr Pugachev's entitlements to the proceeds of the claim. The 4th recital says that in consideration of WRT making such funds available, Mr Pugachev proposes to transfer and assign to WRT a portion of the proceeds, if any. Maru is the guarantor of WRT's obligations under the agreement.

157. The operative clause in the funding agreement is clause 3.1.1 which provides:

> "Under and subject to the terms and conditions of this Agreement and in exchange for the benefits to ASSIGNOR of Disbursements, [Mr Pugachev] agrees to and, at the Closing, shall irrevocably and unconditionally, (i) sell, transfer assign and deliver to ASSIGNEE all of [Mr Pugachev's] legal and equitable rights, title and interest in and to the Assigned Return and (ii) ASSIGNOR shall transfer and grant to ASSIGNEE a security interest in the Collateral to secure all obligations of ASSIGNOR to ASSIGNEE hereunder from time to time"

158. The Assigned Return is defined as repayment of capital actually disbursed by WRT plus 2.5 per cent of Net Proceeds that are actually awarded to and recovered by Mr

Pugachev up to a maximum amount of $20 million. The Closing is defined, in effect, as the date of the conclusion of the agreement. Clause 12.1.3 provides:

> "At the Closing, ASSIGNEE'S rights in the Proceeds (to the extent of the Assigned Return) and all of ASSIGNEE'S rights … as provided for in this Agreement, shall attach and be fully vested, secured and perfected; the Assignment shall be absolute and irrevocable by ASSIGNOR …"

159. The Bank contends, and I agree, that Clause 3 effects on signature of the agreement the actual assignment taking effect in law and equity. The Bank submits that this may not be unusual as a funding agreement but it is in breach of the order. Mr Pugachev has never sought the consent either of the Bank or of the court to enter into this agreement.

160. Mr Pugachev was cross-examined about the Funding Agreement. He claimed to have no recollection of signing it even though it bears his signature on every page. He said that this failure of recall was understandable because every day, on an ongoing basis, he signs many documents sent to him by various lawyers from various jurisdictions, using various means of communication. He did not appear to deny any knowledge of the transaction at all because he accepted that he was 'reasonably in the loop'. But in effect he was not able or prepared to answer questions on it.

161. I cannot accept that evidence for a number of reasons. First, the funding agreement was signed only a few months ago. Although I accept that Mr Pugachev probably signs many documents put in front of him by his lawyers, it is clear from the evidence he gave before me that the BIT Claim is an important matter in his life. Not only does he hope to recover about $12 billion by this means but he sees it as a way of refuting decisively the allegations made against him in the Russian proceedings brought by the Bank, of vindicating himself and of turning the tables on those who have tried to destroy him. It is a matter in which he takes a close personal interest.

162. Secondly there is evidence which shows that he was directly involved in the changes in the governance of the New Zealand trusts which made the conclusion of the funding agreement possible. Mr Pugachev denied that he either monitored or controlled the appointment of the trustees and claimed that it was only when Mr Smith put it to him in cross-examination that he became aware of this. He denied that he had been involved in the decision to replace all the trustees of the New Zealand trusts in July 2015. He said that he had complained about one of the trustees on a number of occasions because he was the 'Protector' and one of the beneficiaries of one of the trusts but he claimed he had not received any documents at all for many years in respect of the operation of the trusts. Again, I cannot accept this. The document replacing the old trustees with the new trustees was signed by both Mr Pugachev and Victor. Mr Pugachev accepted that he had arranged for Victor to sign the document. The former trustees of the New Zealand trusts, including the WRT, were removed from office and replaced by new trustees including Maru Ltd on Friday 24 July 2015. Maru Ltd was incorporated as a company on the day that it became a trustee, 24 July. Maru Ltd entered into the funding agreement on the next working day, Monday 27 July. I am satisfied that Mr Pugachev and his son Victor were closely involved in the removal of the old Trustees and the appointment of the new

ones and that this was done in order to ensure that the trustee of the WRT was an entity willing to enter into the funding agreement.

163. Mr Pugachev put forward various other arguments as to why the assignment of part of the proceeds of the BIT Claim did not amount to a breach of the Return Date Freezing Order or at least was only a technical breach not worthy of censure. First, he argues that there are currently no proceeds of the BIT Claim and the claim may be regarded as very speculative. He argues that the assignment does have any impact on the scope of his assets unless and until there are some proceeds from the BIT Claim made over to Maru Ltd. I do not accept that argument. He is well aware that the BIT claim is an asset in his possession and he disclosed it in the schedule to the 23 July Letter. The fact that Mr Pugachev has not actually recovered anything under the claim is irrelevant because the assignment of anything he does receive became irrevocable on signing. His rights, whatever their value are caught by the freezing order.

164. Secondly Mr Pugachev argues that the Bank stated in its skeleton argument for this application that it does not accept that the BIT claim "has any merit." If that is the Bank's stance, they cannot be heard at the same time to argue that the assignment of part of a worthless claim is a serious breach of the Return Date Freezing Order. I do not consider that the fact that the Bank has said that it does not accept that the BIT Claim is valid means that it is somehow estopped or otherwise precluded from asserting that the assignment effected by the funding agreement is a breach of the Return Date Freezing Order. Maru Ltd has been prepared to pay Mr Pugachev $800,000 in return for the 2.5 per cent share of the proceeds so I am satisfied others apart from the Bank do regard the claim as having some merit – as presumably does Mr Pugachev himself.

165. Mr Pugachev also argues that he is entitled to seek to raise funds to cover legal expenses. However, as I have explained in respect of other allegations, Mr Pugachev is only entitled to use frozen assets for paying his legal expenses in accordance with the terms of the Return Date Freezing Order which put in place important safeguards for the court and the Bank.

166. Mr Pugachev argues that by pursuing this allegation, the Bank is trying to prevent him from funding the BIT Claim thereby frustrating his suit against the Russian state. But if Mr Pugachev had asked the Bank to agree to the conclusion of this funding agreement and the Bank had refused, it would have been open to Mr Pugachev to bring the matter to court to argue that the refusal was unreasonable and that the court should permit the agreement to go ahead as the only available means of obtaining funding. It is not open to Mr Pugachev to sidestep the court's order in the way he has done.

167. Finally, Mr Pugachev argues that if the BIT Claim succeeds then not only will he be paid very substantial amounts in compensation but these orders will fall way because the Russian proceedings in support of which interlocutory relief was given are closely linked with the allegations made in the BIT claim. That is, in my judgment, beside the point. The fact is that the funding agreement effectively turned the existing frozen chose in action into a substantial amount of money in a manner which disregards the terms of the Return Date Freezing Order. I regard this as a serious breach of that order.

Allegation C1: Mr Pugachev failed to deliver up mobile devices, namely an iPad and a mobile phone in breach of paragraph 19 of the Ex Parte Search Order and/or paragraph 4 of the Search Protocol Order.

168. I have described in general terms the effect of the Ex Parte Search Order granted by me on 1 July 2015: see paragraph 27 above. Paragraph 19 of the Ex Parte Search Order provided:

> "19. Each Respondent must immediately after service of this Order on him or her hand over to the Supervising Solicitor any of the Schedule B Items, which are in his or her possession or under his or her control, save for any computer or hard disk integral to any computer. Any items the subject of a dispute as to whether they are Schedule B Items must immediately be handed over to a Supervising Solicitor for safe keeping pending resolution of the dispute or further order of the Court. For the avoidance of doubt, the obligation imposed by this paragraph shall include an obligation to return Schedule B Items which have been removed from the jurisdiction at any time on or after 1 June 2015."

169. The Search Protocol Order made on 27 July 2015 provided in paragraph 4 that-

> "4. Without prejudice to paragraph 19 of the Search Order, the First Respondent shall as soon as reasonably practicable and in any event no later than 4pm on 31 July 2015 either:
>
> (a) deliver to the Supervising Solicitors any of the other items required to be handed over pursuant to paragraph 19 of the Search Order which are in his possession or under his control, including for the avoidance of doubt the iPad and the mobile telephone referred to in paragraph (b) on page 2 of the letter of King & Spalding International LLP dated 8 July 2015 at pages 1-2 of Exhibit SVP14; or
>
> (b) insofar as any of the items referred to in paragraph (a) above comprise electronic devices, hard disks and/or other electronic data storage devices, in the alternative to paragraph (a) above, deliver those items to IT consultants reasonably nominated by the Claimants at a location in or around Paris, France, which IT consultants shall image and/or download data from the relevant devices and provide the same to Supervising Solicitors in accordance with any instructions which may be given to them by the Supervising Solicitors."

170. The Bank alleges that Mr Pugachev was in breach of these orders because when he left England on or about 23 June 2015, he took with him an iPad and a mobile phone.

