Neutral Citation Number: [2019] EWHC 165 (QB)

Case No: HQ17X02869

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/02/2019

Before:

MR JUSTICE FREEDMAN

- -

Between:

MICHAEL O'NEILL	**Claimant**
- and -	
AVIC INTERNATIONAL CORPORATION (UK) LTD	**Defendant**

- -
- -

The Claimant appeared in Person
Laurie Scher (instructed by **Lee Thompson**) for the **Defendant**

Hearing dates: 6, 7, 8, 9, 14 and 15 November 2018

- -

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.

.....

MR JUSTICE FREEDMAN

Mr Justice Freedman:

I Introduction

1. This case concerns an oral contract said to have been made between Mr O'Neill and Mr Lou, on behalf of Avic International Corporation (UK) Limited ("Avic UK") on 30 May 2015: see paragraph 6 of the Amended Particulars of Claim ("the PC"). There was a meeting on that date to discuss the resolution of an issue concerning a solar energy development in Rolleston-on-Dove, Staffordshire ("the Rolleston Project"). The meeting took place at the Hill Bar and Brasserie in Haverstock Hill, London NW3. There is a dispute as to what occurred at the meeting. Mr O'Neill's case is that he entered into an oral agreement with Avic UK under which he agreed to resolve the issue that Avic UK was facing ("the accreditation issue") in consideration of payment by Avic UK to him of 2% of the gross development value of the Rolleston Project. He says that it was also agreed that further projects would be undertaken by Mr O'Neill for Avic UK and other companies within the Avic group of companies on the same terms.

2. The PC do not refer to any written document evidencing the transaction, but the evidence of Mr O'Neill relies on a handwritten document said to have been prepared by him at a restaurant where he was present with Mr Lou on 30 June 2015. The document is literally one side of an envelope which Mr O'Neill says was copied and attached on to non-disclosure and non-circumvention agreements ("NDA's"). It will be necessary to refer to the NDA's and to this handwritten document in some detail later in this judgment. There is a conflict between the evidence of Mr O'Neill and Mr Lou as to whether a copy of this handwritten document was handed to Mr Lou on 30 June 2015. There is a question in any event as to whether, and if so, the extent to which the document supports Mr O'Neill's case.

3. There were only two issues in this trial as follows:

   (a) Was there an oral agreement that, if Mr O'Neill resolved the accreditation issue, he would be paid a fee of 2% of the gross development value (which Mr O'Neill says is £27,000,000)?

   (b) If so, did Mr O'Neill resolve the accreditation issue so as to become entitled to this fee?

4. Despite this focus, the trial has been wide-ranging including dealing with matters not directly relevant to the above issues. For example, there has been a considerable amount of evidence adduced by Mr O'Neill by reference to projects other than the Rolleston Project, which Mr O'Neill has said may be the subject of some other claim. Although this judgment goes beyond matters relating directly to the Rolleston Project, it is not intended to deal with every matter which has been mentioned, nor is it necessary to do so in order to decide the issues in this claim.

II Claim solely for agreed fee

5. Mr O'Neill has elected to make his claim based on an agreed fee or an agreed formula for determination of the fee: there is no alternative claim for a reasonable remuneration (whether in the nature of a quantum meruit or a contractual claim). In the Defence and in the Amended Defence, it was pleaded that although Mr O'Neill has failed to plead

an alternative case, he would at most be entitled to reasonable remuneration and that the amount claimed was manifestly excessive: see paragraphs 1(ii) and 36-39. Despite this Amended Defence dated 11 December 2017 and still being represented for a further six months, Mr O'Neill did not, at any time, seek to amend his case to plead a reasonable remuneration. During the course of a hearing on 20 September 2018, Mr O'Neill's position was summarised by the judge hearing the matter, namely Mr Justice Andrew Baker, as follows:

> "*he has confirmed to the court that…he does not intend to pursue any alternative claim for a reasonable remuneration…a quantum meruit, if he does not prove the express agreement. In his words to me just now, his case is very much that there was an agreement, he performed it, there was therefore an agreed fee due and the agreement should be honoured.*"

6. Before me, he repeated that there was no alternative case: he said about the 2% that *"that's what was agreed. I don't work for anybody on a consultancy. There's no hourly rate."* Mr O'Neill has therefore at all times declined to adopt an alternative case, and accordingly, there is no case or evidence before the Court as to the amount of a reasonable remuneration in the event that the case as to the agreed fee is not established.

III Self-represented litigant

7. At the inception of the claim, Mr O'Neill was represented by Edwin Coe solicitors. Edwin Coe sent a letter before action on 6 July 2017 and issued a claim on his behalf against Avic UK and Avic International Holding Corporation ("Avic China"). By amendment, on 3 November 2017, Avic China was removed as a defendant and the claim is against Avic UK alone. Avic China is a state-owned enterprise and one of the largest corporations in China. Avic UK is wholly owned by Avic China. During the events in question, Avic UK employed very few persons. Since 20 June 2018, Mr O'Neill has been acting in person.

8. I have borne in mind, throughout the trial and in the preparation of this judgment, the difficulty for Mr O'Neill in having to present his own case whilst at the same time giving evidence in his own case. I have sought to make allowances for this both during the trial and in coming to the assessment of the evidence. Those allowances included the following. First, it was to allow Mr O'Neill to tell the chronological story from his perspective as his opening address on the basis that this was confirmed on oath at the start of his evidence. This was important because of the witness statement of Mr O'Neill comprising 58 pages and his skeleton argument of a further 56 pages which did not tell the story of his case in a way which was easy to follow. Second, it was to give Mr O'Neill longer time to cross-examine: the cross-examination of Mr O'Neill was within the day allocated to Avic UK: the cross-examination of the Avic UK witnesses lasted for just over 3 days instead of the period of just over 2 days allocated at the start of the case. Third, Mr O'Neill was allowed to make final written submissions of 63 pages exceeding the maximum previously allowed of 40 pages.

9. In addition to the foregoing, on Monday morning 12 November 2018, taking into account Mr O'Neill's position, I circulated a note as to what I would find helpful in a closing, emphasising the need to comment on the evidence rather than to give new evidence.

10. Despite giving some latitude to Mr O'Neill, he was told that the Court was not advising him, and that he had to present his own case. In coming to the decision which I have done, I have made allowances for the difficulties faced by Mr O'Neill as a self-represented litigant, particularly as regards cross-examination and the preparation of written submissions which pose difficulties in a hard-fought case even for people more experienced in litigation than Mr O'Neill.

IV The structure of the Judgment

11. I shall first consider the history of the matter. Then I shall consider the evidence of each of the witnesses. I shall then make findings about the evidence and in particular about the critical meetings of 30 May and 30 June 2018. I shall then make my decision on the issues between the parties.

V The history

(a) First contact

12. It is common ground that Mr O'Neill is a businessman and entrepreneur. He said that he had a couple of degrees and that he now majors in finance and banking. He said that he has spent a lot of time at Land Securities, and for the last 20 years he has been independent. He has special purpose vehicles mainly focussing on property investment in the commercial sphere. He said that he deals with mergers and acquisitions "between the 500 to 1 billion mark on certain companies that we show an interest in and that we seek to acquire…." [T1/29/5 – T1/30/11].

13. He had known Mr Lou for several years (there was an immaterial difference as to how many years it was). Over the years, Mr O'Neill had put some business proposals to Mr Lou, but nothing had been pursued.

14. On 21 May 2015, Mr Lou and Mr O'Neill met in a coffee shop, and Mr Lou told him about a problem as regards Rolleston. He referred Mr O'Neill to a letter of 13 May 2015. The letter was signed by Mr Lou. Mr O'Neill submits that the letter was on notepaper of Avic China because at the top of the letter appears the words 'Avic Intl' with Chinese writing, and since the words 'Managing Director – Avic International' appear at the end of the letter. He places emphasis on the reference throughout the letter to Avic as a term of art referring to Avic International and to its being a major state-owned enterprise in China.

15. Despite this, I am satisfied that the letter is that of Avic UK because it contains at the bottom of each page the full name of Avic International (UK) Limited, its address in Chalk Farm, London and its registered number in England and Wales. The face of the document shows that it is part of the Avic International group. This conclusion is not altered by the reference to Avic International in the first line of the letter.

16. The letter which was sent to Dominic Jermey of UK Trade and Investment refers to how Avic UK acquired the rights to construct an 18MW Solar PV farm project in Rolleston. It refers to how it successfully funded, constructed, completed and fully commissioned the project by 31 March 2015 in compliance with the RO order for accreditation under the 1.4 RO scheme. It then referred to an issue about accreditation due to the failure to complete the form online on time: there was a delay of a few hours. It was contended in the fourth paragraph of the letter that this non-accreditation *"will*

cause a scandal in China and may even have a negative impact on relations between China and the UK, especially in the UK Energy Market. Such a scandal would create…significant shock waves through the Chinese investment market and may prevent many billions of pounds being invested from China into the UK." The letter contains other statements about how large is the potential Avic business and how the decision not to grant accreditation *"will not be received well in Beijing and may impact China's interest in future major investment in the UK."*

17. A particular paragraph of the letter which has been emphasised by Mr O'Neill is as follows:

> "*If the site is not accredited under the RO scheme then the loss to the project is estimated at £27m over the life of the project. This is an extremely high and disproportionate penalty for an issue caused by only entering accurate and reliable data, which resulted in the application form being submitted a few hours late.*"

18. A letter in the same terms was sent to Dermot Nolan of the Office for Gas and Energy Markets ("OFGEM") and to Stephen Lovegrove, the Permanent Secretary to the Department for Energy and Climate Change. By a letter dated 19 May 2015, Ms Anna Moule on behalf of OFGEM wrote a letter stating that its preliminary view was that it had no discretion that could be exercised and that there was therefore an obligation not to grant accreditation due to the failure to submit the application by the closing date of 31 March 2015.

19. By an email of 21 May 2015 from Michael Spencer of Pinsent Masons, solicitors, to Mr Lou and his wife Ms Li Fan, it was stated that *"this is a very difficult case for AVIC and the outcome does not look favourable."*. There was then a strategy set out both for seeking to get OFGEM to change its view by correspondence and for a judicial review application, all coming to a total estimated sum of £210,000-£240,000.

20. The letter was drafted by Pinsent Masons who had been retained by Avic UK to deal with the accreditation issue. It referred to a discretion which OFGEM had to enable the accreditation to be submitted, and asked the addressee to raise the issue with Dermot Nolan at OFGEM and Stephen Lovegrove at Department of Energy and Climate Change, in order to appreciate the wider opportunity and apply the discretion.

(b) Contact of Mr O'Neill with Mr Byatt

21. In the meantime, contact was made between Mr Lou and Mr O'Neill on 21 May 2015. On the same day, there was an email sent from Mr O'Neill to Mr Byatt on the same date at 09.42. The email referred to a conversation which he had just had with Mr Byatt referring to *"a very serious situation with a company I am directly engaged with"*. He said that if Mr Byatt and he could find a way of resolving the issue that would be suitable to the UK government and its agents, it may ultimately involve billions of pounds of investment. The email contains the name 'XXX' as the name of the other Government, which was intended to mean China. Mr O'Neill said that *"I have their full and utmost authority to deal with this matter…"* He referred in oblique terms to a mistake which *"we admit we have made"*. It involved a "*huge governmental position*

on our part (my side)" that it needed the guidance of Mr Byatt as to how to resolve it bearing mind the excellent relations that the two countries enjoyed at present. He looked to Mr Byatt both for his commercial and banking mindset and his knowledge about government and *"how crucial governmental and related investment relationships are."*

22. It is difficult to see how Mr O'Neill could claim in this email of 21 May 2015 to have "*full and utmost authority to deal with this matter*". On Avic's case, it was never true – and even on Mr O'Neill's pleaded case, his "full" authority commenced on 30 May 2015. When this point was put in cross examination, Mr O'Neill's response was "*You're having a negotiation here… don't be silly*", and when it was suggested that he had lied, the response was "*Of course I didn't lie to him. How dare you say that? Don't ever say that again.*" [T1/107/1-2]. These were unsatisfactory responses which do not provide a basis for the assertion made by Mr O'Neill to Mr Byatt about his authority.

23. The email and the subsequent assertions of Mr O'Neill are to the effect that Mr O'Neill was seeking the assistance of Mr Byatt as an arm of the British Government. Mr Byatt's evidence is that he expressly and emphatically told Mr O'Neill, early on in their conversations, that any help he could provide would be in a private capacity [T4/28/19-25, T4/67/8-13]. This seemed surprising, at first, that Mr Byatt was able to consult alongside his part government role. His ability to do so was understood at the time by Mr McNab who stated, at paragraph 13 of his witness statement, that Mr Byatt was clear from the outset that he was working on the project in his private capacity as a consultant. Later in his witness statement, he added Mr Byatt's invoice to Simmons & Simmons' invoice treating it as a disbursement (paragraph 41 and following).

24. There was a more detailed email sent by Mr O'Neill to Mr Byatt on 23 May 2015. It mentioned the Rolleston project and the mistake in filing accreditation on time. It stated that the Chinese Embassy and Lord Sassoon had been involved, and sought to use Mr Byatt's knowledge of government and particularly his *"strategic position in the Cabinet Office and your full engagement in the success of the Chinese/British investor relations and all that goes along with such strong economic and political understanding"*. It was thought that the problem could be resolved so as not to compromise relations between the UK and China *"which ultimately may involve billions of pounds into the UK."* Much of the rest of the email refers to the nature of the mistake in respect of accreditation, but then refers to the need to resolve the matter discreetly as part of *"a much larger situation…close to the hearts of both the British and Chinese Government."* He sought to resolve the matter *"effectively government to government*" and *"then discreetly direct your agents/departments as to how best to achieve the desired result."* He says that if the same concerned a British company in China *"we would, of course, seek to resolve such in the best possible manner…for the greater good of the overall relationship."*

25. It appears from a further email of Mr O'Neill to Mr Byatt dated 26 May 2015 that Mr Byatt asked various technical questions to which Mr O'Neill responded, and he further stated that *"any legal costs or associated costs that you may incur will be met by Avic International."* The invoice was to be submitted to Mr Lou, described as *"the UK Managing Director."* The full address of Avic UK then appeared.

