



Case No: HQ07X01481

**Neutral Citation Number: [2010] EWHC 476 (QB)**  
**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 10 March 2010

**Before :**

**THE HONOURABLE MR JUSTICE EADY**

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**Between :**

**BORIS BEREZOVSKY**

**Claimant**

**- and -**

**(1) THE RUSSIAN TELEVISION AND RADIO  
BROADCASTING COMPANY  
(2) VLADIMIR TERLUK**

**Defendants**

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**Desmond Browne QC and Matthew Nicklin (instructed by Carter-Ruck) for the Claimant  
The Second Defendant in person**

Hearing dates: 8-9, 11-12, 15-16 & 18-19 February 2010  
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**Judgment**

## Mr Justice Eady :

### *Introduction: the parties and their roles in the litigation*

1. The Claimant sues the Defendants over the broadcast of a television programme on 1 April 2007. The First Defendant is the Russian Television and Radio Broadcasting Company (“RTR”), which was responsible for the Russian language programme *Vesti Nedeli* on the channel RTR Planeta. RTR’s charter demonstrates that it is a state-owned television and radio broadcaster which was created to obtain and distribute information and also to make television programmes for broadcast both in and outside Russia. This claim is confined to the broadcast of allegations within this jurisdiction.
2. The channel is free to view. It is available without subscription throughout the United Kingdom. There are thousands of Russians and Russian speakers living in Britain (indeed, I was told that there may be several hundred thousand in London alone). One of the witnesses, Mrs Marina Litvinenko, told me that many of them do not integrate too well here and are still very much focused on life in Russia and on the Russian viewpoint on current affairs generally. Her evidence is supported by other witnesses. Mr Yuli Dubov, for example, compared *Vesti Nedeli* to Newsnight, although he thought it would attract “a broader audience”. It is likely to have attracted particular interest on the night in question because it had been trailed in advance as throwing new light on the notorious murder of Mr Alexander Litvinenko the previous November. The likelihood is that the viewers of the programme in the jurisdiction will have been measured in the thousands.
3. The Second Defendant, Mr Terluk, has lived in this country since 15 February 1999 and has been hoping to obtain political asylum throughout that period, although it has so far not been granted. The Claimant has lived here since 2001 and was granted asylum on 10 September 2003. He obtained refugee status and indefinite leave to remain because the view was taken by the Home Office that he had “a well-founded fear of political persecution” in Russia. He was described by one of the witnesses, Mr Alex Goldfarb, as a leader of the Russian émigré community and the principal opponent of Mr Vladimir Putin abroad.
4. As I have said, the theme of the programme in question was to throw new light on the murder of Alexander Litvinenko, which took place in London in November 2006. A significant part of the programme consisted in an interview with a person (referred to as “Pyotr”) whose identity was, to some extent at least, disguised. The back of his head was shown in shadow and his voice was distorted. It is the Claimant’s case that the interviewee was in fact the Second Defendant. That remains a live issue for the court to resolve.
5. The First Defendant took no part in the trial, although it had been represented by various firms of solicitors at different stages. There were, however, long periods of non-participation. It only finally became clear shortly before the trial that it would not be represented.
6. Judgment had been entered on 4 December 2008 against both Defendants in default. In July of last year, however, I set aside judgment in respect of the Second Defendant. Although at one stage it was indicated (in a letter from Denton Wilde Sapte of 4 August 2009) that the First Defendant also intended to apply to set aside the

judgment, no such application was ever launched. The trial eventually took place, therefore, on the issues of both liability and damages regarding the Second Defendant, but the only issue relating to the First Defendant was that of damages.