171. The information given by Mr Pugachev through his solicitors about these devices has, the Bank points out, been inconsistent. On 8 July 2015 King & Spalding wrote to Hogan Lovells that there may be documents relating to Mr Pugachev's assets

otherwise than in the premises named in the Ex Parte Search Order because "Mr Pugachev has an iPad and a cell phone in his possession'. Mr Pugachev's 7th affidavit was sworn on 13 July 2015 but provided signed but unsworn on 8 July 2015. In paragraph 8 he refers to that letter from King & Spalding and confirms that what is said there is true and accurate and that he has nothing to add:

> "save that, for the avoidance of doubt, whilst I do have the devices listed in (b) on page 2 of the letter in my possession, there are no documents relating to the so called Pugachev assets stored on those devices"

172. The devices listed in (b) on page 2 of the 8 July letter are the iPad and cell phone said to be in his possession.

173. In his 9th affidavit also dated 13 July 2015 Mr Pugachev says something different. Most of the affidavit seeks to explain why he left the jurisdiction at the end of June. He also states:

> "40. In travelling, I have carried with me, as usual, my personal iPad and my mobile phone. I use my iPad and phone for personal matters. I believe that any documents or data on these devices would be either irrelevant or highly duplicative of the copies of documents already seized and in the custody of the lawyers who supervised the seizure, or are document which are already documents of record within the existing proceedings. Those devices contain limited memory and as such as used for access to data but generally I do not store documents on those devices apart from private documents. I confirm that I have not intentionally destroyed any documents relating to a Pugachev Asset"

174. Mr Pugachev's most recent written evidence on this is in his 12th affidavit sworn for the committal application. In that affidavit he says this:

> "I do not believe that I am in breach of the Search Order in respect of handing up these … items, for the simple reason that following my departure from the jurisdiction and due to my concerns for life and safety and being tracked through the GPS function on those devices, I disposed of those devices. When I left the jurisdiction I simply wanted to ensure no one could follow me.
>
> I appreciate that this does not reconcile with my 7th affidavit or the letter of King & Spalding both dated 8 July 2015. I can only now rectify the error. I did not possess the items any longer and certainly not on that date, but most importantly those devices did not have documents stored on them as they were principally used for access to the email account that I provided, personal photos and videos.

> Therefore it was simply impossible for me to deliver up items which were no longer in my possession at the time."

175. Mr Pugachev was cross-examined by Mr Smith before me about when and where he disposed of the devices. His evidence was that he could not remember exactly when he got rid of the iPad and the mobile phone or destroyed them but it was soon after he left England (which might therefore be before the Ex Parte Search Order was granted). This was because he was concerned that the SIM cards in the devices might enable people to track his whereabouts. As to how it came about that King & Spalding gave a contrary version of events and that he confirmed this, his evidence broadly was that he had understood the questions King & Spalding put to him about what devices he used as a question as to whether, generally speaking, he used an iPad and mobile phone, rather than whether he actually owned and used one at that moment.

176. Having considered all this evidence I am satisfied beyond reasonable doubt that the original version of events set out by King & Spalding in their letter and confirmed by Mr Pugachev in his 9th affidavit is true and that his more recent evidence that he destroyed the iPad and iPhone is false. I find that it must have been clear to him that the reason why he was being asked about whether he had electronic devices was for the purposes of complying with the Ex Parte Search Order and then the Search Protocol Order – he was not being asked generally whether he uses such devices 'in principle'. If the position was that he used to have them but had disposed of them once he arrived in France, it would have been very easy to say that either to King & Spalding when he was providing the information that went into their letter or when he made his 7th affidavit confirming the truth of that letter, if there was a time lag between the two discussions.

177. In his closing submissions, Mr Pugachev's counsel emphasised that any inconsistency between Mr Pugachev's evidence at different times should be considered in light of the fact that he is a non-native English speaker and by nature is not an individual who concerned himself with minutiae. It is at least possible that an explanation for the inconsistency is a failure to realise the significance of the difference between "do have" and "did have" - this was perhaps understandable given his other worries.

178. I have considered carefully whether there might have been some confusion or something lost in translation as between King & Spalding and Mr Pugachev, as Mr Pugachev seems at times to suggest. However it was apparent to me that Mr Pugachev was well able to respond in a sophisticated and nuanced way to the questions posed by Mr Smith even though all those questions and his answers had to be interpreted to or from Russian. This was the case both during his cross-examination before Hildyard J and his evidence before me. I am sure that King & Spalding have measures in place to make sure that they can explain clearly and comprehensively to Mr Pugachev what his obligations are under the court orders that are made and can also take his instructions accurately for the purpose of presenting his case to the court.

179. I therefore find that Mr Pugachev was in breach of the Ex Parte Search Order and the Search Protocol Order by failing to hand over his iPad and iPhone. It is impossible to know, of course, what if any material was on the devices and therefore whether anything of importance has been concealed as a result of Mr Pugachev's breach. The Bank suspects that there may have been emails from Mr Pugachev to those entities

and advisers which control the various elements of his wealth. This breach is bound to raise such suspicions and I regard it as a serious breach for that reason, although not as serious as some of the other breaches I have found proven.

Allegation C2: Mr Pugachev failed to provide passwords to email accounts in breach of paragraph 20(1) of the Ex Parte Search Order and/or paragraph 1 of the Return Date Search Order.

180. Paragraph 21 of the Ex Parte Search Order required Mr Pugachev to provide passwords by 4 pm on 3 July 2015. Mr Pugachev accepts that he was in breach of that order but asserts that his failure to provide the passwords was the result of his concern about the dual role of Diligence as both adviser to the Bank's solicitors and as the independent IT specialist for the execution of the Ex Parte Search Order made against him. That version of events does not, however, fit with the accepted chronology in this regard.

181. The return date hearing for this order took place on 9 July 2015 before Henderson J. At that hearing Mr Pugachev was represented by Mr Isaacs QC. He argued that he should not be required to hand over the passwords because the people who were going to be in charge of investigating his email and other accounts were part of the same firm that was involved in the surveillance of him and his family. Henderson J ordered that the passwords be handed over to the Supervising Solicitor (though not to Diligence) by 4 pm on 10 July 2015: see page 170 of the transcript of the hearing on 9 July 2015. Mr Pugachev did not comply with the order at that point.

182. On or about 17 July 2015 an envelope containing the passwords was provided to the Supervising Solicitors by King & Spalding but they were instructed not to open it. The matter therefore had to be raised again at the hearing before me on 27 July. I directed that the envelope be opened and that is when the Supervising Solicitors finally got access to the password which they should have obtained several weeks earlier.

183. Mr Pugachev's evidence was that he was not told about the order by his legal team and he did not know the passwords to his accounts – only the members of his legal team knew the passwords and he says they provided the passwords to the Applicants. Mr Pugachev asserts that he was not aware that the issue was raised before Henderson J on 9 July because he did not play any part in that hearing. He attributes any delay there may have been with the provision of the passwords to 'technical reasons' causing his lawyers to delay complying with the order. There is no support for any such contention in evidence from Mr Pugachev's legal advisers.

184. I reject Mr Pugachev's evidence either that he did not have access to the passwords himself or that his lawyers did not liaise with him properly over compliance with the order, even though by this time he was in France rather than in England. He cannot lay the blame for non-compliance with his solicitors. If his solicitors had access to the passwords themselves then they would not have failed to comply with the order unless he had directly instructed them not to comply.

185. I find that there was a breach of the Ex Parte Search Order and the Return Date Search Order by failing to provide the passwords. Mr Pugachev has stated in his 12th affidavit that he did not tamper with the email account during this period of delay and

the Bank has not alleged that there was suspicious activity on the account whilst their access to the account was wrongfully prevented. However, I do not regard this as a merely technical breach because it results in delay and expense for the Bank and the Supervising Solicitors in trying to piece together the information that can be gathered from the accounts that the court has ordered should be made available to them. I will assume, however, in Mr Pugachev's favour that the delay did not affect the volume of material ultimately made available to the Supervising Solicitor.

Allegation D1: Mr Pugachev failed to set out to the best of his ability and having made all reasonable enquiries what happened to $500 million transferred to Safelight Enterprises Ltd in breach of paragraph 1(b) of the Rose Order

186. Safelight Enterprises Ltd ('Safelight') is a Cypriot company which has a bank account in Switzerland into which the Bank (when still under Mr Pugachev's control) transferred a very large sum of money in December 2008 and the first quarter of 2009. The Bank's case is that Mr Pugachev received $800 million in this manner and that this was part of the $1.1 billion that the Central Bank of Russia had injected into the Bank in order to help it withstand the financial crisis. Instead of being used to bolster the Bank's capital, the Bank alleges the money was simply taken by Mr Pugachev for his own benefit. Some of the money has been recovered by the Bank but much of it is still being pursued.