26. Mr Byatt does not appear to have responded in writing. In particular, there is no statement in writing from him to make clear that he is not acting on behalf of the Cabinet

Office or that he is unable to have a political role government to government or the like. Nor does he set out the capacity in which he is to act on the basis on which he intends to charge. Mr Byatt says that he thought at the time that it would be difficult to overcome the problem and that *"a pure legal challenge to the legitimacy of OFGEM's preliminary view not to accredit would be unlikely to succeed."* (paragraph 9 of his witness statement).

27. There is a conflict of evidence. Mr Byatt says that he recalls explicitly making it clear to Mr O'Neill that he would be acting in his private capacity as a consultant and not on behalf of the Cabinet Office. He was in his car at the time: he does not recall exactly when it was, but it was before the introduction to Mr McNab. He also says that he recalls that the Cabinet Office could not intervene with OFGEM in the way suggested. His witness statement (paragraph 14) says that OFGEM is an independent body and any such interference would have probably had the opposite effect. Orally, he said as regards the question whether *"the Cabinet Office could ring up OFGEM and ask them to exercise their discretion"* that *"I said that that would be an approach which would not work for the reason that OFGEM was an independent body"* [T4/9/4-6 and 10-12, and he said much the same at T4/14/5-9]. Mr Byatt denies that he was acting on behalf of the Government or the Cabinet Office.

28. Mr O'Neill said in his opening statement on the first day of the trial that the first thing which Mr Byatt said upon receipt of the email was *"we cannot be seen to have government interfering in an aspect of an independent government body that are already going along a certain route"* [T1/37/14-17]. Mr Byatt provided to him his private AOL.com email address. Mr O'Neill repeatedly said that he contacted Mr Byatt at the Cabinet Office, but that was in fact a mobile telephone number which appeared on a card which Mr O'Neill had received at a conference. Mr Byatt's evidence is that he received the first call at his home on his mobile.

29. Despite this, Mr O'Neill's evidence is that when he was talking to Mr Byatt, he was dealing with a government to government matter and that Mr Byatt was involving his boss in the matter, which Mr Byatt denies. Mr Byatt said that he was acting in a private capacity, but Mr O'Neill fundamentally takes issue with this. By involving Mr Byatt, Mr O'Neill believed that he was involving the Cabinet Office and Mr Byatt said and did nothing to show that this was not the case. According to Mr O'Neill, Mr Byatt stated that he would do the 'magic'. Mr O'Neill did not know what that involved, but it was to follow the government to government approach which Mr O'Neill had in mind. According to Mr O'Neill, this incepted a twin pronged strategy. First, there was the legal route which had a certain prospect of success to attempt to cause OFGEM to alter its discretion. Secondly, and behind the scenes, there was a government to government approach to be spearheaded by Mr Byatt of the Cabinet Office. The latter would be done independently of the legal route so as greatly to increase the chance of a successful resolution of the accreditation problem. This political solution could then be the true solution, whereas to others, it would appear to have been engineered by the lawyers.

30. In view of concern about Mr Byatt's ability to accept a private consultancy, I enquired whether it might be possible to obtain a copy of the contract of Mr Byatt with the Cabinet Office. The solicitors for Avic sought this from Mr Byatt who co-operated with the process. He was concerned that it would be misused by Mr O'Neill, but stated that he would co-operate with any order of the Court. An order was made against the parties prohibiting the use of the document pursuant to CPR 31.22(2) other than for the

purpose of these proceedings. The contract between the Cabinet Office and Mr Byatt confirms that it was a part-time engagement for 2 days per week on a daily fee. There was a provision about conflicts of interest regarding personal or business interests, which may or may not be perceived to influence his judgments, and it also required information to be provided of any new appointment which might impugn his duties. He also stated in a letter dated 13 November 2018 to the Court and shown to the parties that his role in the Cabinet Office was a commercial and not a political role.

(c) The involvement of Mr McNab and working the "magic" elsewhere

31. Mr Byatt says that he thought that Mr McNab of Simmons & Simmons would be the best person to assist with the issue, having worked with him previously and having had a success in an OFGEM matter working with Monica Carss-Frisk QC. Mr McNab was willing to assist, and Mr Byatt passed this on to Mr O'Neill. He introduced Mr McNab to Mr O'Neill with a recommendation that the services of Pinsent Masons be dispensed with and that Simmons & Simmons should take their place. Mr Byatt says that he retained involvement following the instruction of the new lawyers, he followed the progress of the matter and he attended various meetings, but he did not meet or have direct contact with anyone from Avic other than Mr O'Neill.

32. In cross-examination, Mr O'Neill referred repeatedly to an expression which he says he had heard from Mr McNab about doing the 'magic'. Thus, what would occur would be that a legal approach would make a request for further time to make submissions to OFGEM, and in parallel with that discussions would take place on the inside to secure the extension. Since the situation was critical, Mr O'Neill said that he used every channel to procure the result [T1/140/5 – T1/141/6]. He said that the 'magic' started from the day that he made contact with the UK Government [T1/152/20-25]. He said that the essence of the deal was that the UK Government at his request wanted to repair the damage to AVIC International (as used by him being a reference to Avic China). This was because billions of pounds of investment were at stake and it was a sovereign-to-sovereign matter. He said the following:

> *"Essentially the position was that the essence of the deal was that the UK Government, at my request, wanted to repair the damage to AVIC International because billions of pounds of investment were at stake and it was a sovereign-to-sovereign matter and it involved the life and death of Mr Lou. So, it couldn't be any more important if you had tried and everybody must try their best through which ever channel they could think of to make this work. At same time, because OFGEM was independent, we then still had to go through the route of giving them an opportunity, legally, to adjust their thinking, which hitherto had been put to them by AVIC International and had failed and hitherto had been put to them, I think, by Pinsent Masons, who also knew that it was probably likely to continue to fail, even at court, and even UKTI said it was continuing to fail. So even UKTI could not do anything about this. So we went right into the heart of government, above UKTI, above the department of Energy, and tried to solve this problem which, as you can see from the result, we did."* T1/154/22-T1/155/18].

33. Mr O'Neill then said that it became a political equation and not a legal matter. The two had to be blended together because OFGEM was an independent body. The way in which it was facilitated was that Mr Byatt and his boss had entered into an agreement with Mr O'Neill that *"we would invest £150 million if Rolleston was solved"*. He then said:

> *"How they then dealt with that inside or beyond Duncan's boss is something for them that I cannot comment on, but it's political. As Duncan has indicated, or actually stated in his witness statement, that's a political matter and they were not going to involve me in their political --you know, this is government. I'm not allowed inside government."* [T1/157/21- T1/158/5].

34. In short, Mr O'Neill's evidence is that by involving Mr Byatt, he was involving government to provide a political solution, but that he did not know how it worked on the inside because he was not allowed inside government.

35. Mr O'Neill described (in chief) a conversation with Mr McNab where Mr McNab "*acknowledged that Duncan and I were working our magic elsewhere and he would never go into it*" [T1/86/16-18].[1] In cross-examination, Mr O'Neill was asked to tell the Court precisely what this behind the scenes '*magic'* was, in respect of OFGEM's extension of time. He initially refused to do so [T1/134/13-15], at first because there were "*Chinese nationals in the room*" [T1/134/18-21]. When pressed, Mr O'Neill referred to the "*commercial business world*" in which things have to be done "*in certain ways*" to avoid compromising "*the integrity of independent bodies in our government*" [T1/136/5-11]. He said that Mr Byatt "*dealt with that inside government and beyond that would be down to him and I probably don't want to elaborate, frankly speaking*" [T1/137/9-12]. He then offered to explain matters "*in your chambers*" – but said he would be "*compromising the government that I work with*" if he explained further [T1/137/15-17].

36. Mr O'Neill used this expression about working the 'magic' both in connection with a 14 day-extension obtained from OFGEM in June 2015 to make submissions and with the substantive decision to resolve the Rolleston issue. Mr O'Neill said at first that "*certain things can be done in certain ways*" [T1/154/18-20]. Then, "*we went right into the heart of government*" [T1/155/15-18], in that "*the UK Government or Mr Byatt and his boss had entered into agreement with me that we would then invest £150 million if Rolleston was solved*" [T1/157/21-23]. But when asked whether the influence of higher powers caused OFGEM to grant accreditation, his answer was in vague terms: "*we went through the front door of the government to solve this. It was a political matter, sovereign to sovereign…What happened with OFGEM is a process within that"* [T2/9/7-25].

37. When challenged about negotiations which Mr O'Neill was to have with the "*head of government in the UK*", Mr O'Neill refused to say who that person was. He then offered to "*tell my Lord in private*", then said "*This is critical. How dare you play games with*

this sort of stuff?" [T2/37/7-19], then pleaded with the Court not to make him say. He said, "*I would be finished*", and "*I don't want the Chinese to know*" [T2/40/13-23].

38. There are no contemporaneous documents produced supporting Mr O'Neill's case about behind the scenes 'magic'. Both Mr Byatt and Mr McNab denied using the expression 'magic' [T4/60/6-13 and T5/60/22- T5/61/12]. Mr McNab's evidence was *"I don't believe there was any magic being worked elsewhere that was in any way relevant to the Rolleston matter which was being dealt with as a purely regulatory matter"* [T5/80 lines 12-15]. On the contrary, throughout his evidence, he stressed that an attempt to have political interference in the matters which OFGEM was deciding would have been damaging to the process. Mr McNab said: *"My advice was there should be no other direct attempt to influence the regulators dealing with what I believed to be a straightforward regulatory and legal matter, and I believed, as I said, that any other attempts at influencing could be counterproductive"* [T5/69/19-23].

39. Mr Byatt gave evidence on this alleged agreement. Despite being challenged repeatedly by Mr O'Neill in evidence, Mr Byatt maintained that there was no agreement, and no secret plan. [T4/34/25-35/5 and T4/54/24 – T4/55/13]. He said, *"there was no political solution here at all."* [T4/13/13]. He was never asked for a political solution, and could not have provided one [T4/20/22-4]. Mr Byatt said that the matter was never discussed within the Cabinet Office [T4/29/14-15]. He said that at the time there was the possibility of future investment with Avic, but the Wroughton and Shotwick projects only came up much later, once the initial steps on the Rolleston matter had been taken [T4/47/19 – 48/14].

40. In his witness statement at paragraph 21 and repeatedly in his evidence, Mr McNab said that his strong advice from the outset to Mr O'Neill was for there to be no attempt by the Cabinet Office to put any pressure on OFGEM. He believed OFGEM to be *"fiercely independent"* and that any further input would *"elevate the risk to the project."* He believes that Mr O'Neill was fully onboard with this approach. At no time did Mr O'Neill suggest to him that he was talking to anyone else in the UK or the Chinese Government in relation to the Rolleston project (paragraph 22 of his witness statement).

(d) The work undertaken by Mr McNab

41. Mr McNab recommended that an extension be sought from OFGEM beyond 12 June 2015 in order to have a written opinion from Ms Carss-Frisk QC. Mr O'Neill agreed to this. The letter of request contained some minor amendments from Mr O'Neill, it was signed by Mr Lou and handed by Mr O'Neill to OFGEM. Mr O'Neill referred to himself as only the "delivery channel". There was a conference with Ms Carss-Frisk QC on 23 June 2015 attended by Mr McNab, his assistant Mr Silk and Mr O'Neill. The advice was that OFGEM did have a discretion which could and should be exercised in favour of accreditation. The written advice was then drafted overnight by Ms Carss-Frisk QC. A draft letter was then prepared by Mr Silk and then substantially approved by Mr O'Neill. However, the large majority of the letter was about the law, and it turned out that the only editing by Mr O'Neill had been to parts of the beginning and end of the letter, which Mr McNab characterised as *"fluff around the edges and positioning"* [T5/86/19-21].

42. By contrast, in his opening which was confirmed on oath, Mr O'Neill said that the letter was his own (T1/48-49):

> *"Simmons & Simmons didn't fail because I wrote the letter. They congratulated me on that and that was submitted on 25 June. Once I instructed Mr Lou to sign it, he signed it without reading a word.*
>
> MR JUSTICE FREEDMAN: *"Sorry, I didn't follow what you just said. You said you wrote the letter. I thought Simmons & Simmons wrote the letter?"*
>
> MR O'NEILL: "*No, I wrote the letter. It's my letter. They gave me input to it. I topped and tailed it all the way through in that process, right through into the evening, right through to midnight, to point that I was still not happy with it, so I went to their offices the following morning. I spent all morning there changing that letter and then I took with me AVIC UK's letterhead, printed the letter out, took it to Mr Lou, who signed it, and I then took it and delivered it to OFGEM.*"

43. On 26 June 2015, Mr O'Neill handed a note to the office of Mr McNab in which he stated: "…Of course it will eventually 'emerge' that it was Simmons & Simmons that guided us every step on this, and particularly you yourself and your direct colleagues. I am extremely grateful to you and Christian and Monica and hope I was not much of a burden." Mr O'Neill continued to insist that notwithstanding this, the letter of 25 June 2015 was his letter. It was put to him that he had provided a copy of the letter to Mr McNab for his records referring to it as "your letter": to this he said that that was simply a scribbled note [T2/6/15-T2/7/6].

44. I have sought to reconcile the two accounts of Mr McNab and Mr O'Neill by seeking to find that the legal aspects were written by Simmons & Simmons and the non-legal aspects by Mr O'Neill. However, that would be to misstate the position. This was primarily a legal letter. Thus, all of its content was drafted by Simmons & Simmons, but I accept that there was some editing done by Mr O'Neill, mainly in the nature of the topping and tailing of the letter. The characterisation of the letter by Mr O'Neill as his own is wrong. The characterisation of Mr McNab about Mr O'Neill's *"fluff around the edges"* is, or is far closer to, the true position.