7. When judgment was entered originally, there was a direction that damages were to be assessed by judge alone on 6 March 2009. By letter of 11 December, one week after judgment was entered, both Defendants were informed that they could apply for trial by jury if they wished. Nothing happened on this or any other issue until, a few days before the appointed hearing date, the Second Defendant applied to set aside judgment. (This followed a meeting on 27 February 2009 with representatives of the Russian Chief Prosecutor's Department, although Mr Terluk says that he was working on the application and that he only made a few amendments to his draft after the meeting.) Thus the hearing on 6 March was used for other purposes. There came a point when I directed that the trial should take place with a jury, because I had formed the impression that Mr Terluk favoured this mode of trial. At the pre-trial review on 5 February 2010, however, he made it clear that this was not so. It transpired that he and the Claimant were both content to have trial by judge alone. The First Defendant had never expressed any view on this point, either at the time I originally ordered assessment of damages by judge alone or when I later directed trial by jury. I made an order accordingly.
8. As it happened, this was more convenient for all concerned. Jury trial with a litigant in person speaking through an interpreter would have been problematic. Sitting alone, I was able to approach the trial more informally and could let Mr Terluk's McKenzie friend, Ms Margiani, take more of a proactive role and to an extent act as a quasi-advocate. Also, I was able to take a more relaxed view about the admissibility of evidence than would have been the case with a jury. In fact, a jury would almost certainly have had to be discharged in the light of some of the material Mr Terluk introduced. I let in a substantial amount of evidence, and cross-examination, without taking up time arguing about it or having to explain the rules of evidence. This was on the basis that I could then decide the case only on that which was properly admissible. Further difficulties would have arisen in a jury trial over documents, as the Second Defendant kept refusing to indicate to the Claimant's solicitors in advance which documents he wanted in the trial bundle. He introduced them piecemeal as the trial progressed.
9. It is perhaps worth recording that a number of false allegations have been made in the Russian press as to why RTR did not participate in the trial. It has been said, for example, that it was prohibited from doing so because the court had ordered it to disclose the identity of a source (i.e. Pyotr), which it refused to do. In fact, the opposite is the truth. There was a hearing in January of this year when counsel represented RTR and made submissions on source protection. These were upheld, so that RTR did not have to disclose anything which might reveal such information.
10. It is true that there had been a much earlier hearing, in July 2008, during which RTR had asked the court to decline jurisdiction on the ground that it was obliged, by Russian law, not to reveal the identity of "Pyotr" because he was supposed to be a "state-protected witness/victim". This was said to render the case non-justiciable. I rejected this application: [2008] EWHC 1918 (QB). RTR had failed to establish that "Pyotr" had the protected status. Moreover, no indication was given as to why this litigation would require Pyotr's identity to be revealed in any event. It was not, for

example, explained what defence RTR would wish to advance that might lead to this revelation; in particular, there was no indication of a plea of justification. Moreover, even at that stage, I referred, at [22], to the possibility of RTR being able to rely on s.10 of the Contempt of Court Act 1981, which provides for source protection. (Since RTR was unsuccessful in its application, it was ordered to pay a sum on account of costs, which remains outstanding to this day.)

11. RTR was ordered on 25 January of this year to specify whether it was going to participate in the trial by the deadline of 27 January at 5 p.m. This left only seven working days before the commencement of the trial itself. The purpose of the order was to enable everyone to prepare accordingly. Both I and the Claimant's solicitors had previously tried to obtain an answer from RTR as to its intentions, but this information was not forthcoming. For example, I had asked RTR's counsel at a hearing on 13 January and he replied that he would take instructions. The request was repeated in a solicitor's letter of 14 January. Denton Wilde Sapte responded in letters of 15 and 21 January to the effect that they were taking instructions. Still nothing happened. All this against the background that the trial date had been fixed in August 2009. RTR had had ample time to decide on the stance it wanted to take. It was necessary to know where we stood. Despite having solicitors in London, it failed to meet the deadline. No application was made for an extension.
12. On 1 March, after this judgment was ready in draft for releasing to the parties, RTR resurfaced. I received a communication indicating that it wished to appeal my order of 5 February as to mode of trial. It wished to argue that the damages should have been assessed by a jury. I was asked to stay the handing down of my judgment until after the application for permission to appeal was dealt with. The object is apparently to obtain an order for retrial of the issues relating to damages – this time with a jury. Mr Browne QC, for the Claimant, has made the point that it would be “absurd that a non-participating party should be able to dictate mode of trial, when the participating parties both wished a trial by judge alone”. By the time I made the order on 5 February, it had been clear for more than a week that RTR was not intending to participate. As I have said, it failed to meet the deadline on 27 January and did not seek an extension.
13. It would not accord with the overriding objective for me to stay the handing down of judgment on liability, as between Mr Berezovsky and Mr Terluk, simply because RTR suddenly declared an interest in jury trial on the issue of damages. Nor would it be compliant with the parties' rights under Article 6 of the European Convention. There have been unnecessary delays in the course of the litigation and it is overdue for resolution.
14. In any event, since the issue of liability was to be tried by judge alone, it would make no sense to bring in a jury at a later stage to assess the damages. They would need to have the whole circumstances of the trial on liability placed before them. It would amount to a complete replication of what had already taken place. In all the circumstances, I concluded that it was inappropriate to stay the handing down of my judgment on damages.
15. Before I come to the broadcast itself, and the defamatory meanings for which the Claimant contends, it is important that I set out something of the background context, as it has emerged in the course of the evidence.