187. In his second witness statement (29 September 2014) Mr Michaelson on behalf of Mr Pugachev refers to commercial loans made by VTB (a major Russian bank) to three companies: OOO Middle Trading Rows ('STR'), CJSC Plescheevo ('Plescheevo') and CJSC Sanara ('Sanara'). The loans totalled $2.1 billion and were made between December 2007 and March 2008. His evidence was that these loans were each made for the purposes of 'substantial development projects' such as the development of a luxury gated village called Gribanovo in an exclusive area of Moscow, a shipbuilding complex in St Petersburg and a development of a luxury hotel and residential complex adjoining Red Square in Moscow. He says further:

> "189. Shortly after the drawdown of the loans, in March and April 2008, the funds were transferred by Plescheevo, Sanara and STR to OPK Development pursuant to certain investment agreements (…). Under these agreements OPK Development was responsible for overseeing the development of the various projects being undertaken by STR, Sanara and Plescheevo.
>
> 190. I am told by Mr Pugachev that by the end of 2008 or beginning of 2009, Sanara, Plescheevo and STR became dissatisfied with OPK Development's performance and requested that the funds which continued to be held by OPK Development be transferred back to them. Around the same time, STR, Sanara and Plescheevo entered into new investment agreements with Safelight Enterprises Ltd ("Safelight") (pages 1666-1734). The funds were then transferred to Safelight in accordance with those agreements."

188. Mr Pugachev was questioned about what had happened to the money transferred to Safelight during his cross-examination before Hildyard J. The inadequacy of his

responses resulted in the inclusion in the Rose Order made on 27 July 2015 of a requirement that Mr Pugachev was to swear and serve on Hogan Lovells an affidavit setting out, amongst other things, what happened to the sums totalling approximately $712,978,000 which were transferred by JSC Sanara and Plescheevo CJSC to an account in the name of Safelight at Société Générale Private Bank in Switzerland between about 29 December 2008 and 8 April 2009, including where those sums of money and any assets which have been acquired with all or part of those sums of money currently are. The Rose Order made clear that the information required included, in respect of any transfer of all or part of any of the said sums of money, details of when, where, to whom, by what means and why they were so transferred.

189. Mr Pugachev has made two attempts at complying with that obligation. In Allegation D1, the Bank alleges that the paucity of information provided shows that he has failed to do what is required of him to comply.

190. Mr Pugachev first set out information about the Safelight money in his 11th affidavit sworn on 21 August 2015. In the opening paragraphs of his 11th affidavit, Mr Pugachev states that he has sought to comply with the terms of the Rose Order to the best of his ability and in good faith but that he has had difficulty recalling the very specific and detailed information requested. This is because (a) the events which he is directed to explain took place 5 or 6 years ago; (b) during the relevant time he had a substantial business empire with numerous companies and individuals working for those companies (at one time, it was approximately 350,000 people); (c) also at the time, he was a Russian senator so could not be actively involved personally in dealing with his business empire; and (d) since he has had to flee Russia because of fears for his safety, he does not have access to the documents or individuals who would be able to assist him in collating the information he is obliged to provide.

191. Mr Pugachev then refers to his explanation as to why the sums were paid to Safelight and asserts that these payments "were legitimate commercial transactions using monies that were borrowed for specific and genuine commercial purposes".

192. Mr Pugachev states first that so far as he is aware, the Safelight accounts into which the Safelight monies were originally paid were either closed in 2011 or frozen by the Swiss authorities in 2013 (and remain frozen presently). The freezing of accounts was directly related to the Russian criminal investigations. He accepts that he is "unable to fully reconcile the funds received and disbursed by Safelight" before the accounts were frozen - the details he goes on to provide have been provided to him by his Swiss Counsel.

193. Mr Pugachev states that Safelight made payments of the following sums:

i) $180,251,000 to a company called Stallingsa Finance Ltd (of which Mr Pugachev was the beneficial owner) in February and March 2009. He asserts that the sums transferred to Stallingsa Finance Ltd were then transferred back to the Bank in February and March 2009 under agreements entered into between that company and the Bank.

ii) $100,000,000 to a BVI company called OPK Mining Ltd (of which Mr Pugachev was the beneficial owner) in June 2009. He asserts that in December 2009 OPK Mining Ltd. (BVI) paid in effect the whole of the $100 million to a

company called Strathconon Holding Ltd. (BVI) of which Mr Pugachev was the beneficial owner. He says that he cannot recall how all the funds were used from December 2009 until September 2013 when the accounts of Strathconon were frozen by the Swiss authorities. He states that he believes that "most of it was spent on investment projects including telecom projects handled by Luxury Broadcasting Limited (presently called Luxury Consulting Limited)". At the time the Strathconon bank account was frozen it had a balance of less than $10,000. In his 12th affidavit (paragraph 69.1) Mr Pugachev reiterates that this $100 million was spent on 'investment projects' – he cannot be more specific because he does not have access to the bank statements of accounts held by Strathconon.

iii) $421,751,000 and €8,014,167 was transferred to a company called Financial Investment Solutions Limited ('FIS') in February 2010. Mr Pugachev recalls that 'at some point' he was the beneficial owner of FIS. He understands from further enquiries that FIS was liquidated and dissolved in February 2012. In his 11th affidavit he was able to provide additional information only as regards a proportion of the money transferred to FIS. That information is that funds amounting to about $335 million were transferred by FIS to a company called Enderton Company Ltd between June and November 2010. Enderton's account was closed in December 2011 and the company was liquidated and dissolved in March 2012. Of the $335 million that was transferred to Enderton, Mr Pugachev was able to account for some but not all of it. It appears that that $335 million was paid away as follows (the arithmetic is complicated by exchange rate fluctuations and by some amounts being expressed in dollars and some in euros):

a) $161,488,282 was transferred by Enderton to another company called Domreis Investments SA ("Domreis"), which Mr Pugachev beneficially owned, in November 2010. All except about $1million was then transferred in February 2010 by Domreis into an account for OPK Mining Ltd (Cyprus). He does not recall how Domreis used the $1 million it retained but the money had gone by the time Domreis' bank account was frozen by the Swiss authorities in September 2013. In his 12th affidavit he states that he does not believe that the balance came to him personally: see paragraph 69.4.

b) As to what happened to the $160.5 million that went from Domreis to OPK Mining Ltd (Cyprus), Mr Pugachev says OPK Mining Ltd. (Cyprus) made three transfers between February and June 2010 totalling $160 million to Solaris Property Investment Corp. ("Solaris") which was the owner for a period of the company EPK discussed below. In his 11th affidavit Mr Pugachev says that Solaris made a payment to Sablon International in March 2010 in the sum of €6,700,000. Mr Pugachev owns a minority interest in Sablon. He says he has no information about how these funds were used, but they appear to have been paid away by the time the account was frozen by the Swiss authorities. In his 12th affidavit Mr Pugachev is able to give further information about what happened to the $160 million that were transferred by OPK Mining Ltd (Cyprus) to Solaris (see paragraph

69.6). He states that it is his understanding that Solaris principally lent funds to various entities or for other reasons. However, he is 'not entirely clear as to the basis for the payments or transfers made by Solaris Property Investment Corp'. He sets out payments which he understands Solaris made to various entities in 2010 including $4.2 million to OPK Biotech LLC, $155.7 million to Enderton and €6.7 million to Sablon International. As to what those recipients did with the money, his information is scant. In his 12th affidavit he says that all monies paid to OPK Biotech LLC were lost as the company became insolvent and was sold to someone with whom he now has a poor relationship so he is unable to get any further information. The insolvency of OPK Biotech LLC forms an element in his BIT Claim.

c) $101,333,084 was paid to OPK Mining Ltd (BVI) in November 2010. OPK Mining Ltd. (BVI) used those monies to repay a loan provided which it owed to Societe Generale prior to its bank accounts being frozen in September 2013.

d) €16,909,587 was transferred to Luxury Investments in November 2010. Mr Pugachev states that he is the beneficial owner of Luxury Investments. In his 11th affidavit Mr Pugachev says that he is unable to say what happened to these funds except that they had all gone from the account by the time the account was frozen by the Swiss authorities in September 2013. In his 12th affidavit he states (paragraph 69.9) that he now understands that Luxury Investments invested those funds in Hediard SA which was sold as disclosed in the Schedule of Assets and discussed elsewhere.

e) $16,855,698 was transferred to OPK Biotech International SA ("OPK Biotech"). Mr Pugachev recalls that at some time he was the beneficial owner of OPK Biotech, but that his son Victor subsequently became the owner at some point. He cannot recall what happened to these funds in OPK Biotech's hands but understands that OPK Biotech went into Chapter 11 and then Chapter 7 proceedings in the USA. Again, by the time this account was frozen by Swiss authorities in September 2013 it had only a nominal balance.