45. In the end, it became apparent that the sum of the evidence was that Mr O'Neill's approach was that since he was instructing Simmons & Simmons (ignore for this purpose whether it was for Avic UK, as I hold to be case, or for himself, as was not the case), Mr O'Neill characterised this as making any letter instructed by him to be his letter. As he said in cross-examination [T1/148/19-25]:

> *"It's not their letter, it's my letter. They sent a draft under my instruction over to me. We have been over the word "draft" many times. It is my letter. Simmons & Simmons only exist because of me. They are only doing anything because of me. That's the end of it."*

46. In fact, the letter was written by Simmons & Simmons, and not by Mr O'Neill. Mr O'Neill instructed the letter to be written, acting on behalf of Avic UK, and not for himself. Mr O'Neill is wrong in two respects, namely (a) his part in writing the letter was minimal as set out above, and (b) Simmons & Simmons was instructed by Avic

UK acting through Mr O'Neill and not by Mr O'Neill personally. These two respects in which Mr O'Neill was wrong in his case about the letter are significant because they evidence how Mr O'Neill exaggerates his own role and the importance of his own actions as regards the letter of 25 June 2015 which informs more generally as regards the evidence and the issues in this case.

(e) Communications between Mr O'Neill and Mr Lou

(i) The meeting of 30 May 2015

47. All of the above surrounds the critical communications between Mr O'Neill and Mr Lou. It is Mr O'Neill's evidence that there were repeated calls and meetings with Mr Lou in the period between 21 May and 30 May. He described Mr Lou as being suicidal due to the problems caused by the absence of accreditation, fearing for the future of his job and being called back to China. In his opening address to the Court on the first day of the trial, Mr O'Neill referred to meeting Mr Lou in a coffee shop, referring to massive distress due to the loss of £27 million. Mr Lou said that his wife had slept on the bed for three days. She was sipping water, the curtains were drawn and she did not know what to do next. This was on top of two further losses of £1 million and £600,000. He returned with Mr Lou to the office to see the above-mentioned email from Pinsent Masons regarding the fees that would be incurred. He said that they spoke about going to Court, and that Mr Lou shouted at his wife to the effect that they would be finished if they went to Court. According to Mr O'Neill, this was the context in which he agreed to act and in which he made contact with Mr Byatt [T 1/35/13- T1/37/9].

48. Over the course of the next few days, Mr O'Neill described how he would meet Mr Lou at a pub near where they both lived. He referred to a meeting at a pub on 30 May 2015 where Mr Lou stated that he had the full authority and instruction from Mr Wu in Beijing. Mr O'Neill was given full authority of "Mr Wu and Avic International [meaning Avic China]" to do whatever it takes with the UK government to resolve the Rolleston matter. He says that there was an oral agreement that day for 2% of the £27 million and full authority to resolve the matter with the UK government [T1/40/6 – T1/41/3]. The pleaded case for Mr O'Neill (PC paragraph 17) is that he discussed with Mr Lou the issue of his fees if he were able to resolve the issue relating to the Rolleston Project for Avic UK and Avic International. He told Mr Lou that his terms were that he would be paid on the reversal of OFGEM's decision and the granting of accreditation for the Rolleston Project. He said on achieving that goal, Mr O'Neill would be paid 2% of the gross development value of the project. He said that 2% would include expenses incurred in the process such as legal fees, which Mr O'Neill would have to bear out of his 2%. Mr Lou said that *'this is agreed'* and *'money is no problem for Avic International.'* Mr Lou said that Mr O'Neill could do *'whatever it takes'* and had the full and absolute authority to do so on behalf of Avic International. Mr Lou said that *'in China, if anyone does a miracle for us, we make sure we never forget'* and that Mr O'Neill could *'trust Avic International, given who they are in China.'* The resolution of the problem was vital for future investments by Avic International and other Chinese enterprises. The substance of this is set out at pages 41-43 of the skeleton argument of Mr O'Neill of 26 October 2018, the truth of which he confirmed at the start of this oral evidence.

49. There is no documentary evidence of this agreement made either before or during or shortly after the meeting. I shall refer in detail below to the handwritten note made

according to Mr O'Neill a month later on 30 June, and on which he relies as evidence of the agreement of 30 May 2015.

50. Mr Lou says that Mr O'Neill told him that he was having discussions with the UK Government, which Mr Lou asked him to continue. Mr Lou denies giving him full and exclusive authority [T2/166/22 – 167/17]. Mr Lou agreed that Avic UK would pay the fees of professionals such as lawyers (which did not need explicit authority from Avic China) and suggested that Avic UK would remunerate Mr O'Neill if successful: but said that any remuneration paid to Avic UK would need to be approved by Avic China. Mr Lou says that no fee was agreed at this stage: see Mr Lou's witness statement paragraphs 27-28 and Mr Lou's WS at [B1/15/177] para 27-28, [T2/170/16-T2/174/21], and [T2/179/1 – T2/182/3].

51. Mr Lou denies that there was an agreement in respect of Rolleston of 2% of the gross development value. He says that although he was very upset about the position, and although he was taking medication for depression, he has never been suicidal. He did not ask for help for to solve the position, but when Mr O'Neill contacted him, he was interested in his ideas. Mr O'Neill did present the matter by 30 May 2015 as one involving strict secrecy and gave the impression that he had access to government (Lou witness statement paragraph 26). Mr O'Neill claimed to have had discussions with central government who had wished to attract foreign investment into the UK. (Lou witness statement paragraph 25). This emphasis on secrecy is evidenced by a text message on 5 June 2015 from Mr O'Neill, stating among other things that *"civil servants and lawyers have to deal with in a certain way according to law, is the way it is. Everything else is secret. Otherwise it cannot work and we cannot undermine our system especially when we are answerable under FOI [meaning Freedom of Information]. So none of this is happening.* ***So it is safe and in highest hands****."*

52. As for the claim that Mr Lou gave to him full and exclusive authority to do whatever it took to resolve the issue, this is denied by Mr Lou: he says that he simply wanted to see what assistance Mr O'Neill could provide to help Avic to obtain full accreditation (Lou witness statement paragraph 26 and [T2/166/22 – T2/167/17]).

53. Mr Lou says that he agreed that Avic UK would pay the fees of professionals such as lawyers and that it would pay Mr O'Neill if successful, but any remuneration would have to be approved by Avic China, and no fee had been agreed (Lou witness statement paragraph 28). Mr Lou stated that he did not use the phrase 'gross development value', that he assumed that the value of the project was around £20 million if it had the full ROC subsidy. He also says that he would not have agreed to pay a fee based on a percentage of the value of a project, but rather a fair and reasonable sum depending on the work undertaken and the outcome (Lou witness statement paragraph 29, [T2/172/18- T2/174/21, and T2/179/1 – T2/181/9]).

54. Mr O'Neill says that there and then he told Mr Lou to sack Pinsent Masons so that they could have a fresh start. That story is inconsistent with the account of Mr McNab. He says that he did not speak with Mr O'Neill until early June 2015 and that he did not agree to act until about 10 June 2015 by which time on 9 June 2015, Simmons & Simmons completed its conflict checks, and on 10 June 2015 obtained approval of its charge out rates. Simmons & Simmons indicated through Mr McNab that they would have to act alone so that there was a single line of communication. The effect of the foregoing is that it is doubtful that Mr O'Neill told Mr Lou to sack Pinsent Masons as

at 30 May 2015. According to Mr Lou, as part of the secrecy emphasised by Mr O'Neill, he claimed over the days following 30 May 2015 that he had been talking to officials at the highest level in UK central government and that officials required the appointment of a different law firm whom the UK government favoured, namely Simmons & Simmons and that OFGEM did not like Pinsent Masons (Lou witness statement paragraph 32). Accordingly, on 8 June 2015 at 15:12, Mr Lou sent an email to Pinsent Masons asking it to cease work on the Rolleston matter.

55. According to Mr O'Neill, the Rolleston matter would be resolved by an agreement whereby Avic International (Mr O'Neill's expression for Avic China) would invest in two government projects worth £150 million, namely Wroughton and Shotwick. It was made clear that there was not to be any 'co-joining' of Rolleston with the investments [T/1/42/line 7 – T1/42/10][2]. Throughout the story, Mr O'Neill refers to Mr Byatt or to the people with whom he believed Mr Byatt was dealing (whose identity was not known to Mr O'Neill) as government [T1/44/15- 1/46/6].

56. Following the foregoing, on 4 June 2015 by email, Mr O'Neill sent to Mr Lou two NDA's, one with Mr O'Neill and one with his company Rathbone Developments Limited. It was envisaged that a meeting would take place on the next day. It is to be noted that although there was to be formality about these typed agreements to be signed by the parties, there was no written agreement or even side letter sent at the same time to create or confirm an agreement to pay 2% of the gross development value of Rolleston or to pay 2% of £27,000,000. Mr Lou said that he does recall saying words to the effect that according to Chinese culture if somebody helps me, I should not forget them, meaning that he intended that Avic UK would compensate Mr O'Neill for his work. If his input was significant, he expected to pay Mr O'Neill, but he did not have a particular sum in mind (paragraph 29 of Mr Lou's witness statement).

57. Mr O'Neill said that he was too busy to draft such an agreement at the time because he was fully occupied with the matters relating to Rolleston and to what he calls the Government projects, namely Wroughton and Shotwick. Nonetheless, he did send the NDA's on 4 June 2015.

(ii) The meeting of 30 June 2018

58. In fact, the NDA's were signed on 30 June 2015. A meeting took place at a restaurant on that day between Mr O'Neill and Mr Lou. They were prepared between Mr O'Neill and Avic UK and between Rathbone Developments Limited and Avic UK. They were prepared by inserting the names of the parties and they were dated in manuscript "30th of June, 2015". They were each signed with the signatures of Mr Lou and Mr O'Neill on the same date.

59. Mr O'Neill's evidence is that he wrote in hand on an envelope at the restaurant on 30 June 2015 in the presence of Mr Lou. Having written on the envelope, he asked the restaurant manager to make four copies of it and he attached the same to the NDA's so that there were two copies for him and two copies for Mr Lou. According to Mr Lou,

the restaurant manager was tipped £20 for his trouble. Mr Lou's evidence is that he did not see this document before the same was provided months later to him by Simmons & Simmons. He states that he did not see this document being written [T2/220/10-20]. The document is not, according to Mr Lou, a record of any agreement between him or Avic UK and Mr O'Neill. He says that Mr O'Neill did not mention Rolleston on 30 June 2015 [T3/160/1 – T3/161/4]. Ms Fan also denies seeing this document at the time [T3/210/1-24], noting that it looks like Mr O'Neill's "shopping list" [T3/210/24].

60. I next consider the wording of the manuscript document, the writing on the envelope, which is at page 57 to Mr Lou's exhibit YL2. In its second line, it is stated *"2% on value"*. In its first line, it states *"director – strategic/commercial. Avic Enterprise."* This is apparently an expectation that Mr O'Neill would become a director of that company within the Avic group. It refers to MON and RDL in the next line, which was according to Mr O'Neill to show that either it would be a project for Mr O'Neill or for his company Rathbone Development Limited. In the right-hand part of the document, there is reference to HW Fisher, whom Mr O'Neill intended to be appointed as accountants. There is then a reference to PM/Michael Spencer being replaced by Simmons & Simmons. There is a line from Simmons & Simmons to the word "Gov" under WIP (work in progress). Against Gov, there is identified an "existing" project of 70MW and 150MW which is said to be "new". Mr O'Neill said that 70MW was a reference to Lyneham and 150MW to new projects at Wroughton and Shotwick. Underneath these projects were projects in Portugal and a new company Solar Ventures, referring to a value of a billion pounds.

61. The following is apparent in respect of this manuscript document as to what is not contained in it, namely:

(1) there is no reference to Rolleston;

(2) there is no reference to 18MW or OFGEM;

(3) it is not stated that 2% of the sum of £27 million is to be paid by Avic UK (or any other Avic entity) in the event that the Rolleston accreditation has been obtained or some other form of words to like effect;

(4) the projects referred to are all ongoing or future projects on which a consultant might be expected to work and seem to be different in kind from fixing a specific problem in respect of accreditation. Of course, by 30 June 2015, the submission had been sent to OFGEM and the primary work had been undertaken;

(5) despite the signatures on the NDA's, there was no signature of the parties on the envelope or on any photocopy.

(6) it is undated.

62. Mr Lou's evidence (witness statement paragraph 31) is that he only saw the handwritten document when it was first sent to him by Simmons & Simmons in March 2016. Mr O'Neill's evidence is that Mr Lou was provided with this document on 30 June 2015 and that Mr Lou has concealed fraudulently this document in particular from Simmons & Simmons. This point is emphasised in the final submissions of Mr O'Neill. In order to reflect the emphasis which is attached to this point by Mr O'Neill, I quote from the start of paragraph 4 of his final submissions which starts as follows:

> "*The very reason for this direct malicious and explicit deception of the court and fraudulent attempt to deny the existence of this document prior to 3rd March 2016 is because it is critical and further proves the case for the Claim, and the Defendant's solicitor knows that is the case in this attempt by the Defendant to deceive the court and further proves by such actions that the Claim is fully proven.*"

63. While not accepting what Mr O'Neill says about the document, Mr Lou did agree that a fee of 2% was discussed at one time. His evidence was not specific. As for a date, he said that maybe it was after 30 June 2015. He said that it was in respect of new work, but he did not mention Rolleston at that time [T2/223/1 – T2/224/22]. He said both that it was too much, and that the business would need to make money after that 2% e.g. [T2/223/14], [T2/226/3-4].