f) €23,787,887 went from Enderton to Sablon International who held bank accounts at Hapoalim bank. Mr Pugachev owns a minority interest in this company. As far as he can recall, these monies were used to invest in France Soir, a company which subsequently went into liquidation. This account was frozen by Swiss authorities in September 2013 with a nominal balance.

g) €31,226,584 went to Topaze Funds SA ("Topaze"). *[REDACTED]* This account was frozen by Swiss authorities in September 2013.

h) $39,366,477 was transferred to a company called Twentieth Emerald SARL. In his 12th affidavit (paragraphs 69.11 and 70) Mr Pugachev was able to provide more information about this payment. He says that he is not the owner of Twentieth Emerald SARL but his son Victor is

the director of that company. He now understands that somehow these funds were invested in OPK Biotech LLC which is now bankrupt. The Bank asserts that that OPK Biotech was one of Mr Pugachev's companies and he accepted that he was the sole shareholder of it at some point in the 2000s. He was not able to say when he ceased to be the shareholder of Twentieth Emerald SARL but the ownership changed after its insolvency. He says he has asked his son Victor for additional details but he has declined to provide any more information.

i) $12,100,000 was transferred to Mr Pugachev's son Victor. He cannot now recall the reason for this and can provide no more details. In his 12th affidavit he says of his son "I have enquired as to his use of the funds. He has respectfully declined to provide me with further detail".

j) Two amounts totalling about $264,000 were transferred to a company called Ravenloft Corporation. Mr Pugachev says that he cannot confirm whether he ever owned an interest in that company and he cannot recall what happened to the funds. He gives no further details in his 12th affidavit.

194. As to why he cannot say anything further about why Enderton made the payments it did, Mr Pugachev explains in his 12th affidavit (paragraph 68.4) that Enderton was owned by a trust where the trustee was David Henderson-Stewart, a former adviser of Mr Pugachev. However, Mr Henderson-Stewart is now a witness against Mr Pugachev in the Russian criminal proceedings. Further, Mr Henderson-Stewart's evidence against Mr Pugachev in the Russian criminal proceedings was relied on in the Russian civil judgment underpinning these proceedings. Mr Pugachev says that he is in the process of filing a claim against Mr. Henderson-Stewart for breach of his obligations as trustee of the trust. The inference I understand I am being invited to draw is that Mr Henderson-Stewart is more likely to be able to provide information about the purpose and ultimate fate of these payments to the Bank than he is to Mr Pugachev.

195. In his 12th affidavit, Mr Pugachev provides some further information about $432 million of the Safelight monies that was paid to FIS (i.e. $421,751,000 and €8,014,167): see paragraph 69.2 of the 12th affidavit. In addition to the amount paid over to Enderton and distributed as I have described in paragraph 193.iii) above, he states that about $105 million was paid in June and July 2010 to an entity called Cyrus Group. He says that he is now in dispute with the former director of FIS and cannot provide any more details of what happened to the monies.

196. He states now that he believes that $250 million of the Safelight monies were in fact lent or paid to the Claimants. Therefore, he says, the entire premise of his cross-examination, and repeated attempts to have him explain the whereabouts of $712 million, is simply inaccurate as the true sum in question is approximately $460 million.

197. Mr Pugachev was asked by Mr Smith how the information provided in the 11th and 12th affidavits had been gathered. Mr Pugachev said that he did not do this personally but the whole team that works for him, his legal team his finance team and others gathered the information together. He was not able to say therefore who had provided

the additional information that he gave in the 12th affidavit but did not give in the 11th affidavit or even which additional people if any had been asked for information. He was unable in cross examination to provide more information thanwas set out in his two affidavits. He said this information was provided by his advisers and he trusted his advisers to be accurate - he had not taken any steps himself to ensure that it was accurate. He says he was unable to request information regarding payments to Safelight.

198. Having regard to all this material, I am not satisfied to the necessary standard that Mr Pugachev must know what has happened to the monies beyond what he has set out in his affidavits. The fact that he was able to provide more information in his 12th affidavit than he could in his 11th affidavit does not prove that there must still be information withheld. I accept Mr Smith's point that there are large tranches of money which appear to have been transferred away by the numerous companies referred to in the evidence but that the trail provided by Mr Pugachev goes cold without a clear indication of what the money was spent on or where it might now reside. The Applicants also rightly point out that Luxury Consulting is a company of which Mr Pugachev was the sole shareholder at all material times; he was its sole director between 2011 and 2013 and since then its sole director has been Ms Kristof who is his former personal assistant. There has been no explanation from Mr Pugachev as to why he cannot remember what happened to those monies in the hands of Luxury Consulting. However, I bear in mind that several of these transactions took place before Mr Pugachev left Russia in early 2011. It must be true that he does not have access to some of the documentation that might have assisted. I also accept that his relationship with some of the people working for him at the time these monies were being moved about has soured and that, whatever the rights and wrongs of why that has happened, that may prevent him from finding more material.

199. The Applicants criticise Mr Pugachev because it is clear that he has not made his own efforts to sort out what has happened to the money but has relied on his advisers to try to trace payments. I agree that, as Mr Smith put it, the buck should stop with Mr Pugachev and that he cannot entirely delegate his responsibilities for complying with the Rose Order to his advisers. But in a case where the information requested is detailed financial information of a complex kind and the transactions took place several years ago as part of a series of transactions, it is not realistic to expect someone to hold these details in his head or to be able to find out more information than his advisers can provide.

200. I therefore find that the Bank has failed to establish to the necessary standard that Mr Pugachev has failed to set out to the best of his ability and having made all reasonable enquiries what happened to the money transferred to Safelight.

Allegation D2: Mr Pugachev failed to set out to the best of his ability and having made all reasonable enquiries what happened to RUR3.4 billion which was transferred from Creative Associates Services Ltd into an account in Mr Pugachev's name in breach of paragraph 1(c) of the Rose Order

201. In paragraph 1(c) of the Rose Order, Mr Pugachev was required to set out what happened to the sum of RUR 3.4 billion transferred by Creative Associates Services ('Creative') into an account in Mr Pugachev's name on or about 29 December 2008.

202. In his 11th affidavit (21 August 2015), Mr Pugachev said that he did own a 100 per cent interest in Creative and disposed of that interest in November 2009. He says that he is unable to recall what happened to these monies and he has no access to the records of the bank account into which the money was paid. Mr Roberts of Hogan Lovells had in his evidence for the Applicants exhibited bank statements and suggested what might have happened to the money. Mr Pugachev asserts that in fact the Bank is in a better position to explore the trail of this money than he is. In his 12th affidavit (20 November 2015) Mr Pugachev confirms that he cannot recall these transactions.

203. In their submissions on this allegation, the Applicants complain that Mr Pugachev in cross-examination said that in response to the Rose Order he asked his legal and financial advisers in various jurisdictions to provide him with answers and he signed the affidavits based on those answers. He said that King & Spalding had coordinated with other advisers and produced the drafts. He did not take any steps to satisfy himself that the advice he received was correct and he was not aware of the details. However, in the opening paragraphs of the 11th and 12 affidavit Mr Pugachev gives the usual confirmation that the information is true to the best of his knowledge and belief if it comes from a source other than his own recollection.

204. They describe this evidence as 'shocking and no answer to the charge' because Mr Pugachev cannot delegate compliance with the court's orders or abdicate his personal responsibility for compliance.

205. I recognise the importance, of course, of deponents taking responsibility for the information that they disclose in affidavits which they have sworn. But the scope of the reasonable inquiries that a deponent has to make in response to an order to provide information, and the extent to which he can be expected to rely on his own recollection must depend on the nature of the information sought. What emerges from the evidence in this case was that large sums of money were moved around in order to finance particular projects, many of which were not ultimately successful. It is unrealistic to expect Mr Pugachev to retain in his mind – if he ever knew it – the details of what happened to the many different parcels of money that are described in his evidence. It appears to me, from the specificity of the amounts of money described, that such evidence as he is able to give is probably arrived at by someone within his advisory team trying to match up payments out of and into various bank accounts of these various companies where those records are available. The records are incomplete, perhaps in part for the reasons that Mr Pugachev gives in his 11th affidavit, namely in particular because these transactions took place a long time ago; they were some among many different business deals he was working on; some of the relevant entities no longer exist and some records are either still in Russia or in the hands of his adversaries.

206. The question I must consider is whether I am satisfied that there is more information that is available to Mr Pugachev or his legal advisors than he had disclosed or that he has refrained from making reasonable enquiries which he could have made and which might have uncovered more information. I am not satisfied to the necessary standard that that is the case.