64. Mr Byatt's evidence is that the Wroughton and Shotwick projects were not government projects [T4/39/12-13] and [T4/42 lines 6-7], and Mr McNab said they were projects being developed by public and private entities [T5/79/20-T5/80/3]: Mr O'Neill contended that they had everything to do with the government (as regards Shotwick [T2/73/16-17]. Mr Byatt says that these projects did not arise until later after the initial steps on Rolleston had been taken [T4/48/12-14]. It was not until months later [T4/51/8-25]. Contrary to this, Mr O'Neill said that the governmental intervention was on the basis of a quid pro quo, namely that Avic would invest in these projects in the event that the Rolleston accreditation was given. Mr Byatt says that the combination of Wroughton and Shotwick was significantly less than 150 MW, whereas Mr O'Neill says that directly or indirectly, the 150 MW was in respect of these projects (but including also a small scheme of 17MW which was not to proceed at that stage) [T2/71/19-25]. In the course of cross-examination, Mr Scher asked Mr O'Neill to confirm that there were no documents which he had concerning an agreement for £150,000,000 with the UK Government: no documents were referred to, and Mr O'Neill said that he did not know if there were any documents regarding this agreement. He was given an opportunity to produce any such documents, but none have been produced which appear to evidence this agreement. Mr O'Neill accepted that there may not be any such documents because *"this was a secret agreement with our government for political reasons."* [T2/15/15-18] I regard it as most unlikely that there would be an agreement of this nature involving government which was not recorded. The acceptance in evidence that there may be no such documents must mean that Mr O'Neill is contending that there was such an agreement with the British Government, but that it was undocumented. It follows that I regard the proposition that there was such an oral agreement as most unlikely.

(f) 3 August letter and Mr Byatt's fee

65. On 3 August 2015, OFGEM wrote to Avic UK accepting the submissions and confirming that, if granted, the accreditation date of Rolleston could be regarded as the date when it was commissioned, that is 31 March 2015 Mr O'Neill wrote to Mr McNab with profuse thanks for Simmons & Simmons' *"full attention and expertise"*, for *"your approach and intellect [which] has been outstanding"*. In response, Mr McNab said that Mr O'Neill had played it just right in timing and tone. Mr O'Neill said that it was *"you guys that did it all."*

66. In cross-examination, Mr O'Neill was asked a question about how the letter of 3 August 2015 had come about. There follows an extract [T1/133/15 – T1/134/11]:

> *"Q. It was Simmons & Simmons, more than you, who persuaded OFGEM to grant an extension of time, wasn't it?*
>
> *A. You are joking.*
>
> *Q. That's why –*
>
> *A. You are joking. We pre-arranged that through the Government. We knew we were going to get an extension. Of time. We went through the motions to put an appropriate letter in to OFGEM. That's why I instructed.*
>
> *Q. You pre-arranged the extension of time through the government, you say.*
>
> *A. You know very well. This was a deal with the government, but this was something that we had to be very careful of. This was referred to by Steve McNab himself as magic and he couldn't be told what the magic was because he's a lawyer. Being a lawyer, if he wanted to go into depth of the magic, we would have to tell him everything and we couldn't do that and he understood that. So he always referred to Duncan and I's magic when we were dealing with the government."*

67. Some further information had to be provided to OFGEM to enable them to process the information. On 17 August 2015, a draft invoice was sent by Simmons & Simmons on the Rolleston matter. Mr McNab stated in an email that if he could get over the invoice for the "political consultancy", that could be paid as a disbursement. Mr O'Neill wrote back saying that Mr Byatt's name should be removed, the word political should not be used, and £50,000 should be added under the title "Other Specialist Legal and regulatory matters". He also said that Mr Byatt was away until the beginning of September. Mr O'Neill suggested a meeting with Mr Lou to discuss Simmons & Simmons being appointed for ongoing matters.

68. This caused Simmons & Simmons to postpone their invoice to Avic UK to await obtaining an invoice to them from Mr Byatt. In fact, the invoice was that of a company of Mr Byatt, namely DB Property Development Limited for a sum of £50,000 to Simmons & Simmons for *"Advice in connection with Solar PV Farm at Rolleston, UK."* It is a curiosity that the invoice was to Simmons & Simmons rather than to Avic UK, but Mr McNab said in his evidence that this sometimes occurs either because the work is connected with the solicitor's work or because it is requested by a client to simplify bill processing.

69. Mr O'Neill's evidence is that this sum of £50,000 was demanded by Mr Byatt and indeed he accused him of blackmail. He said that he had not engaged Mr Byatt as a consultant. In his opening, which was verified on oath, he said:

> "*I never engaged him as a consultant and never knew he was a consultant.* [He was an employee of the Cabinet Office.] *He acted as such.*" [T1/85/6-9]. He said that there was no option to pay it because of the sensitivities in respect of OFGEM.

70. In his opening, as regards the allegation of blackmail, Mr O'Neill said the following [T1/57/12 – T1/58/10]:

> *"So unfortunately, Duncan and Steve McNab have now contrived in their witness statements to pretend that there's some sort of consultancy and to pretend that it was not a blackmail payment of £50,000 straight out of nowhere, because otherwise, because of these unfortunate events, they have now been dragged into this matter and the way they normally behave has now been exposed. I subsequently discovered that Duncan was then to be made redundant from the Cabinet Office --."*

MR JUSTICE FREEDMAN: "You said it was a blackmail payment and not a consultancy."

MR O'NEIL: "Absolutely."

MR JUSTICE FREEDMAN: "In what sense was it blackmail?"

MR O'NEILL: "Well, it's just an immediate demand. I call it "blackmail" in quotes. It's immediate demand out of the blue. I had no idea it was coming. I had no idea why I had to pay it. It was just demanded and that was that. I think the real reason is that the government at this time were getting to the point of cancelling all subsidies on solar to a certain degree. They were phasing it out, to the point that they had advised Duncan that he was going to be made redundant. So later on, I deduced that's probably why he demanded payment."

71. This is not easy to follow. The evidence is that the invoice of Simmons & Simmons was not paid until 25 November 2015, long after the accreditation had taken place, which occurred on 18 September 2015. Mr McNab's evidence, which was corroborated by Mr Byatt, was that he was called by Mr Byatt in early September 2015 who told him that Mr O'Neill had asked him to charge a sum of £50,000 because of delight about the outcome. Mr Byatt was surprised about the amount and wondered if he should be concerned. Mr McNab says that he told him that he could receive it, but he ought to consider whether Avic was trying to gain influence over him for something else in the future given his role in the Government. Mr Byatt said that he did not think so (McNab witness statement paragraph 43). According to Mr McNab, this was the only instance in which Mr Byatt's fee has been added as a disbursement in this way in a Simmons & Simmons matter, and it was done at the instigation of Mr O'Neill.

(g) The invoice of Mr O'Neill for his fees

72. On 23 October 2015, Mr O'Neill presented an invoice for a sum of £534,000 to Mr Lou on that date. This was for the *"successful resolution of regulatory and legal matters in respect of the Rolleston Solar PV Farm"*. It was said to be an *"agreed fee of 2% of agreed gross valuation of £27 million"* comprising £540,000 less a discount of legal fees paid separately to third party lawyer in the sum of £95,000 comprising £445,000 plus VAT of £89,000 comprising a total amount of £534,000. The payment terms were then said to be a first payment of £245,000 plus VAT to be paid within 14 days, and the balance of £200,000 plus VAT to be payable by 30 April 2016.

73. According to Mr O'Neill, Mr Lou said that he did not have the money to pay the bill and he said that he would need to pay it over 10 years, paying £50,000 a year and offered to stay at Mr O'Neill's home so that he would know that there was no escape for him or for Avic in paying the fee due to Mr O'Neill. According to Mr O'Neill, Mr Lou was again suicidal and was stating that he would throw himself off a roof. Faced with this, Mr O'Neill did not withdraw the charge, but provided an invoice for a sum of £100,000 plus VAT to be paid within 14 days.

74. Mr O'Neill wrote over the covering letter of 23 October 2015 the word "superseded". An invoice was sent on 26 October 2015 for a sum of £100,000 plus VAT of £20,000 making a total of £120,000, payment to be in 14 days. There was no reference to this being the first instalment and the invoice was headed "RE: Successful resolution of regulatory and legal matters in respect of the Rolleston Solar PV Farm."

75. When asked why he did not say that this second invoice was the first instalment of what was due to be paid, Mr O'Neill replied saying that there would still be a problem about having the first invoice on the books and Mr Lou would still commit suicide. Thus, the unorthodox solution when Mr Lou was begging for his life, he said, was that he was protected by the original agreement and Wroughton and Shotwick were to come, and so he could amend the invoice [T2/85 line 9 - T2/86 line 23].

76. Mr Lou says that he considered the second bill excessive and he did not agree to pay it. He challenged the invoice because there was no agreed fee and it was too high. According to Mr Lou, Mr O'Neill replied saying that he needed the money and did not say that it was an agreed fee.

77. Relations then broke down between the parties in the weeks which followed. I shall refer below to that. On 14 November 2015, Mr O'Neill sent a letter which stated that he was re-submitting his invoice for £534,000. This invoice was said to supersede the earlier invoices of 23 and 26 October. It required payment of the full sum within 14 days of the invoice date of 14 November. This replaced not only the invoice of £100,000 plus VAT, but also the suspension until 30 April 2016 of the second instalment of £200,000 plus VAT.

VI Oral contracts

78. Before making findings, it is necessary to say something about the law relating to oral contracts. I have derived considerable assistance from a judgment of Leggatt J as he then was in the recent cases referred to below as follows:

(1) It is generally speaking possible under English law to make a contract without any formality simply by word of mouth. The absence of written record may make the contract harder to prove, but this is a matter of proof rather than legal requirements: see ***Blue v Ashley*** [2017] EWHC 1928 (Comm) per Leggatt J at [49];

(2) Due to the prevalence of electronic communications, it is rare nowadays to have an agreement, particularly involving very large sums not to have some form of electronic footprint: see ***Blue v Ashley*** per Leggatt J at [65]. In ***Edgeworth Capital (Luxembourg) S.A.R.L. v Aabar Investments*** [2018] EWHC 1627 (Comm), Popplewell J *("**Edgeworth Capital**")* interpreted paragraph 65 in *Blue v Ashley* as

meaning that *"the absence of a contemporaneous written record by those with business experience may count heavily against the existence of an oral contract, because in the twenty-first century the prevalence of emails, text messages and other forms of electronic communication is such that most agreements and discussions which are of legal significance, even if not embodied in writing, leave some form of electronic footprint."*

(3) *"…the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length….Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."* per Leggatt J in *Gestmin SGPS S.A. v Credit Suisse (UK) Limited* [2013] EWHC 3560 (Comm) ("*Gestmin*") at [23];(4) In almost every commercial case, the best approach for a judge to adopt in making factual findings is to be guided principally by the contemporary documents and the inferences which can be drawn from them and from known or probable facts, rather than oral evidence of witnesses (see *UBS AG (London Branch) v Kommunale Wasserwerke Leipzig GmbH* [2014] EWHC 3615 (Comm) at [70], and *Gestmin* at [15-23]).

79. Despite the importance of the above matters, this guidance must not be taken too far. These are not rules of law. Otherwise, there would almost never be a case proven on an entirely oral contract, yet there are cases, even in a commercial context, where oral contracts involving substantial sums have been proven without any contemporaneous documentary evidence. Nevertheless, the above cases contain valuable words of caution before establishing an entirely oral agreement, particularly in a commercial context.

80. I should add that these cases were not referred to at the trial, but in the course of preparation of my judgment, I sent a note on 17 January 2019 to the parties containing three of these cases, and seeking comment. I received notes respectively from Mr Scher on 18 January 2019 and from Mr O'Neill on 21 January 2019: Mr Scher's note referred to *Edgeworth Capital.*

81. In this case, albeit that the alleged agreement was made entirely orally, it is necessary to consider the extent to which there is documentary evidence which supports the agreement, even although it is not contemporaneous with the agreement itself. The most important document in this regard comprises the handwritten document, written on an envelope, said to have come into existence on 30 June 2015 and to have been copied to Mr Lou. Much later in time after the alleged oral agreement is the invoice sent on 23 October 2015 which refers to an agreed fee.

VII Findings about the witnesses

82. Before assessing the crucial evidence about the meetings of 30 May 2015 and 30 June 2015, I shall express my views about the witnesses. Whilst doing so, I shall make findings about the matters outside the crucial meetings of 30 May and 30 June 2015.

They provide an important context to those meetings. I shall then make my findings about those meetings.

(a) Mr O'Neill

83. In my judgment, at the stage when Mr O'Neill first made contact with Mr Byatt on 21 May 2015, he had a limited contact with Mr Lou, offering to help in respect of Rolleston. Mr O'Neill exaggerated his role and authority to Mr Byatt. His email of 21 May 2015 referring to his having the full and utmost authority of Avic UK to deal with the matter was an exaggeration at that stage. It was misleading for him to refer to Avic in the first-person plural as if he was a part of Avic UK. His responses to cross-examination about these points *"don't be silly"* and "*How dare you say that? Don't ever say that again"* do not begin to provide an answer to the fact that he was misleading about his relationship within Avic at this early stage.

84. Mr O'Neill's emails of 21 and 23 May 2015 suggest strongly that he approached Mr Byatt believing that he would assist in a political capacity, and that the matter could be dealt with government to government. Even if that is what he thought at the outset, I find that he was disabused of this. In this regard, I accept the following evidence, namely

(1) Mr McNab and Mr Byatt both advised that OFGEM was an independent body and that any interference would have had the opposite effect. Mr O'Neill said about this:

> "*No, that a perfect lie. That's a perfect lie. You'll see elsewhere in this that he recognises it's a political solution that's required.*" [T2/24/7-9]:

(2) The evidence of Mr McNab and Mr Byatt is corroborative and I accept that this is what they advised. I reject Mr O'Neill's evidence that they were lying or that they were collaborating to give false evidence to the Court.

(3) There is no documentary evidence to support the assertion that there was anything behind the scenes of a government to government nature or to influence the decision-making process of OFGEM.

(4) I reject the suggestion of Mr O'Neill that there was a political solution, secret or otherwise. I accept Mr Byatt's evidence that he was never asked for a political solution, and could not have provided one.

(5) I reject the reference to "magic". It was not apparent how this "magic" would work. Mr McNab, to whom the remark was ascribed, rejected it outright as his own. Mr McNab was involved in conventional work as a lawyer, and there is nothing to indicate that he would have been involved in "magic".

(6) I accept that Mr Byatt acted in a private capacity, and there is nothing in the evidence to indicate that he was acting in any other capacity. I return to my reasons for this when making findings about Mr Byatt's evidence.

85. Despite the foregoing, Mr O'Neill gave the impression to Mr Lou that he had access to government. He gave the impression that everything was a secret, for example, in the text message of 5 June 2015 referred to above. It is also reflected in his numerous

references in his evidence to secrecy, magic and the like. He summarised the position as follows: [T2/9/lines 12-20]:

> *"The arrangement, the agreement, was with the UK Government and OFGEM fitted in with that. So that's the hierarchy of how I solved it. As you recall with my Lord yesterday, I said we went in through the front door of the UK Government to solve this. It was a political matter, sovereign to sovereign, billions of pounds of money involved, £27 million lost. So we went in through the front door of the UK Government. What happened with OFGEM is a process within that."*

86. This has enabled him to portray that there was a double prong, namely the legal work undertaken by the lawyers, the apparent process, but in reality, solved by the secret government to government communications which would and did pave the way towards accreditation. In my judgment, there was nothing in this, and in view of the information which he received from Mr Byatt and Mr McNab, disabusing him of this idea (if he ever believed it), Mr O'Neill must have appreciated this.

87. Mr Lou complained in his evidence about how he was being manipulated and controlled by Mr O'Neill. This can be seen at T2/196/24-T2/197/10 and T2/197/23-T2/198/5 when cross-examined by Mr O'Neill as follows:

"Q. You had zero idea. You and your wife begged me every day to tell you what was going on; true or false?

A. We did not beg you. You were trying to manipulate and control.

Q. Manipulate and control? Why? I'm not interested in you and your wife. Why would I do that?

A. Don't say that, please.

Q. I'm not interested in you and your wife. Why would I do that?

A. I mean you did not tell anything. You exaggerated to the central government and then you manipulate me to believe that you were very important.

….

MR JUSTICE FREEDMAN: You didn't step back.

A. My Lord, the reason we step back because we really are concerned. We asked about it and Mr O'Neill say it's very highly sensitive, central government, and he could not tell anything. It's absolutely a secret and that's what happened. And then because I was under pressure, he was trying to make me suffer and trying to make me feel he was important."

88. I have come to the conclusion that indeed Mr O'Neill was being manipulative. He sought to make himself appear indispensable to Avic on the basis of this requirement for secrecy when he knew from his dealings that the matter was not being sorted in some secret way. Whilst this does not by itself lead to the conclusion that there was no agreement of the kind contended for, this finding does undermine the credibility of Mr

O'Neill, and gives rise to caution about his evidence. Mr O'Neill also sought to marginalise Mr Lou and Ms Lin by telling them to have no involvement: the more that he was involved, and the less that they were involved, the greater would be his control.

89. In my judgment, Mr O'Neill throughout his evidence exaggerated the extent to which he was involved in the procurement of the accreditation. He said that it was his decision to sack Pinsent Masons on about 30 May 2018, but the email dispensing with their services was not until 8 June 2018. In my judgment, that occurred not due to his decision, but due to Mr Byatt recommending Simmons & Simmons and/or Mr McNab indicating that if appointed, Simmons & Simmons would have to be the sole point of contact.

90. Mr O'Neill says that he treated Simmons & Simmons as his lawyers, apparently on the basis that he would be paying for them indirectly out of his fee. He said *"...they acted for me and no one else."* [T1/110/18] and *"...AVIC UK was not the client. I was the client. They were paying from my fee, so they were acting for me."* [T1/111/10-11]. "*Subsequently, he appeared to back-track saying that the solicitors were there to assist him to solve the situation with the full authority of AVIC UK:"* [T1/112/16-18]. In fact, Simmons & Simmons was retained by Avic UK, and hence its invoice was to Avic UK (and then altered to a subsidiary of Avic UK at the request of Avic UK). Insofar as Mr O'Neill was suggesting that he was the client, this was wrong.

91. A repeated refrain throughout the written and oral evidence of Mr O'Neill and his submissions as well as his cross-examination has been that Mr Lou was about to commit suicide and he was literally saving his life. This applies from the first meeting which they had in respect of the events material to this case on 21 May 2015 at Café Nero. At page 21 of his witness statement, referring to paragraph 14 of the Defence, Mr O'Neill says that *"Mr Lou absolutely pleaded with the Claimant to resolve the matter for Avic International as he was going to commit suicide otherwise. He was deadly serious and even stated directly that he was under medication from the doctor so that he did not commit suicide. He was so distressed that the Claimant thought that he was going to commit suicide at any moment and it was exactly like that over the coming months every single day..."* Mr Lou and Ms Fan denied that he had been suicidal, albeit that it was accepted that he was very upset about the failure to get accreditation and that he was receiving treatment for depression.

92. In this context, there is what in my judgment is a telling exchange of emails of 26 May 2015. On 26 May 2015, Mr Lou wrote to Mr O'Neill attaching a G59 form and stating, *"thank you so much for your help, actually, I am a bit embarrassed to say I am taking anti-depression drugs because I have been under huge pressure."* Mr O'Neill's response was sympathetic *"...Do not be embarrassed as we are friends and no one will ever know what we discuss. Please be calm – we will solve this and don't (sic) be depressed. It is one thing to feel responsibility to your company and country as the proper and honest businessman that you are, but do not let that lead to depression, for your sake and the sake of your family. We will find a way to try and resolve this I (sic) am sure."*

93. This appears to be difficult to reconcile with the account in the witness statement about the meeting at Café Nero. If in fact Mr Lou had said on 21 May 2015 that he was under medication from his doctor and he was suicidal, then an email five days later breaking the news that he was having anti-depression drugs would have been seemingly

unnecessary. Further, if Mr Lou had been talking about being suicidal on 21 May 2015, it would seem odd days later to indicate embarrassment about anti-depression drugs.

94. In this context, I prefer the evidence not only of Mr Lou, but also of Ms Fan to the effect that at the relevant time Mr Lou was suffering from depression, but he was not suicidal. The fact of the email appears to evidence that Mr Lou was exhibiting high levels of stress to Mr O'Neill, but it does seem to me to call seriously into question the account of Mr O'Neill about taking steps throughout to avert suicide on the part of Mr Lou.

95. Mr O'Neill also treated Mr Lou and Ms Fan in a disrespectful way. He acted as if they were incapable of doing anything at the relevant, so paralysed were they with concern about the situation regarding Rolleston. He referred to them in a very low light in his witness statement dated 10 October 2018 at B1/136 where he stated that *"They were disgraceful, low calibre individuals and the claimant would not tell such foreign people of such low calibre about his dealings to resolve the matter for AVIC International with the UK Government."* In this regard, I was particularly struck with the contrast between Mr O'Neill's comments about Ms Fan as a housewife (meant in context a person with no knowledge of business affairs) with her testimony which showed an impressive command of financial concepts relevant to her work for Avic. In my judgment, what actually happened is that Mr O'Neill has sought to obtain control over Avic by a combination of belittling its management having regard to the mistake, exaggerating their distress and making it appear that the matter could be resolved in a secretive manner involving government about which the management was to know nothing. This attempt to side-line Mr Lou and Ms Fan at the relevant time appears to me to be Mr O'Neill's way of seeking to take control of Avic and manoeuvre himself unfairly into a position where he could become involved at the heart of the business of Avic.

96. A particularly extraordinary part of the evidence was the suggestion of Mr O'Neill that there came a point of time when he offered to buy a £500,000 flat for Mr Lou's daughter. This was a point put by Mr O'Neill to Mr Lou in the following terms

"Q. Because after we reached agreement, I said, given the condition you are in, then I will buy your daughter a 500,000 apartment; true or false?

A. Fantasy." [T3/36/15-18].

It is not necessary to make findings about each and every allegation that was made when they are not part of the issues which I have to decide. I do not decide this point, but it is far-fetched that due to sympathy for Mr Lou, Mr O'Neill made a commitment of this kind, whether enforceable or not.

97. More generally, Mr O'Neill gave his evidence in an overbearing way, believing that he could shut down the challenges to his veracity in this way. Examples are as follows: [T1/107/1-2] "*How dare you say that? Don't ever say that again*.", [T1/140/23] ("*Don't try and challenge me*"), [T1/151/5] ("*Don't be stupid*"), [T2/20/4] ("*Please don't lie to me in court*"), [T2/24/7] ("*That's a perfect lie. That's a perfect lie*".), [T2/37/13] ("*How dare you?*"), [T2/80/13] ("*perjury*"), [T2/80/19-21] ("*perjury*" to have made blackened copies of the handwritten document). Whilst making allowances for strong feelings when being challenged about his integrity, these instances, and there were others, went beyond strong feelings: they were attempts to avoid being challenged about his account.

98. Mr O'Neill is so convinced about his rightness and the wrongness of Mr Lou and Ms Fan that he has made accusations of corruption against them with no evidence to support them (other than his own word). In particular, Mr Lou and Ms Fan were accused of corruption at paragraphs 23-28 of the Skeleton Opening which was pursued with Mr Lou at [T3/57-73] who answered each of the allegations. Some of the allegations were pursued with Ms Fan at [T3/233-238] who answered the allegations put to her. It is not necessary to say anything more about these allegations other than that they were each refuted and not proven.

99. The position is more concerning. Mr O'Neill has been seemingly motivated by a desire to punish Mr Lou and Ms Fan. This was apparent in correspondence including a letter to Mr Wu, the Chairman of the Board of Avic China and copied to the Chinese Ambassador to the UK dated 17 June 2016 (referring to letters before action). He referred to them repeatedly as *"rogue employees"*. He expected the addressee *"to repatriate them immediately or for them to face deportation over their actions…"* and *"to purge yourselves of such persons…"*. In connection with the fact that they had not been sacked, he said *"how dare you treat our society to the continued conduct of two people that you, Avic International, found so despicable…"* This goes well beyond Mr O'Neill protecting his own interests but shows an animus against Mr Lou and Ms Fan which adds to the caution which a court should have with the allegations relevant to this case.

100. The combination of the last three paragraphs shows a worrying belief in his rightness such that Mr O'Neill has lost the ability to be dispassionate about his cause. This applies in particular to his attempts to close down the legitimate challenges to his evidence, the indiscriminate allegations of corruption made by Mr O'Neill without an evidential foundation and the nature and tone of complaints to third parties intended to punish Mr Lou and Ms Fan. This all affects the reliability and weight to be attached to the evidence of Mr O'Neill.

(b) Mr Lou

101. There were several difficulties of the cross-examination which makes it not entirely easy to assess the evidence. First, Mr Lou gave his evidence in English, but it is evident that it is not his mother tongue. Whilst that was more satisfactory than receiving evidence through an interpreter, it was more difficult to assess his evidence than where English is the mother tongue.

102. Secondly, he had to endure cross-examination from Mr O'Neill which sometimes went beyond the boundaries of what is legitimate. "*You won't be staying in this country much longer like that*" [T3/66/14-15], "*you didn't understand anything else you signed*" [T3/104/22-24]. At one point, having put that Mr Lou was lying under oath, he said *"you won't stay much longer in this country like that"* [T3/66/14-15]. At another point, Mr O'Neill said to Mr Lou *"... you know this is not China. This is not you getting away with the law in China*" [T3/25/5-6]. On another occasion, he said "*Are you going to commit suicide*?" [T3/153/17] Indeed, there were about 15 references to suicide of Mr Lou about which I have commented above.

103. Thirdly, the questions were frequently framed not in a question and answer way, but were littered with preambles which made the question difficult to discern. Whereas a lawyer like Mr McNab could deconstruct the question and answer each part, it was very

difficult for Mr Lou. Frequently, the answer to such a question was simply "false". In order to assist the process, I tried to clarify the question either with Mr O'Neill or to rephrase it to Mr Lou, but this could not be done every time.

104. Overall, Mr Lou did give clear answers when he understood the question put. He was frank about what he could not remember (for example, which documents precisely he gave Mr O'Neill) [T2/161/21 – T2/162/3]. He openly said that he expected to pay Mr O'Neill something if he helped D [T2/170/22] and [T2/180/19 – T2/181/9]. Mr Lou gave evidence relevant to the allegation of a promise to pay 2% which was not a bare denial. This is to his credit and goes as to his reliability. Another witness may have retreated to a bare denial. I shall refer to that evidence in detail below when considering the evidence of the meetings of 30 May and 30 June 2015. Overall, and subject to the difficulties of relying on oral evidence, I prefer his evidence to that of Mr O'Neill.

(c) Ms Fan

105. The evidence of Ms Fan was particularly articulate. She gave clear and full answers to Mr O'Neill's questions. She frequently assisted the Court by correcting Mr O'Neill's understanding of Avic's business. This was particularly striking because of the way in which Mr O'Neill had been quite demeaning of her. In the course of his cross-examination of Ms Fan, Mr O'Neill stated at [T4/168/18] *"I don't consider you a businesswoman"*, at T4/191/8 *("you're irrelevant"*), at [T4/200/9-12] "*Nobody was interested in you… Nobody was interested in what you had to say, including your husband*" and at [T4/218/18-21] *"your husband had no interest in you at this time. You destroyed his life"*.