Allegation D3: Mr Pugachev failed to set out to the best of his ability and having made all reasonable enquiries what happened to $146.7 million transferred from Devecom Ltd to Basterre Business Corporation in breach of paragraph 1(d) of the Rose Order

207. This payment was part payment for the transfer of Mr Pugachev's interest in a company called Enisey Production Company, usually referred to in the documents as EPK. EPK had a licence to develop and mine the coking coal deposit in the Elegest Plateau at the Ulug Khemsky coal basin in Tuva. Tuva is a relatively remote region of central southern Russia bordering Mongolia. The Elegest Plateau contains approximately one billion tonnes of coking coal and is one of the largest coking coal deposits in the world.

208. According to the second witness statement of Mr Michaelson served on behalf of Mr Pugachev in September 2014, Mr Pugachev acquired EPK in the summer of 2003. In 2009 the Ministry for the Environment in Russia granted EPK a full licence to develop the coal deposit until May 2020.

209. In circumstances which were described by Mr Michaelson in his second witness statement on behalf of Mr Pugachev (made on 29 September 2014) Mr Pugachev decided to sell his interest in EPK in about 2007. Throughout 2011 Mr Pugachev made efforts to find a buyer who was a Russian national. A Mr Igor Altushkin emerged as a potential purchaser. A sale was negotiated between Mr Pugachev and Mr Altushkin and concluded in Paris on 9 June 2011. Mr Altushkin set up Devecom Ventures Ltd ('Devecom') as an SPV for this transaction. Basterre Business Corporation ('Basterre') was the counterparty seller of the interest in EPK. The $146.7 million referred to in this allegation was the first tranche of the payment for this interest. Mr Pugachev's evidence is that he never received the remaining consideration that Mr Altushkin was supposed to pay him.

210. In his 11th affidavit (21 August 2015) Mr Pugachev says that to the best of his recollection and after consulting his son Victor, he can confirm that $150 million was paid to Basterre and paid into an account in Switzerland. He says:

> "48. As I explain in paragraph 51 below, due to pressure from President Putin to dispose of my interest in EPK and to do so to a Russian businessman and/or entity, at a meeting in Monaco in May 2011, I agreed with Mr. Igor Altoushkin to sell my interest in EPK. I asked my son Victor to effectively hold in trust my interest in EPK through Basterre. My son and I reached an oral agreement where Victor would act as the director and owner of Basterre and he would be entitled to utilise the funds for third party advisors to conclude the agreement with Mr. Altoushkin and the balance of the funds were his to use as he saw fit as compensation for assisting me. I was to be entitled to the rest of the benefit of the sale proceeds."

211. He repeats this information in his 12th affidavit. He adds that Victor has told him that $3.3 million was spent by Basterre on payment of legal and other professional fees (hence the allegation relates to $146.7 million rather than the whole $150 million). As to the rest he says:

> "75. … Viktor continues to decline to provide me with any detail for the remaining balance of $70 million that he controlled and disposed of at his sole discretion in accordance with our agreement (representing the difference between the $150 million instalment and the said $80 million). As explained in my 11th affidavit and made clear in my investment treaty claim, Viktor was holding in trust the shares of Basterre on my behalf and he was paid these sums for doing so."

212. Mr Pugachev's evidence when he was cross examined before me was very different when he was asked about EPK in the context of allegation E1 which I discuss later. He denied that he had any interest in EPK, maintaining all along that the company belonged to his son. He said that Mr Michaelson's evidence on his behalf had been untrue – the company belonged to Victor at the time it was sold and he said he could offer no comments on the statements of Mr Michaelson. As to what happened to the $150 million he said that it was all Victor's money and Victor had declined to tell him what happened to the money.

213. On this point I regard Mr Pugachev's evidence given on his behalf by Mr Michaelson and in the 11th and 12th affidavits as more reliable than Mr Pugachev's blanket denial of any interest in EPK. I am fully satisfied that EPK was owned beneficially by Mr Pugachev at the time it was sold by Basterre to Devecom and that Victor's involvement was as a nominee for Mr Pugachev.

214. There is in my judgment an important distinction between the EPK money and the Safelight and Creative monies which makes me sure that he must know more about what happened to the money than he has been prepared to disclose even though I am not sure as regards the other sums. The reasons he put forward in his 11th affidavit (see paragraph 190 above) no longer held true in June 2011 when the EPK transaction took place. As Mr Smith put it, this payment from Devecom was the only significant monies Mr Pugachev received after he fled Russia and it is wholly implausible that he would simply have given the whole amount to Victor to spend as he saw fit.

215. I do not accept that Victor would not tell Mr Pugachev what has happened to the money that he (Victor) was holding for Mr Pugachev. Even if the relationship between him and Victor has been cool at times, there has been no suggestion in these proceedings that Victor has taken money from Mr Pugachev to which he was not entitled. He held this $150 million for Mr Pugachev and I am sure that he would say what had happened to it if asked. I therefore find that this allegation is proved to the necessary standard because either Mr Pugachev did know at the time he made his 11th and 12th affidavits what had happened to the $146.7 million or he failed to make reasonable enquiries of Victor as to what happened to it.

Allegation E1: Mr Pugachev gave false evidence in respect of EPK and Basterre having no honest belief that it was true in that

(a) during his cross-examination, he said that he had no involvement with the sale of EPK to Mr Altushkin.

(b) in his fifth affidavit, he said that he disposed of his interest in EPK to Basterre Business Corporation before the sale and purchase agreement dated 9 June 2011 was signed.

(c) during his cross-examination, he said that neither he nor his companies had received any monies in connection with the sale of EPK.

216. I have already described EPK and its disposal in June 2011 to Devecom and Mr Altushkin. As well as allegation D3 discussed above, the Applicants allege that Mr Pugachev lied in his evidence to Hildyard J during his cross-examination on 31 March 2015. In considering this, and the other allegations in this category I have borne in mind that Mr Pugachev was cross-examined over several days and that he was asked questions about many different companies, payments, projects and transactions some of which occurred several years ago. I also bear in mind that at its height, his business empire probably involved hundreds if not thousands of different companies and he had very many people working for him dealing with the nuts and bolts of these deals. The Applicants have referred me to the particular parts of the evidence before Hildyard J on which they rely. But I have looked at Mr Pugachev's answers in context to make sure that the Applicants are not placing undue emphasis on an answer where the question may have been unclear, or where he may have misspoken about the name of a company or may have dismissed something out of hand in a moment of annoyance.

217. Mr Pugachev's first line of defence is that Hildyard J made a finding that Mr Pugachev had not given false evidence when he was determining the question of indemnity costs and that I should not seek to go behind that finding. In his judgment of 12 June 2015 Hildyard said:

> "33. In the particular circumstances, the Claimants accept that to justify an order for costs on an indemnity basis they must satisfy me that the Defendant did not engage in good faith with the process of cross-examination and was not merely evasive but actually intending to obstruct justice, the paradigm in a sense being by giving answers demonstrated to be plainly and obviously false.
>
> 34. The hurdle is a high one. The court is likely to be reluctant to reach a conclusion of bad faith and dishonesty in the course of what is meant to be an exploratory rather than adjudicatory process, and at an interlocutory stage, except on the clearest evidence."

218. Hildyard J went on to consider the EPK evidence given before him by Mr Pugachev and the inconsistency between that evidence and what was said on Mr Pugachev's behalf by Mr Michaelson a few months earlier.

> "87. Although my recitation of the inconsistencies and the impression given by the Defendant might earlier have suggested otherwise, and although I must accept that I have had misgivings, I do not consider the hurdle has been cleared in this case so as to justify an order for indemnity costs.

88. Put shortly, I have been left sufficiently unsure where the truth really lies to dissuade me from an indemnity order. In that context I have felt it important to distinguish between appearances exacerbated by the Defendant's habit of testing the boundaries of the court's patience, and his resistance to any form of active co-operation on the basis that he contends that his assets have been unlawfully expropriated and he is now being mercilessly hounded by the Claimants, and the Russian State itself, and on the other hand, whether he has actually sought to mislead and been dishonest.

89. Further, I do not think I can simply reject the general themes advanced by the Defendant, including to the effect that (a) he had a huge empire and he was unaware of the individual components and details of it; (b) he had relied on others to complete his asset disclosure, no doubt at huge expense; (c) some things which may prima facie appear to suggest evasiveness in reality reflect other pressures, including a wish not to reveal more than is strictly required for fear of the Russian State itself and what it may do with any information provided; (d) the realities of political power in the Russian Federation, where (for example) a Presidential call to prevent the sale of an asset may have to be complied with by exerting any means of influence, even in the absence of any actual ownership or control (as, according to the Defendant, was the case as regards EPK), thus confusing ownership and influence; (e) it is necessary to take into account the very considerable pressures upon the Defendant, the inherent difficulties of assimilating the copious material provided, and his (he would say understandable) reluctance not to commit himself unless taken to any documentary evidence thought to be relevant, and what may be genuine practical difficulties in recalling and providing details of assets (many of which he is adamant are now in the ownership or control of the Russian State).