106. An example of how she dealt with the business directed questions was about an allegation that Avic UK was defrauding HMRC by paying 8-12% interest for a loan from a connected company. Ms Fan explained that it is usual for high interest rates to be charged during construction of a project, and that such a loan would be refinanced after completion [T3/235/8-24]. This answer is an example of how the attempts to marginalise Ms Fan were misplaced. I have noted above the cross-examination of Mr Lou and Ms Fan alleging that there were a series of matters in which Mr Lou and Ms Fan had conducted business affairs dishonestly, intended to go to credit, but none of these matters were established. This alleged fraud on HMRC was just one of them.

107. Like Mr Lou, Ms Fan was the subject of abuse in the letters to which I referred above. Mr O'Neill also made personal remarks about her relationship with Mr Lou and about the 10-year old daughter in distress [T4/170/5 – T4/171/3], [T4/186/4-6] and [T4/191/17-21]. The shortcomings of the evidence of Mr Lou referred to above do not apply to her. Her English was stronger, albeit a second language. She was more able to deconstruct the questions. When questions were put too strongly, she answered back very firmly. Subject to the general limitations of oral testimony, Ms Lan came over as a helpful witness who refuted the matters put to her by Mr O'Neill.

(d) Mr Prichard

108. I shall now refer to Mr Prichard's evidence even although he gave evidence after Mr Byatt. It is more logical to refer to the three Avic UK witnesses before considering the evidence of Mr Byatt and Mr McNab.

109. Mr Prichard identified himself as responsible for the mistake which led to OFGEM deciding not to grant accreditation, and indeed offered his resignation in April 2015, which was not accepted. He showed by his answers that he was familiar with technical matters, but not wider matters relating to the business of Avic UK. When he did not know the answers, he said that he was simply unable to give evidence. His acceptance of the limitations of his knowledge is to his credit [e.g.T4/134/24 – T4/135/22]. Mr O'Neill accused Mr Prichard 16 times of attempted fraud, although his final submissions relented from that position (e.g. he was not the "prime mover" in these plans at pages 34-35). Mr Prichard repeatedly explained, in detail, that there was no such fraud [T4/137/19 - 138/24]. I found him a frank witness who was attempting to assist the Court. I find the accusations against him of fraud without substance.

(e) Mr Byatt

110. As is apparent from my summary of the facts regarding the involvement of Mr Byatt, I was concerned about the ability of Mr Byatt to combine a private consultancy with his position in the Cabinet Office. I refer above to the section above headed "Contact of Mr O'Neill with Mr Byatt". The relevance of this to the case is that if it were the case that the work which Mr Byatt did was a breach of his obligations to the Cabinet Office, and especially if there was something furtive about it, then that might lend some credence to Mr O'Neill's case that Mr Byatt was in effect the Government and was not acting in a private capacity. It might then lead to the conclusion that the money paid to him was in some way illicit. All of this might support Mr O'Neill's case that there was indeed a secret mission, thus lending some credence to the notions of 'magic' and/or that he was opening up the government to government route.

111. There was some suspicion about Mr Byatt's evidence because of an absence of formality on the part of Mr Byatt in the following respects. First, he did not provide a written contract at the start to make it clear that his activity had nothing to do with government. Secondly, he did not respond to the emails of 21 May 2015 and 23 May 2015 in writing so as to dispel the apparent expectation that there would or could be a government interface. Thirdly, he did not provide terms at the outset as to remuneration, or indeed any contemporaneous document containing or evidencing his consultancy. Fourthly, the sum of £50,000 is a very high sum of money to receive for the work undertaken and the explanations are only based on oral explanations. There is no contemporaneous documentary evidence which shows that the sum was suggested by Mr O'Neill rather than Mr Byatt. There was evidence that Mr Byatt sought to negotiate a further fee from Mr Angus Macdonald (referred to below) after the retainer in respect of Rollestone and at the time when there were negotiations with Mr Macdonald, but Mr Macdonald refused to agree this fee. Mr O'Neill believes that, in fact, Mr Byatt did agree a fee. This is not directly connected with the evidence about the £50,000 fee and it does not affect my view of the evidence concerning the £50,000.

112. Despite each of these concerns, I am satisfied that the cause for suspicion has been answered. First, although there was no written contract, I accept the evidence that the fact that Mr Byatt was acting in a private capacity was raised at the outset. When the absence of a document was put by Mr O'Neill to Mr Byatt, he responded as follows [T4/28/19-25] *"...I was very clear to you, very shortly after this detail appeared to me, that if I was going to help you, it would have to be in my private capacity. Q This is an absolute lie. I'm sorry to have to say it, Mr Byatt. A. I'm sorry to refute it in absolute terms. I was very specific to you indeed that that would be the case."*

113. If Mr McNab had thought that Mr Byatt was acting in some illicit capacity, I am of the view that he would not have allowed him to charge his fee to Simmons & Simmons as a disbursement. I referred above to the contract between the Cabinet Office and Mr Byatt and to the circumstances in which it was produced at the trial. Since that contract was for only two days per week, that must be premised on the possibility of other work for the rest of the week. Hence, the terms of the contract about conflicts must be intended to permit but to circumscribe work outside the Cabinet Office work. Although Mr Byatt was concerned about collateral use of the contract by Mr O'Neill giving rise to his letter of 13 November 2018 (which seemed to me understandable in the context of the case as a whole including the correspondence with third parties to which I have referred). Overall, I regarded his approach to the disclosure of the contract as open and cooperative, which is another feature indicating that he was acting in a private capacity and that he was permitted to act as such.

114. Secondly, as regards the emails of 21 and 23 May 2015 from Mr O'Neill, I am satisfied from the evidence of Mr Byatt which is corroborated by Mr McNab (McNab witness statement paragraph 13) that they both advised that any interference from the Cabinet Office would do harm in respect of the prospect of obtaining accreditation from OFGEM. Mr McNab states that he was informed by Mr Byatt that Mr O'Neill had mentioned the sensitivity of the matter being "state to state" and needed ideally to be cleared up before an impending visit of Chinese leadership (McNab witness statement paragraph 9). He also saw the email of Mr O'Neill of 23 May 2015. Contrary to that which is suggested by Mr O'Neill, this did not lead to a political initiative, but it was the background to the clear advice that there should not be a political initiative to obtain accreditation from OFGEM.

115. Thirdly, it appears that Mr Byatt did not decide that he was going to charge at the outset, and he might have expected that there would come a point in time when he was to discuss remuneration on this project, or that the project would lead to other projects where he could discuss fees.

116. Fourthly, on the basis of the evidence which I have heard, I am satisfied that the fee of £50,000 came from Mr O'Neill rather than Mr Byatt. The reasons for finding this are as follows, namely

    (1) I have reservations about the evidence of Mr O'Neill for the reasons described above. I regarded the evidence of Mr Byatt as measured and clear, and so as between the two of them, I prefer the evidence of Mr Byatt;

    (2) The evidence of Mr Byatt was corroborated by the evidence of Mr McNab because Mr Byatt's evidence was that he went to Mr McNab because he was concerned that it was a large amount of money to have suggested (T4/84/2-9]. I was impressed by the evidence about Mr Byatt being concerned about the level of the fee and seeking advice from Mr McNab. As noted above, Mr McNab advised Mr Byatt that he could accept it (McNab witness statement paragraph 43), and I regard the evidence of McNab as precise and reliable.

    (3) Mr O'Neill alleged in trenchant terms collusion of Mr Byatt and Mr McNab: *"Mr Byatt and Mr McNab have had to collude in a horrendous fraud in order to conceal the truth and in particular the £50k blackmail monies demanded from the Claimant by Mr Byatt and laundered through Simmons & Simmons invoice….*

Because Mr Byatt and Mr McNab have both been compromised by this Claim coming forward, they have locked themselves into their own collusion, within the collusion necessary in their eyes to assist Defendant. Thus creating a self-defeating spiral of connecting and hideous lies." (page 30 of final submissions). I reject these allegations. Mr Byatt and Mr McNab are two independent people who each know their own minds. Although they have done some business together, that does not seem a reason why they would both make up false stories together for the Court. When it was suggested that he had colluded with Mr Byatt on their evidence, Mr McNab said that he had not seen Mr Byatt's witness statement, and did not hear his evidence in court. As Mr McNab said: "*If we are telling the same story, it is because the same story is true.*"

(4) The timing seems also potentially significant. At the time when the question of a fee of Mr Byatt arose on about 17 August 2015, Mr Byatt was away on holiday. He did not return until early September 2015 which is when he dealt with the question of his fees, spoke with Mr McNab and raised an invoice. This in addition to the other factors makes it more likely that the fee was suggested in the first instance by Mr O'Neill. Further, if it had been the case that Mr Byatt was seeking to procure an extortionate fee for himself, and as per Mr O'Neill was blackmailing (put about eight times to Mr Byatt in cross-examination), then it is most unlikely that he would have waited until September 2015 to raise the invoice or until November to be paid.

(5) The suggestion of blackmail appears to be predicated upon Mr Byatt reverting to OFGEM in the event that his demand for that level of fees was not accepted. It is apparent from my finding that OFGEM was independent that this blackmail could not have worked, and Mr O'Neill must have known this. In any event, long before the payment was made by Avic, the OFGEM approval had been obtained, and so if Mr Byatt ever had a lever for blackmail, it was spent. I reject the suggestion of blackmail.

117. I referred above to suspicions about Mr Byatt which could have been avoided by matters being put in writing in May 2015. In the light of the foregoing, my suspicions about Mr Byatt's evidence have been removed. I have come to the conclusion that the allegations against Mr Byatt are not made out. I accept the evidence of Mr Byatt, and where his evidence conflicts with Mr O'Neill, I prefer strongly the evidence of Mr Byatt to that of Mr O'Neill. I reject the allegations of Mr O'Neill against Mr Byatt.

(f) Mr McNab

118. I agree with Mr Scher's characterisation of Mr McNab's evidence as thorough, detailed, and clear. Mr McNab identified what was outside his knowledge, and answered each part of the questions put to him. I have referred above to particular aspects of his evidence which I regarded as convincing including the absence of collusion with Mr Byatt in connection with the evidence, the advice sought by Mr Byatt as regards the £50,000 and the firm advice not to interfere politically with OFGEM because it was an independent body [T5/41/1-5].[3] I rejectMr O'Neill's suggestion that Mr McNab's departure from Simmons & Simmons and his formation of a boutique firm meant that

in some way he is compromised in this case. I found his evidence impressive and thought that he came over well and authoritatively.

119. In his closing written submissions in the section relating to Mr McNab, Mr O'Neill uses the words "lie", "lies" and "lying" in respect of Mr McNab's evidence about 34 times. I found Mr McNab to be a reliable witness. The numerous references to lying (and to collusion with Byatt referred to above) and the like say more about Mr O'Neill's extreme perceptions in the case than about reality, which in the end affect adversely the weight that I am able to attach to Mr O'Neill's evidence.

VIII Findings in respect of the meetings of 30 May and 30 June

120. Having considered at length the major features of the history and made findings about the witnesses, I can now make findings about the two central meetings in this case. They comprise the meeting of 30 May 2015 which, it is said, gave rise to an oral agreement, and the meeting of 30 June 2015 in which it is said that the terms of the oral agreement were confirmed orally and in writing. These two meetings are connected.

121. I have referred above to the evidence of the parties as to what was said at the meeting of 30 May 2015. On the case of Mr O'Neill, it was a very important meeting in that there was an agreement for a fee which would lead be an entitlement to a payment of over £500,000. If that was the purpose of the meeting to agree a fee, it is remarkable that there was no contemporaneous or near contemporaneous note of that meeting. It could have been by an agreement prepared before, during or shortly after the meeting, but there was no such document.

122. There is no sensible explanation for the absence of a document. At one point, Mr O'Neill suggested that he was too busy throughout June 2015 working on Rolleston and future projects. It is not clear how busy he was, but even if he was busy, this does not explain how he would not have sent over a draft agreement or even an email asserting or confirming the agreement. There is not even an internal note or memorandum containing contemporaneous evidence of any alleged agreement. It might be said that there was a desire for secrecy or a desire not to increase the stress levels of Mr Lou and Ms Fan, but in my judgment, that does not explain some suitably worded document.

123. The position is made odder still by the fact that on 4 June 2015 Mr O'Neill provided draft NDA's. Mr O'Neill had gone to the trouble of having the NDA's headed with the parties' names, but he did not include anything about agreement to pay a sum of over £500,000 in respect of Rolleston depending upon success. If he was going to that trouble, a short confirmation of an oral agreement with such a high consideration would have been the obvious thing to do. It was not done, and this is telling against the existence of an oral agreement of the kind described by Mr O'Neill.

124. This then connects with the meeting of 30 June 2015 because this was, according to the evidence of Mr O'Neill, a meeting where there was a confirmation of what was agreed on 30 May 2015. It is common ground that at that meeting, the NDA's were signed by Mr O'Neill and by Mr Lou respectively. If that was to take place and the terms of the 30 May 2015 meeting were to be confirmed, then it stood to reason that the terms of 30 May 2015 should be confirmed albeit belatedly in writing. Here again, one would expect a formal agreement like the NDA's. Even if they could be explained as being

standard form of agreements, and the parties might have had something less, it seems highly improbable that there would not be at least a side agreement or letter to be signed at the same time confirming the terms of an agreement in respect of Rolleston.

125. Mr O'Neill's evidence is that that is exactly what took place and such confirmation written on the envelope and photocopied at the restaurant. That does not seem a probable story and I prefer the evidence of Mr Lou that no copy was provided to him. It does seem odd that the writing should be in the form of what Ms Fan called a 'shopping list' rather than in a series of sentences to express an agreement. If there had been a confirmatory agreement at that meeting, then one would expect that it would be expressed in a very different form, and that it would be signed by the parties at the same time as the NDA's.

126. Even if a copy of the envelope was made and provided to Mr Lou, which I do not accept is proven, it has very serious shortcomings in that the envelope does not prove the terms of the agreement. As summarised above the shortcomings of the envelope include that (a) it did not contain any reference to Rolleston, (b) there is no reference to 18MW or OFGEM, (c) it is not stated that 2% of the sum of £27 million is to be paid by Avic UK in the event of accreditation, (d) the projects which mentioned were all future projects, (e) there are no signatures or dates on the page.

127. What of the oral evidence? A point which can be made on behalf of Mr O'Neill is that in the course of his oral evidence, Mr Lou accepted that there was reference to 2% either on 30 June 2015 or shortly thereafter. The evidence needs to be considered carefully. I quote some of it as follows:

MR JUSTICE FREEDMAN: "Was there a discussion about 2%?"

A. "He mentioned at one time 2% to me. I said -"

MR JUSTICE FREEDMAN: "When did he mention that?"

A. "I think maybe after 30 June, sometime later. He mentioned to me 2%. I said okay, if that's – I mean, investment value, that's too much, but anyway, we must make sure we can make money after 2%. That's what I said to him."

MR O'NEILL: "So you now admit the 2%."

MR JUSTICE FREEMAN: "Sorry, what did you –"

A. "Because he asked for 2% for the investment value."

MR JUSTICE FREEDMAN: "When did he ask you for 2% of the investment value?"

A. "I think maybe after – we talk about on 30 June. I remember him mention some time about 2% and he said he wanted 2% of value. I thought it was too much and I said, "Okay, if that's 2% on the investment, that's too much", and also, we must make sure after 2% this company can still make money."

MR O'NEILL: "So even after 2%. So you're happy with 2% so long as the company makes money. That's what you just said."

A. "I was a little bit trying to be polite. I was a little bit trying to be polite."

Q. "Really?"

A. "Talking about the 2%, I thought you were a little bit -"

Q. "No, you just -"

MR JUSTICE FREEDMAN: "Please. It might help if you don't interrupt."

MR O'NEILL: "Sorry."

A. "Yeah, my Lord, I thought – from that time on, I thought that Mr O'Neill seemed to me does not understand business at all."

MR O'NEILL: "I didn't lose £27 million, did I?"

MR JUSTICE FREEDMAN: "I am sorry."

MR O'NEILL: "I apologise my Lord."

MR JUSTICE FREEDMAN: "You said you talked about 2% investment value. You said it was too much and you said you must make sure, what?"

A. "Yeah I was trying to be polite to, to say 2% is a lot. We must make sure after this 2% this company can still make profit, which I did imply to say 2% was too much."

MR JUSTICE FREEDMAN: "And 2% of what?"

A. "He was trying to say 2% of investment value of the project, like to say, I mean, any investment of the project."

MR JUSTICE FREEDMAN: "This discussion about 2% was in relation to what?"

A. "Only about the future projects."

MR JUSTICE FREEDMAN: "What about Rolleston?"

A. "He did not mention Rolleston at that time."

MR O'NEILL: "So you now accept that there was a discussion with you present – that's the only way you can have a discussion – about these features, which I then wrote down with you next to me with 2%. The 2% as you well know, comes from the 30 May agreement where we agreed the 2% on Rolleston and the 2% on the future projects. So it was already agreed. This is just written confirmation: "yes" or "no"?"

A. "No."

Q. "You have just confirmed to my Lord that so long as the company makes money, you were quite happy with 2%. You have just confirmed that, haven't you?"

A. "You are twisting my words now."

Q. "No, you can check the transcript. I would never twist your words. So long as the company made enough money, you were happy with 2%. That's what you just said."

A. "First -"

Q. "Trust or false?"

A. "– I should not say I was happy. Second, the procedure."

Q. "Sorry to interrupt, you said "so long as". I took that as being happy. That's normal English. I know you're Chinese, but if you say to somebody "so long as", then that's like a condition. If I'm happy with that, then, yes, 2% is great; "yes" or "no"? You said, "so long as". I'm just using your words. I'm not trying to put any words in your mouth. I'm using your words."

A. "So the question again?"

Q. "You said to my Lord that so long as the company made money, then 2% was okay."

A. "I didn't not say "okay". I should say it must guarantee the company, after 2%, still can make money."

Q. "You have just introduced the word "guarantee" now. You cannot guarantee anything on investment, as you know, so the word "guarantee" is now a new introduction by you. Anyway, this is a written record of what happened. As you then rightly say, in that meeting then I could go into a little bit more detail with you because now I have had a breather from ROC. I couldn't – or Ofgem, I couldn't do anything more on Ofgem until they came back and moved us into the second phase, which will not be until 3 August."

128. As is apparent from the transcript, Mr O'Neill treats this as an admission that there was agreement to 2% of the investment value. It is certainly helpful to his case that Mr Lou admitted that he did have a discussion about 2% on or after 30 June 2015. It is not clear whether he said that 2% was too much, or that it depended upon making sure that the company could still make money. When pressed about being happy with 2%, the answer of Mr Lou was that he was trying to be polite. There is an ambiguity about the response *"I was trying to be polite, to say 2% is a lot. We must make sure after this 2% this company can still make (sic) profit, which I did imply 2% was too much."*

129. On one matter, Mr Lou was firm. He said that 2% was discussed in respect of future projects, and not in respect of Rolleston. *"He did not mention Rolleston at that time."* By contrast, Mr O'Neill was very firm that at the meeting of 30 June 2015, Rolleston was mentioned specifically, confirming that 2% was payable in respect of Rolleston.

130. Bearing in mind what I have said above about oral evidence, it is important to see this evidence against the context of the documents. This is where it is important to have regard to the envelope. If this document reflected contemporaneous writing (whether handed as a copy to Mr Lou on 30 June 2015 or an internal note of Mr O'Neill whether on that date or another time), there is one matter which resonates strongly. That is the fact that the document does not refer to Rolleston. It refers to other future projects, albeit not specifically. It does not state that 2% of the gross development value of

Rolleston is to be paid. If this was to reflect an agreement made on 30 May 2015, it is highly improbable that this would not have been made plain by writing it out expressly. It is not a substitute that there is a reference to 2% value or a reference to Simmons & Simmons. In my judgment given the evidence that the meeting of 30 June 2015 was to confirm what had been agreed on 30 May 2015, this is all at one with Mr Lou's evidence that there was no reference to Rolleston on 30 June 2015 and that there was never any agreement as to a fee in respect of Rolleston.

131. There are other reasons why a fee might not have been agreed in respect of Rolleston. It was not clear what work was involved on the part of Mr O'Neill. The main work was the legal work. It would therefore be difficult to justify a fee in respect of Rolleston comprising about £500,000. The work which Mr O'Neill had done or would be doing in order to justify a fee of about £500,000 is very small relative to the fee. Most of the work was legal work being done by Simmons & Simmons and by Ms Monica Carss-Frisk QC. Such changes as were made by Mr O'Neill were of a cosmetic nature, or as Mr McNab called it "fluff around the edges". The contemporaneous documentation does not tell a story of a great contribution on the part of Mr O'Neill. As it transpires, but as Mr O'Neill must have known, there was not a political dimension to this job.

132. Insofar as Mr O'Neill has given evidence about the enormous work which he was doing on this job, I have serious doubts about it. In any event, the bulk of his work must have been done between 21 May 2015 when he had his first meeting with Mr Lou about this matter and the end of June 2015 by which time the application had been submitted as it was on 25 June 2015. There was some further work to be done after OFGEM gave its indication on 3 August 2015, but of a relatively minor nature. All of this supports the fact that there was not an agreement between the parties of a 2% fee in respect of Rolleston. Mr O'Neill may have seen the real fees to be earned in respect of future projects, and it is consistent with this that the notes on the envelope were about that.

133. It is not necessary to consider whether there was an agreement in respect of future projects, and it does not arise for decision by itself in this action since the issue concerns an agreement as regards Rolleston. However, I am not satisfied that there was an agreement at all. It seems more likely to me that there was a discussion about the principle and that it would require more to be worked out in order to arrive at an agreement. In particular, if it was to be 2%, it begged the question as to what was meant by 2% of value. The word "value" was written by Mr O'Neill in the handwritten note. How was 2% to be worked out? Was it to be 2% of gross development value as Mr O'Neill stated, and if so, how was that value to be calculated? Was it to be 2% of investment value as Mr Lou thought he heard, and is that in any way different from gross development value? It may be the same, but there was debate in the case as to different values, which illustrates the point about the difficulties. Mr O'Neill latched on to the letter of Mr Lou of 13 May 2015 drafted by Pinsent Masons referred to above which said that the "*loss to the project is estimated at £27m over the life of the project"*. This might be different from the gross development value or the investment value in that it might be a reference to an income stream, and it might be that it was necessary to capitalise the loss. The Defence (paragraph 41) referred to a gross development value of £20 million, although no expert evidence was called by either party in this regard. The Defence (paragraph 38(4)) also stated that the value of Rolleston with accreditation was about £20 million with accreditation, and £7.5-10 million without accreditation, although there was no evidence in the case to substantiate these figures.

134. There was even an argument that was advanced by Avic UK without any notice in the pleadings to the effect that the loss was £3 million or less. The argument and the references are touched upon at paragraph 78 of the closing skeleton of Avic UK and especially at footnotes 85-87. The importance of the foregoing matters regarding value is to provide another indicator as to why it was that there was not an agreement in respect of Rolleston nor a completed agreement in respect of future projects. Given the issues which could arise about value, it would have been obvious for Mr O'Neill not to have referred to value or gross development value, but to have referred to £27,000,000, if that was the applicable figure on which a percentage of 2% was to be applied. The fact that this does not appear in the handwritten note is another pointer to the effect that, if there was agreement at all in respect of payment for Rolleston, there was no agreement of a price or a formula to work out a price in respect of Rolleston. Further, as regards future projects, a discussion of 2% of value was imprecise. This supports Mr Lou's evidence that the discussion at the time was not concluded, with his indicating that it would have to be seen if a future project could make a profit for Avic. He may also have indicated that 2% may be too high. Looking at his evidence as a whole, it appears to be falling short of agreeing anything. The imprecision about value, in my judgment, tends to bear this out. I am not satisfied that it has been proven that any agreement was reached by reference to a formula of 2% of some value, and if so, what was the formula for ascertaining such value.

135. What of the evidence relating to the invoices to which I have referred above? Does the fact that Mr O'Neill made an invoice on 23 October 2015 indicate that there was an agreed formula which was being applied following accreditation in respect of Rolleston having been obtained. It can be contended that although the invoice was not contemporaneous with the alleged oral agreement of 30 May 2015, it was nonetheless sufficiently proximate to be capable of amounting to some support for the oral agreement. Such support is tempered by the fact that it was several months after the alleged oral agreement. In my view, the support is probably removed by the fact that within three days, namely by 26 October 2015, it was superseded and a revised invoice for £100,000 plus VAT was substituted. There is here a conflict of evidence. Mr O'Neill says that Mr Lou threatened to commit suicide if he did not allow Avic UK to pay in instalments. The £100,000 plus VAT invoice was orally agreed to be only the first instalment. The remainder was not written down, because it needed to be kept secret from Avic China. Avic UK says that Mr Lou challenged the invoice because there was no agreed figure, and the sum in the invoice was far too high. Mr Lou said the £100,000 plus VAT invoice (which truly superseded the earlier one) would be discussed with Avic China.

136. In my judgment, the contemporaneous documents are the most significant aspect of this conflict of evidence. If it had been the case that Mr Lou had enlisted the help of Mr O'Neill to agree to a deferment of the payments, then it is unlikely that Mr O'Neill would not have recorded the nature of the arrangement. It is equally unlikely that he would have written 'superseded' on a document and provided an invoice for £120,000 without a reference to the fact that this was an instalment payment. I have already formed the view that Mr O'Neill has been exaggerating the level of stress and depression of Mr Lou, and that I prefer Mr Lou's evidence. In my judgment, the high probability is that the invoice for the lesser sum without any indication on the invoice of 26 October 2015 or any contemporaneous note was because Mr O'Neill recognised that there was no agreement as per the invoice of 23 October 2015. He was therefore

content at that stage to seek £100,000 plus VAT and to head it in the same way as the 23 October invoice *"RE: Successful resolution of regulatory and legal matters in respect of the Rolleston Solar PV Farm."* When subsequently relations soured in mid-November, the invoice of 14 November 2015 was sent, but this does not explain the invoice of 26 October 2015. Overall, I take the view that these invoices provide more support for the case of Avic UK than the case of Mr O'Neill.

137. Seen against this background and my findings about the respective witnesses, I reject the evidence of Mr O'Neill that Mr Lou offered to pay the sum of £50,000 per annum over a period of 10 years and to live with Mr O'Neill until such sums were paid. In the context of the evidence as a whole, there is no reason to accept that such an inherently improbable offer was made, and I reject Mr O'Neill's evidence that it was made.

138. Taking into account all of these matters, I have come to the conclusion that Mr O'Neill has failed to prove that there was an agreement made on 30 May 2015 or at all whereby Avic UK was to pay 2% of the value/gross development value or the investment value upon the grant of accreditation in respect of Rolleston. I have come to that view for all the reasons set out above. By way of summary only, and without this limiting my analysis above, my reasons include (a) my serious doubts about the veracity and reliability of the evidence of Mr O'Neill for all the reasons set out above, (b) the related the trpoint that I prefer the evidence of Mr Lou whose evidence is that he not did enter into an agreement, (c) the absence of a document setting out those terms around the 30 May 2015 meeting, (d) the fact that formal NDA's were circulated and then executed without at the same time having any formal or informal written agreement or even side letters as regards a 2% charge on gross development value in respect of the Rolleston Project" (e) the fact that the envelope does not contain a reference to Rolleston, (f) the fact that there were reasons not to have such an agreement in respect of Rolleston because the primary work for Rolleston was to be legal and not that of Mr O'Neill, (g) the lack of clarity as to the meaning of 'value' which indicates that more was to be done in order to conclude an agreement as to price.