90. As indicated above, I would give the apparently damning EPK issue as an example of the difficulties of being sure where the truth lies. In paragraph [53] above I have provided my résumé of what the Defendant told me in that regard, and further recitation of the evidence he actually gave may illustrate the difficulties which, according to his evidence, someone in his position, having had a great deal of money and having enjoyed a position of authority within the Russian Federation, is in, if circumstances arise such that they fall out with the government in that State.

91. It is difficult to decide, even with the benefit of watching the Defendant in the witness-box, whether there is substance in the admittedly rather general description given by the Defendant as to the reasons for his evidence in his witness

> statement through his solicitor departing so radically from his evidence in the witness-box, but it seems to me that it is wrong to make a finding of bad faith and dishonesty where there remain such doubts, and especially so in the context of circumstances of such complexity.
>
> 92. In short, I consider, as I have said, the truth of this matter and the ownership and control of EPK not to be capable of being decided definitively by me at this stage.
>
> 93. The same goes for Safelight and Sanara and the other companies who advanced or transferred monies to it, and to the issue as to whether his son or sons are in control themselves of Safelight, or whether the Defendant pulls their strings, or pulls the strings of the company directly.
>
> 94. These are matters which of course encourage curiosity and no doubt may give rise to further enquiry, but I do not consider it right to determine such facts at this stage on this evidence.
>
> 95. Further, my overall impression is that although the Defendant does not deny that he sought to protect assets that had not yet been expropriated by encouraging their transfer into trust, and has given the impression that he was able to do so because of some ownership or control of those assets, I am not in a position to determine what was or was not his relationship to those assets at this stage. The assets now are prima facie at least held on trusts which have not been shown to be shams and in respect of which, albeit belatedly, disclosure has for present purposes sufficiently been provided."

219. I do not consider that Hildyard J's judgment precludes me from making a finding of contempt in relation to allegations relating to the truthfulness of Mr Pugachev's evidence before him. The issue before him was whether to make an indemnity costs order and he decided that that was not an appropriate context in which to make the findings of dishonesty and untruthfulness that the Applicants were urging on him. I do not accept, as Mr Cherryman argued, that 'the matter is now closed as far as the present application is concerned' or that the observations of Lloyd LJ in *Ereschenko* as to the inappropriateness of an appellant court looking behind a trial judge's findings of fact are apposite here. This application for committal is the proper forum for deciding whether the statements made by Mr Pugachev to Hildyard J were untrue and if so, whether Mr Pugachev made the statements knowing that they were untrue or recklessly not caring whether they were true or false.

220. As regards parts (a) and (c) of Allegation E1, the relevant evidence is set out in Section 1 of Annex 3 to this judgment.

221. There is no doubt that Mr Pugachev was lying when he made those statements. On 20 April 2015 Mr Pugachev handed up to Hildyard J a schedule on which were set out his responses to a series of inconsistencies on which the Applicants relied including

the conflict between the passages of his evidence I have set out above and what was said by Mr Michaelson. In that response he says:

> "I repeated that a company entered into the contract and this means that Mr Altushkin's company paid that company. Claimant counsel keeps mixing people with companies. Mr Altushkin's company entered into a contract with another company and paid that company for the shares."

222. I regard that as a thoroughly disingenuous statement. Mr Smith did his best in his questions on 31 March 2015 to establish whether Mr Pugachev was drawing some nice distinction about what he did personally and what he did through companies or nominees. Mr Pugachev was insistent that he had nothing to do with the sale of EPK. He was given every opportunity to explain, once and for all, what the position was in relation to the sale of EPK, his involvement, his son's involvement, who owned what, what money was paid and what happened to that money. Instead of doing so he simply blocked any investigation of the matter by denying that it was anything to do with him.

223. In responding to this allegation before me, Mr Pugachev did not point to any passages in his cross-examination in which he explained his role in the sale of EPK– either the position as described in Mr Michaelson's witness statement which I have found is the correct version or the version that he relied on subsequently that EPK was Victor's company and Victor received and spent the $150 million. On the substance of the allegation, Mr Pugachev's defence seems to rest first on his disavowal of Mr Michaelson's evidence given on his behalf in September 2014. Mr Pugachev argues that it is for the Bank to establish that Mr Michaelson's evidence was based on what Mr Pugachev told Mr Michaelson. Given that Mr Pugachev has not waived the privilege that exists between the discussions between Mr Pugachev and his then solicitors, that seems to me an impossible task for the Applicants to perform. Solicitors often provide affidavits and witness statements on behalf of their clients in court proceedings. Mr Michaelson states in the opening paragraphs of his witness statement that he has conduct of the matter on behalf of Mr Pugachev; that he was duly authorised to make the witness statement in support of Mr Pugachev's application to discharge the Ex Parte Freezing Order. He states:

> "The facts to which reference is made in this witness statement are either within my own knowledge and are true or have been obtained from information provided to me by Mr Pugachev and are true to the best of my knowledge, information and belief".

224. A party cannot use the fact that his solicitor made the witness statement on which he relies before the court as a pretext for then denying any responsibility for a conflict between that evidence and evidence given directly at a later stage.

225. I note also that Mr Michaelson criticises the evidence produced by Mr Roberts for the Bank on the basis that Mr Roberts refers to the DIA as knowing or believing or suspecting things without identifying the individual sources of information. He says

> "It will be submitted on behalf of Mr Pugachev that no weight can properly be attached to contentious statements which no

> individual at "*The DIA*" is prepared to acknowledge publicly as his or her own or where otherwise the original source of the allegation cannot be ascertained or challenged"

226. This shows that Mr Pugachev and his advisers were well aware, at the time Mr Michaelson's witness statement was made, of the importance of attributing an accurate source to all the information included in a solicitor's statement. Mr Michaelson was not involved in the EPK transaction himself and Mr Pugachev has not suggested any alternative source from which Mr Michaelson inexplicably drew incorrect material for his statement. I reject Mr Pugachev's contention that the court cannot safely assume that what Mr Michaelson states is in fact derived from what Mr Pugachev told him. If Mr Michaelson had badly misunderstood what he had been told or had included material in his witness statement which was wrong, Mr Pugachev had had plenty of opportunity to correct that before the cross-examination.

227. Mr Cherryman also complains that Mr Pugachev was not taken to Mr Michaelson's evidence during the cross examination before Hildyard J in respect of this point, though he was taken to that evidence on other occasions. However, Mr Pugachev was not saying to Hildyard J that he did not remember the transaction. He clearly knew precisely which transaction was being discussed and his evidence was emphatic that he had no part in the deal. That evidence was untrue.

228. As to whether Mr Pugachev knew at the date of the hearing that it was untrue I am satisfied that he did. Mr Michaelson' witness statement was made only a few months before the cross-examination took place. In his 11th affidavit (21 August 2015) Mr Pugachev referred to Mr Michaelson's second witness statement and that he had reviewed it: see footnote 3 to paragraph 24 in which he completes what Mr Michaelson had said about a different matter.

229. Further, Mr Pugachev has said that the EPK deal forms part of his BIT claim against the Russian state. He has been actively involved in the preparation of that claim so the EPK transaction must have been in his mind over this period. This is not a situation where an applicant is trying to trip a defendant up over some inconsistent statement made a long time before that he may have forgotten.

230. As far as the money is concerned, he said that neither he nor his companies received a single kopek from Mr Altushkin. We know now that Devecom paid $150 million as the first instalment of the sale of EPK. Again, given the forcefulness of his answers to Mr Smith's attempt to probe whether he *or any of his companies* received the money, it is not open to Mr Pugachev now to claim that his answers were strictly truthful because it was a company that received the money. If his current version of events – that EPK was Victor's interest and Victor received the money – were true, he could have explained that in answer to the questions he was asked.

231. I therefore find that parts (a) and (c) of Allegation E1 are proved. I consider this is a serious contempt. The purpose of the cross-examination was, as Mr Pugachev well knew, to try to find out what had happened to the $150 million paid by Devecom to Basterre. Mr Pugachev's untruthful answers were aimed at blocking any such discussion by simply denying his involvement in the deal.

232. As to part (b) of Allegation E1, I can deal with this more shortly as I am not convinced there is a real point here of any importance. It may well be that Mr Pugachev's interests in EPK were transferred to Basterre prior to the June agreement with Mr Altushkin in anticipation of the sale of the interest. That does not appear to me to be material.

Allegation E2: Mr Pugachev gave false evidence in respect of Safelight and Oreon, having no honest belief that it was true in that during his cross- examination he said that:
~~(a) he did not recognise the names of Safelight Enterprises Ltd and Oreon Ltd~~
(b) he did not know whether he had ever had an interest in either of those companies
(c) he did not know anything about the transfers of about $713 million by JSC Sanara and Plescheevo CJSC to an account in the name of Safelight Enterprises Ltd

233. I have already described the transfer of monies to Safelight in the context of Allegation D1; the evidence given about the background to that transfer in Mr Michaelson's second witness statement and what Mr Pugachev said about the money in his 11th and 12th affidavits. The first allegation, struck through above, was not pursued by the Applicants.

234. The relevant passages from Mr Pugachev's cross-examination before Hildyard J on 23 March 2015 are set out in section 2 of Annex 3 to this judgment. Those passages on which the Applicants rely come shortly after Mr Pugachev was asked about the project that Plescheevo was involved in, the building of the luxury village. He said (transcript pages 29 – 30) that he did recall the project, he was engaged in it and the village was to be constructed on his land – or rather land that was owned by 'a huge number of companies'. The land which he possessed was, he said, in the most exclusive area of the Russian Federation and the approximate value of the land lots was 'running to the tune of US$10 – 12 billion'.

235. The Applicants allege that it is inconceivable that Mr Pugachev would have forgotten that a company beneficially owned by him received sums totalling $712 million or that he has forgotten where the bulk of the monies had gone. They also point to the fact that in his 11th and 12th affidavits Mr Pugachev was able to give more information about the monies paid to Safelight and confirms what Mr Michaelson said. Mr Pugachev also says in his 11th affidavit that having made further enquiries he can provide some information about the various payments were made that I have already described in relation to Allegation D1.

236. I do not accept that there is sufficient evidence of deliberate untruthfulness here. It is entirely plausible that, as Mr Pugachev said in his cross-examination, he was able to remember the nature of the projects he was involved in and their approximate value but that he could not recall – and may never have known – the names of the particular companies involved, their ownership structure and the route that the money took from the VTB Bank to the spending on the projects. This is a different situation from the EPK allegation first because the events were some years earlier and before his fall from favour and also because Mr Pugachev was not denying all connection with the projects. His evidence before Hildyard J was not blatantly in conflict with the evidence that Mr Michaelson had given on his behalf earlier. The fact that he was able to give more detailed information in his later affidavits, clearly in my view drawn by

his advisers from bank records, does not mean that he was being untruthful at the time of his cross-examination.

237. I therefore dismiss Allegation E2.

Allegation E3: Mr Pugachev gave false evidence in respect of Creative, having no honest belief that it was true when he said that

(a) he did not recognise the name Creative

(b) he did not know anything about the transfer of about RUR 3.4 billion which was transferred by Creative into an account in his name.

238. I have referred to Creative and the payment to it in relation to Allegation D2. The passages in Mr Pugachev's cross-examination before Hildyard J on which the Applicants rely are set out in Section 3 of Annex 3 to this judgment. The Applicants submit that it is not possible that Mr Pugachev had forgotten the name of Creative and the transfer of the RUR 3.4 billion (equivalent to about $106 million) because Mr Michaelson had dealt with this in his second witness statement in September 2014. Mr Michaelson says in paragraph 193 of that statement:

> "193. A dividend was paid out by Creative Associated Services Ltd ("Creative") on 29 December 2008 to Mr Pugachev, its sole shareholder at the time. Although Creative had no substantial business activity of its own, it was used as a holding company for a number of valuable assets. The dividend declared by Creative was derived from the proceeds of the sale of its 99% shareholding in JSC Suprim ("Suprim") to Lassiter Finance Inc ("Lassiter") pursuant to a sale and purchase agreement dated 14 November 2008 (pages 1735-1737). At that time, Suprim owned 13,097 (or 13.7839%) of the shares in OJSC "OKB Sukhogo", one of the companies in the Sukhoi group, the major aircraft manufacturer. The shares in Suprim were purchased by Lassiter for RUB 3.396 billion (US$124 million). Mr Pugachev personally conducted the negotiations for the sale with representatives of the Russian state arms trading company, Rosoboronexport, which ultimately provided the purchase monies. He was not aware of the mechanics through which the transaction was carried into effect. Given that Creative was merely a holding company and did not carry out any commercial activities, it paid the sale proceeds to Mr Pugachev as a dividend."

239. I do not find it surprising that Mr Pugachev did not recollect the name Creative or that he did not remember the particular transaction concerned here. Although I accept that he must have provided this information to Mr Michaelson for inclusion in Mr Michaelson's second witness statement, I am not convinced to the necessary standard that he must still have had that particular company in mind at the end of March. He did not deny the receipt of the dividend and in fact explained that he received several very large dividends that were reported on by the media because of his position as a Russian senator. His evidence can be read as saying that he did not remember this

particular transaction and this particular company but as accepting it may well have taken place. His evidence read as a whole is plausible on this point.

240. I therefore dismiss allegation E3.

Allegation E4: Mr Pugachev gave false evidence in respect of his impecuniosity during his submissions to Hildyard J during his cross-examination and as confirmed in his fifth affidavit when he had no honest belief that it was true.

241. At the hearing before Hildyard J on 2 April 2015 Mr Pugachev applied for the return of his French passport which had been delivered up to Hogan Lovells as I have described in relation to Allegation A1. He based his application on the need to visit his bank HSBC in France to set up an online banking facility to be able to access the money in that account to cover his living expenses and pay his lawyers. He submitted that this was the only money he had available to him to pay these expenses. The evidence that the Applicants rely on is set out in Section 4 of Annex 3 to this judgment. In summary Mr Pugachev pressed his case that he had no money to pay basic living expenses and his legal fees of €6000 and was in danger of losing his legal representation because of that.

242. The Applicants say that we now know that this was completely false because at this time his legal and other expenses were being financed by the money that had been moved into the sterling and euro accounts of Luxury Consulting from the proceeds of the sale of the Hediard business: see Allegation B3 above. Ms Kristof, the sole director of Luxury Consulting, has explained that €3,750,000 was transferred into Luxury Consulting's euro account on 11 December 2014 on behalf of Luxury Investments and the sum of £994,416 was deposited also on behalf of Luxury Investments on 12 December 2014, being proceeds from the Hediard sale.

243. Mr Cherryman's submissions in response to this allegation broadly are that Mr Pugachev may have been referring on 2 April 2015 to his own financial situation absent the Luxury Consulting funds or that he may not have known precisely the amount of those funds. Those submissions are however beside the point. The point is that the whole basis for Mr Pugachev's application to Hildyard J for the return of his passport was deliberately untruthful because he was not dependent on the money in his HSBC bank account to pay his expenses and legal fees. He must have known this since he must have (at least) known about the transfer of the Hediard monies to Luxury Consulting and he must have given instructions that those monies were to be used to pay his expenses. Indeed in his 12th affidavit Mr Pugachev refers to his application to unblock his HSBC bank account saying (paragraph 89)

> "This was necessary as I did not have an active UK bank account, and I was relying on Luxury Consulting to pay my living expenses through the repayment of my loan to it. However, there was a limit to the sums that Luxury Consulting was able to advance to me, and as I reside in France I naturally have expenses in France that require payment in France. It was a matter of great importance that I was able to go to France to withdraw money in order to continue funding my living expenses in France and in the UK due to the extended cross-examination"

244. As I have noted, there was no reference at the hearing of 2 April 2015 to Luxury Consulting and to the substantial amounts of money that had become available to pay Mr Pugachev's future expenses.

245. I am satisfied to the necessary standard that Allegation E4 is proved.

Conclusion

246. I therefore find that Mr Pugachev is in breach of the orders of the court in respect of

Allegation A1: he failed to deliver up his French passport in breach of paragraph 1(2) of the Ex Parte Passport Order

Allegation A2: he left the jurisdiction in breach of the court-imposed travel restriction in paragraph 4(a) of the Hildyard Order

Allegation A3: he failed to identify and deliver up further travel documents in breach of paragraph 1(2) of the Ex Parte Passport Order, paragraph 1(2) of the Return Date Passport Order and paragraph 3(d) of the Rose Order

Allegation B1: he procured and/or permitted the transfer of shares in LLC Petrovka-Rent held by Limebury Investments Ltd to another company in breach of paragraphs 2(1), 2(2), 2(3) and/or 2(4) of the Return Date Freezing Order

Allegation B3: he dealt with the proceeds of sale of Financiere Hediard in breach of paragraphs 2(1), 2(2), 2(3) and/or 2(4) of the Return Date Freezing Order

Allegation B4: he sold two motor cars in breach of paragraphs 2(1), 2(2) and/or 2(3) of the Return Date Freezing Order

Allegation B5: he disposed of part of the proceeds of any recoveries from his Bilateral Investment Treaty arbitration claim in breach of paragraphs 2(1), 2(2) and/or 2(3) of the Return Date Freezing Order

Allegation C1: he failed to deliver up mobile devices, namely an iPad and a mobile phone in breach of paragraph 19 of the Ex Parte Search Order and/or paragraph 4 of the Search Protocol Order

Allegation C2: he failed to provide passwords to email accounts in breach of paragraph 20(1) of the Ex Parte Search Order and/or paragraph 1 of the Return Date Search Order

Allegation D3: he failed to set out to the best of his ability and having made all reasonable enquiries what happened to $146.7 million transferred from Devecom Ltd to Basterre Business Corporation in breach of paragraph 1(d) of the Rose Order

Allegation E1: he gave false evidence in respect of EPK and Basterre having no honest belief that it was true.