139. It could have been the case that Mr O'Neill could have sought some implied payment of a reasonable sum whether contractual or a quantum meruit. I do not have to consider this because this alternative case has been decisively rejected by Mr O'Neill and there is no objective evidence to value the work. The Court is left with the impression that he did not pursue this alternative because he feared that this exercise would lead, if successful, to an award of a small fraction of the current claim.

140. In view of the foregoing, I conclude that Mr O'Neill has not proven an oral agreement that, if Mr O'Neill resolved the accreditation issue, he would be paid a fee of 2% of £27,000,000 or of the gross development or investment value or value on any other basis in respect of Rolleston. Indeed, I conclude that the alleged agreement was not made.

IX Wroughton and Shotwick

141. A matter on which Mr O'Neill relies is an agreement in respect of what he describes as government projects in respect of Wroughton and Shotwick. Mr O'Neill says that they arose from the start, namely in May 2015. They had a total value of £150,000,000, and so a 2% commission would be £3,000,000. He claims that as part of the agreement with government, it was agreed that upon the resolution of Rolleston, government

would bring these projects to AVIC. Since no claim arising out of Wroughton and Shotwick has been made in this action, it is important to note at the outset that these projects do not arise directly for decision in this action in that they are not the subject of the claim: Mr O'Neill has alluded to the possibility of a second claim. It is not a matter for this Court to decide whether such a claim could be brought at all in a second action, or whether, if allowed in principle, it would succeed (whatever that claim may be). However, I do mention various matters based on the evidence which I have heard insofar as such a claim is said to relate to the matters in issue relating to Rolleston, namely

(1) It was asserted repeatedly by Mr O'Neill that Wroughton and Shotwick were government projects, but I have seen no documentary evidence to support this. Mr Byatt said that this was not the case.

(2) I accept the evidence of Mr Byatt that these matters in respect of Wroughton and Shotwick only came up much later after the initial steps on Rolleston had been taken. I reject Mr O'Neill's evidence that Wroughton and Shotwick were intimately connected with Rolleston.

(3) Mr O'Neill said that *"this was a secret agreement with our government for political reasons"* [T2/15 lines 15-18].. He said that due to such secrecy, there may not be any documents in respect of such agreement. I have seen nothing to support Mr O'Neill's bare assertion that there was an agreement with government that upon Rolleston being sorted that the government would make Wroughton and Shotwick available to AVIC.

(4) In any event, it would be unlikely for an agreement for such large value projects to be made orally. Even the alleged value of £150,000,000 is not made out in the evidence. I do not have to make a finding about Wroughton and Shotwick because they are not before the Court, but insofar as there is said to be an agreement with government connected with and bearing on the solution of the Rolleston problem, I reject Mr O'Neill's case in this regard.

X "Coffee"

142. A matter on which Mr O'Neill relies in this case is a secret agreement which he says that he had in connection with the purchase of jet engines with the code name "coffee". He relies on this as an example of the authority that he had been granted by Avic UK and by Avic China, and his importance to Avic China. He says that he has a claim for 2% of the value of the deal. Avic UK seeks to rely on this allegation as casting grave doubts on the credibility of Mr O'Neill generally.

143. Here too, it must be clear that this alleged agreement is not a part of the pleaded claim. It is therefore not for this Court to resolve in this case. It is later in time than the alleged agreement in this case. Its relevance to this case seems very limited. As with Wroughton and Shotwick, it is not for this Court in this action to decide whether such a claim could be brought at all in a second action, or whether, if allowed in principle, it would succeed (whatever that claim may be).

144. In his chronology of 26 October 2018, Mr O'Neill referred to meetings which he had with UK Government about Wroughton, Shotwick and coffee on 9, 15, 19, 20 27 and

29 October 2015. These entries do not state who it was of UK Government, but in his evidence, it became apparent that he referred to Mr Byatt as UK Government. I have found above that Mr Byatt advised vis-à-vis Mr O'Neill and Avic UK in a private capacity.

145. Mr O'Neill relied on two documents disclosed after the close of his evidence. They were both short. One begins "*AVIC announced the 2015-2034 civil aircrafts forecast at Beijing International airshow.*" The document contains generalised high-level predictions of the growth of the Chinese aviation market. The second document seems to be a four-line summary of the announcement. Both documents indicate that Avic UK and/or Avic China has given to Mr O'Neill some information about the Chinese aviation market.

146. Mr O'Neill said that the project of jet engines for China would be of huge importance to the Chinese state; that it would transform Chinese society; that it would be a trillion dollars' worth of activity; and that he was to be introduced to President Xi himself because of the project [T2/36/14 toT2/37/7]. This reached a crescendo on [T2/37]:

"A. "... It cannot get any more important than this and the head honcho is President Xi and we were dealing with the very head of our government in the UK."

Q. Who was?

A. I'm not going to say who it was. Who was.

Q. Mr O'Neill, please say who the person who was at the head of the - -

A. No, no. How dare you? No.

Q. Mr O'Neill, you say that you were dealing with the head of government in the UK. Who was that person?

A. I'm not going to tell you, unless my Lord - - and I'll tell my Lord in private if he will accept that. This is critical. This is critical. How dare you play games with this sort of stuff?"

147. The suggestion of Mr O'Neill is that he was entitled to 2% of the worth of the project, which is said to be £5 billion. If that is right, that would be a claim for £100 million with almost no contemporaneous documents and apparently no document between the parties comprising or evidencing the agreement.

148. Mr Byatt's evidence was that Mr O'Neill was, with "coffee", "probably trying to piece together some interesting thoughts" [T4/107/11-16] and see [T4/108/5-12]. From his experience as a fund manager, he considered that the considered that the "coffee" proposal did not seem very likely. He went to say that "*four lines on a scrap of paper is not what you take – what was the phrase you used -- to the highest level of government*" [T4/109/10-19].

149. None of the foregoing lends support to the claim in this action. There are common themes of agreements. One is large sums at stake (the coffee agreement is for a far larger sum than the subject of the instant claim) without a document containing or clearly evidencing the same. Another point is the invoking of contacts at the heart of

the government without obvious contemporaneous documents which would seemingly be a pre-requisite of interesting the highest levels of government.

X Breach of NDA's

150. Similarly, there was another alleged potential claim which is also not the subject of this action. There is an issue apparently as to what happened in respect of the Wroughton deal, and why negotiations between Avic UK/Avic China and BSR (or, on Mr O'Neill's case, a related company known as PBSL) broke down. I do not intend to give a long account of the evidence, but to refer to some aspects of it briefly. According to Mr O'Neill's chronology, on 3 November 2015 there was a meeting between the UK Government and Mr Angus Macdonald of BSR/PBSL to agree a deal in respect of Wroughton and Shotwick and Solar Ventures. On 5 November 2015, he described a visit to Wroughton with Mr Lou, Ms Fan, Mr Prichard and representatives of Avic International. He claims that on 6 November 2015, he met with Mr Angus Macdonald *"to progress the MOU on Wroughton and Shotwick and entered into agreement to invest in a further £1.0 billion project by PBSL over the next three years."* He confirmed this to Mr Lou and Ms Fan on 8 November 2015, and that then Simmons & Simmons were instructed to act on Wroughton to be followed by Shotwick.

151. Mr O'Neill then says that on 12 November 2015, Mr Lou admitted that Bank of China refused an application for a loan for Avic UK. On 13 November 2015, he met with Mr Lou and there was an agreement to set up a meeting with Mr Angus Macdonald for Monday 16 November 2015 to sign a memorandum of understanding. On 14 November 2015, Mr O'Neill received a text from Mr Lou stating that Avic International had decided not to proceed with the investment and that the meeting for Monday should be cancelled. According to Mr O'Neill, this was a breach of the NDA, and Avic then proceeded to cut him and to proceed with PBSL directly and to *"steal and defraud from the Claimant the new investment business that he had created for Avic International."* Mr O'Neill says that Mr Angus Macdonald then made it clear that he would only undertake business through Mr O'Neill, and that he could not work with Mr Lou and Avic UK.

152. As stated above, it was on 14 November 2015 that Mr O'Neill sent the invoice for the sum of £534,000 despite the earlier invoice for a sum of £100,000 plus VAT. On the same date, Mr O'Neill wrote to H.E. Ambassador Liu Xiaoming, the Ambassador for the People's Republic of China in the United Kingdom, purporting to write as a friend of Mr Lou, but writing that Mr Lou had been threatening to commit suicide. He also wrote that the Rolleston situation was one which Mr Lou created and sought to conceal, and other losses which he and his wife had created for Avic. He sought that the Ambassador should assist Avic, saying that he understood that the Ambassador *"wanted to join Avic once your term as Ambassador had come to an end, and so I am confident that you may wish to assist Avic."* On 16 November 2015, Mr O'Neill wrote to Mr Pan Linwu, the Executive Vice-President and Chief Financial Officer of Avic China, making similar disparaging remarks about Mr Lou.

153. He wrote a follow up letter to the Ambassador on 16 November 2015. On 17 November 2015, Mr O'Neill wrote in disparaging terms to Mr Lou (copying in Mr Angus Macdonald). There is an email of the same date from Mr Macdonald who wrote to Mr

O'Neill, copying in Mr Lou, saying that he was taken aback by the content and looked forward to further opportunities in the future, but saying that *"I have to ask you to help protect both our professionalism and corporate governance."* Mr O'Neill wrote on 18 November 2015 to Mr Wu Guangquan, the Chairman of Avic China. I have referred above to even more extreme communications of Mr O'Neill sent in June 2016.

154. These approaches do not appear to have led to Mr O'Neill being given any greater role in Avic. On the contrary, on 25 November 2015, Avic UK wrote saying that it could not accept the invoices. Further, Simmons & Simmons wrote for Avic UK saying that the above communications had damaged Avic UK such as to derail negotiations for a lucrative opportunity with BSR.

155. Mr O'Neill believes that he has a claim for breach of circumvention obligations in the NDA's, albeit that they do not form a part of the instant claim. He believes that Mr Lou and his wife acted in a fraudulent manner, and he has made allegations of fraudulent conduct against Mr McNab and Mr Byatt. I do not intend to resolve these matters in this case, save to say the following insofar as they relate to the Rolleston Project, namely

(1) No allegations of fraudulent conduct have been proven as regards Mr Lou or is wife;

(2) The repeated references to fraudulent conduct of Mr McNab and Mr Byatt have not been shown to have any basis at all.

(3) On the basis of the findings which I make in this case, the position in November 2015 was that Mr O'Neill had made an unjustifiable claim for fees by reference to 2% of £27 million.

(4) Further, Mr O'Neill's conduct has been manipulative, namely by his making out that the Rolleston matter was a political matter which it was

not, and that it was sorted because of him, when in fact it was sorted primarily because of the legal representations and strategy of solicitors and Leading Counsel.

156. Without deciding the above claims, which I do not do because they are not before this Court, there is nothing about any alleged claim, Wroughton and Shotwick, coffee and the NDA's, which lends any support to the instant case.

XI The two issues before the Court

157. It is apparent from the foregoing that the first issue is to be resolved against Mr O'Neill. He has not proven the alleged agreement to 2% of the development value or any value of Rolleston. I have set out my reasons in detail above and no summary affects or restricts that analysis. However, among the many matters on which I base my judgment, I have had regard to (a) the absence of documentation in respect of a substantial commercial retainer, (b) the contrast with the NDA's which were put into writing and were formally executed, (c) the findings which I have made about the back of the envelope including its absence of reference to Rolleston, as well as the fact that it was not signed by Mr Lou and my finding that a copy was not provided to him at the time, (d) all the criticisms which I have of the evidence of Mr O'Neill throughout this judgment, (e) the fact that I prefer the evidence of each of the witnesses for Avic and, as regards the meetings of 30 May and 30 June, the evidence of Mr Lou. I referred to

the recent cases about the approach of the Court to alleged oral agreements, and I have had regard to these cases in the approach to the evidence. In the end, I reject the evidence of Mr O'Neill about the alleged agreement on which he founds his claim, and with that, I reject his claim.

158. I now refer to the second issue, namely whether Mr O'Neill resolved the accreditation issue. This issue does not arise for consideration because I have resolved the first issue against Mr O'Neill. The second issue is predicated upon not only an agreement, but on an agreement in which Mr O'Neill has to have resolved the accreditation issue in order to be entitled to payment. Having found that there was no agreement, I do not have to decide, and indeed I cannot decide, whether the agreement would have required such causation to be proven. Whether or not entitlement would have depended on causation, it is inherent in the case of Mr O'Neill that he resolved the accreditation issue.

159. If causation of this kind had to be proven, then I would have found that the accreditation was brought about by the work of the lawyers advising as to strategy and making representations. Since I have rejected that it was a combination of political and legal work, with the "magic" being at the centre of it, Mr O'Neill cannot be given credit for assisting in bringing about the 'magic': indeed, there was no "magic". He might be responsible for the introduction to Mr McNab in an indirect way. He went to Mr Byatt, and Mr Byatt recommended Mr McNab. I reject both the suggestion that Mr O'Neill was responsible for writing the letter of 25 June 2018 or that he had any substantial part to play in its wording. I reject also the suggestion that it was Mr O'Neill who resolved the accreditation issue.

160. In the circumstances, Mr O'Neill's attempts to make himself appear pivotal to the entire transaction were an attempt to make out that he played a major role. In truth, he did not. The solution was not a political one. It was a legal one. Mr O'Neill assisted indirectly in introducing Mr Byatt who introduced the new legal team, and in instructing the lawyers on behalf of Avic UK, but the real cause of the accreditation was the work carried out by Mr McNab and his team at Simmons & Simmons together with the advice and assistance of Ms Monica Carrs-Frisk QC. However, in view of the finding about the first issue, and for the reasons which I have given, the second issue does not arise for determination.

XII Disposal

161. In all the circumstances, I reject Mr O'Neill's claim against Avic UK in this action. Accordingly, the claim is dismissed.