Allegation E4: he gave false evidence in respect of his impecuniosity during his submissions to Hildyard J during his cross-examination and as confirmed in his fifth affidavit when he had no honest belief that it was true.

247. I find that the following allegations have not been proved to the necessary standard:

Allegation B2: he removed or alternatively procured or permitted the removal of the Motor Vessel Victoria from the jurisdiction in breach of paragraph 2(1) and/or 2(2) of the Return Date Freezing Order

Allegation D1: he failed to set out to the best of his ability and having made all reasonable enquiries what happened to $500 million transferred to Safelight Enterprises Ltd in breach of paragraph 1(b) of the Rose Order

Allegation D2: he failed to set out to the best of his ability and having made all reasonable enquiries what happened to RUR3.4 billion which was transferred from Creative Associates Services Ltd into an account in Mr Pugachev's name in breach of paragraph 1(c) of the Rose Order

Allegation E2: he gave false evidence in respect of Safelight and Oreon, having no honest belief that it was true

Allegation E3: he gave false evidence in respect of Creative, having no honest belief that it was true

248. At the end of the hearing on 22 December 2015 I told the parties I would hand down judgment on liability only and hear further submissions on sentence in the light of my findings. Since that date, I have been notified that on 27 January 2016, Master Price made an order, on the application of King & Spalding, that they have ceased to act as solicitors for Mr Pugachev and Luxury Consulting.

Post Script

This judgment is being handed down with some redactions to comply with the restrictions imposed in earlier court orders on the disclosure of information about Mr Pugachev's living expenses and of information about the New Zealand trusts.

ANNEX 1

THE ALLEGATIONS OF CONTEMPT

Allegation A1: The Defendant failed to deliver up his French passport in breach of paragraph 1(2) of the Ex Parte Passport Order

Allegation A2: The Defendant left the jurisdiction in breach of the court-imposed travel restriction in paragraph 4(a) of the Hildyard Order

Allegation A3: The Defendant failed to identify and deliver up further travel documents in breach of paragraph 1(2) of the Ex Parte Passport Order, paragraph 1(2) of the Return Date Passport Order and paragraph 3(d) of the Rose Order

Allegation B1: The Defendant procured and/or permitted the transfer of shares in LLC Petrovka-Rent held by Limebury Investments Ltd to another company in breach of paragraphs 2(1), 2(2), 2(3) and/or 2(4) of the Return Date Freezing Order

Allegation B2: The Defendant removed or alternatively procured or permitted the removal of the Motor Vessel Victoria from the jurisdiction in breach of paragraph 2(1) and/or 2(2) of the Return Date Freezing Order

Allegation B3: the Defendant dealt with the proceeds of sale of Financiere Hediard in that he
(1) procured or permitted the transfer of €3,750,000 owed to Luxury Investments to a bank account of Luxury Consulting and thereafter procured and/or permitted payments to be made from that sum to other persons in breach of paragraphs 2(1), 2(2), 2(3) and/or 2(4) of the Return Date Freezing Order;
(2) procured or permitted the transfer of £994,416.33 owed to Luxury Investments to a bank account of Luxury Consulting and thereafter procured and/or permitted payments to be made from that sum to other persons in breach of paragraphs 2(1), 2(2), 2(3) and/or 2(4) of the Return Date Freezing Order;

Further, in so far as the Defendant contends that such payments were within the exceptions to the order in respect of living expenses, legal expenses or tax payments then in respect of each such payment the Defendant acted in breach of paragraphs 4, 5(a), 5(b), 5(c), 5(d) and/or 10 of the Living Expenses Order in making the payments without complying with the conditions imposed in those paragraphs.

Allegation B4: The Defendant sold two motor cars in breach of paragraphs 2(1), 2(2) and/or 2(3) of the Return Date Freezing Order.

Allegation B5: The Defendant disposed of part of the proceeds of any recoveries from his Bilateral Investment Treaty arbitration claim in breach of paragraphs 2(1), 2(2) and/or 2(3) of the Return Date Freezing Order

Allegation C1: The Defendant failed to deliver up mobile devices, namely an iPad and a mobile phone in breach of paragraph 19 of the Ex Parte Search Order and/or paragraph 4 of the Search Protocol Order.

Allegation C2: The Defendant failed to provide passwords to email accounts in breach of paragraph 20(1) of the Ex Parte Search Order and/or paragraph 1 of the Return Date Search Order.

Allegation D1: The Defendant failed to set out to the best of his ability and having made all reasonable enquiries what happened to $500 million transferred to Safelight Enterprises Ltd in breach of paragraph 1(b) of the Rose Order

Allegation D2: The Defendant failed to set out to the best of his ability and having made all reasonable enquiries what happened to RUR3.4 billion which was transferred from Creative Associates Services Ltd into an account in the Defendant's name in breach of paragraph 1(c) of the Rose Order

Allegation D3: The Defendant failed to set out to the best of his ability and having made all reasonable enquiries what happened to $146.7 million transferred from Devecom Ltd to Basterre Business Corporation in breach of paragraph 1(d) of the Rose Order

Allegation E1: The Defendant gave false evidence in respect of EPK and Basterre having no honest belief that it was true in that

(a) during his cross-examination, he said that he had no involvement with the sale of EPK to Mr Altushkin.

(b) in his fifth affidavit, he said that he disposed of his interest in EPK to Basterre Business Corporation before the sale and purchase agreement dated 9 June 2011 was signed.

(c) during his cross-examination, he said that neither he nor his companies had received any monies in connection with the sale of EPK.

Allegation E2: The Defendant gave false evidence in respect of Safelight and Oreon, having no honest belief that it was true in that during his cross- examination he said that:

~~(a) he did not recognise the names of Safelight Enterprises Ltd and Oreon Ltd~~

(b) he did not know whether he had ever had an interest in either of those companies

(c) he did not know anything about the transfers of about $713 million by JSC Sanara and Plescheevo CJSC to an account in the name of Safelight Enterprises Ltd.

Allegation E3: The Defendant gave false evidence in respect of Creative, having no honest belief that it was true when he said that

(a) he did not recognise the name Creative

(b) he did not know anything about the transfer of about RUR 3.4 billion which was transferred by Creative into an account in his name.

Allegation E4: The Defendant gave false evidence in respect of his impecuniosity during his submissions to Hildyard J during his cross-examination and as confirmed in his fifth affidavit when he had no honest belief that it was true.

ANNEX 2

COURT ORDERS

Order	Judge	Date of Order	Contempt allegation
Ex Parte Freezing Order	Henderson J	14 July 2014	
Return Date Freezing Order	Henderson J	29 July 2014	B1 Disposal of Petrovka Rent B2 Dealing with MV Victoria B3 Disposal of Hediard Sale Proceeds B4 Disposal of Rolls Royce and Bentley B5 Disposal of BIT proceeds to Maru Ltd
Living Expenses Order	Peter Smith J	14 August 2014	B3 alternative basis if Hediard money used for living expenses
Ex Parte Passport Order	Peter Smith J	2 March 2015	A1 Failure to deliver up French passport A3 Failure to deliver up further travel docs
Return Date Passport Order	Peter Smith J	6 March 2015	A3 Failure to deliver up further travel docs
Hildyard Order	Hildyard J	12 June 2015	A2 Departure from the jurisdiction
Ex Parte Search Order	Rose J	1 July 2015	C1 Failure to deliver up mobile phone and iPad C2 Failure to provide passwords
Return Date Search Order	Henderson J	9 July 2015	C2 Failure to provide password
Search Protocol Order	Rose J	27 July 2015	C1 Failure to give up mobile phone and iPad
Rose Order	Rose J	27 July 2015	A3 Failure to deliver up further travel documents D1 Failure to provide information about Safelight money D2 Failure to provide information about the Creative money D3 Failure to provide information about the EPK/Basterre money

ANNEX 3

Passages from transcript of Mr Pugachev's cross-examination before Hildyard J

[Much of this evidence was heard in private and has therefore been redacted from this judgment]