*Mr Boris Berezovsky's account of his earlier career*

16. Mr Berezovsky was born in Moscow in 1946. For many years he worked at the Institute for Control Sciences, where he eventually held the post of Head of the Department of Computer Design. While there, he obtained a degree in engineering at the age of 28 and subsequently became a Doctor of Sciences, aged 35. He was elected a corresponding member of the Russian Academy of Sciences.
17. In the course of his career, he has written more than a hundred papers and two monographs on scientific subjects. He has also lectured around the world, including in the United States, Japan, Italy and Germany. During his time at the Institute, Mr Berezovsky worked with the large car manufacturer known as Autovaz and developed computer software for automatic design systems. These were used in various Russian industries. One of the first private companies to exist in Russia was Logovaz, which was set up by Mr Berezovsky in 1989 for the purpose, originally, of developing and selling computer software. In 1991, he became a distributor for a large number of external car manufacturers, such as Mercedes-Benz, Volvo, General Motors, Chrysler, Honda and Daewoo. Mr Berezovsky's business career thereafter prospered and in November 1994 Logovaz, together with some other private companies, acquired a 49% share of ORT, which he described as "the major Russian television channel". A year later he acquired a substantial interest in the major oil company, Sibneft, which was set up in September 1995.
18. During the presidency of Mr Boris Yeltsin, Mr Berezovsky became involved in politics and held various offices. From October 1996 to November 1997, he held the position of Deputy Secretary of the Security Council of the Russian Federation, which led to his becoming directly involved in the negotiation of the peace treaty at the end of the first Chechen war. This was signed between Russia and the Chechen president, Mr Aslan Maskhadov, on 12 May 1997. In April 1998, he was appointed Executive Secretary of the Commonwealth of Independent States ("CIS") This was as a result of the unanimous decision of the twelve presidents of the former Soviet republics. That position he held until 2 April 1999. In December of that year he was elected a member of the Duma.
19. Shortly afterwards, Mr Putin stood for President and Mr Berezovsky was at the outset a supporter. On the other hand, he recounted in his evidence how he became more and more concerned, from the spring of 2000 onwards, by what he perceived to be a process of centralising all power within the Kremlin. He began publicly to oppose certain of his policies.
20. In May 2000, I was told, Mr Berezovsky criticised Mr Putin's decision to dismiss regional governors, who had been democratically elected. A further point of criticism related to the treatment of Vladimir Gusinsky, whose television channel, known as NTV, had voiced opposition to a number of Mr Putin's policies. He was arrested in June 2000 and accused of serious fraud. He was, however, released once he had signed a paper surrendering his television interests to the state.
21. Mr Berezovsky also criticised Mr Putin's policy in relation to Chechnya, which he regarded as aggressive. This is one of the main factors which led Mr Berezovsky voluntarily to resign from the Duma in July 2000. He also announced an intention to organise more general political opposition to Mr Putin.

22. In August 2000, the Kursk submarine disaster occurred, which led to the slow deaths by asphyxiation of the entire crew. Mr Putin was on holiday on the Black Sea at the time and came in for a good deal of criticism for what was thought by many people to be a slow response to the disaster. He was given unfavourable coverage in this context by ORT, which led to his inviting Mr Berezovsky to the Kremlin. According to his evidence, he was told to surrender his share in ORT because Mr Putin wished to have complete control of the television station. If he did not comply, he would be put in prison. He protested publicly that the Kremlin was trying to “blackmail” him. Eventually, in October 2000, while he was away in France, it was announced by the Russian prosecuting authorities that he and Mr Gusinsky were to be charged shortly with separate criminal offences. It is Mr Berezovsky’s case that these were politically motivated. He decided not to return to Russia.
23. By October 2001, Mr Berezovsky was in England and, as I have recorded, he applied for political asylum. In March 2003, the Russian prosecutor applied for extradition, on the basis that Mr Berezovsky had stolen 2,322 cars. The background to this was that Autovaz had supplied these vehicles to Logovaz on credit terms back in 1993 and 1994. According to Mr Berezovsky, these vehicles had been transferred as part of a tripartite deal between Autovaz, Logovaz and the Samara regional administration, which took a share in Logovaz equivalent to the amount Autovaz owed the region in outstanding taxes.
24. I was told that, much later, in November 2005, the Praesidium of the Supreme Arbitration Court held that this deal had been entirely lawful. I must be careful, however, to record that I have heard no expert evidence on Russian law or as to the full implications of that decision. At all events, Mr Berezovsky relies upon it as an outward demonstration of the fact that the charges brought against him had no foundation in law and were politically motivated. It is not for me to come to a conclusion one way or the other. It does not arise as an issue in the case.
25. He contends also that the grant of refugee status in 2003 would not have taken place if the British government had reason to believe that he had committed a serious criminal offence. Furthermore, at the same time the extradition proceedings brought against him in England were discharged.
26. In November 2008, notwithstanding the ruling of the Praesidium three years earlier, the criminal proceedings were revived and a trial was to be conducted in Mr Berezovsky’s absence. According to his evidence, he believes that this was a political act intended to undermine his refugee status in the United Kingdom and to lead possibly to his extradition. He took no part in the criminal proceedings in Russia, which commenced on 19 January 2009.

*Mr Berezovsky’s relationship with Mr Alexander Litvinenko*

27. It is necessary, by way of background, also to summarise the evidence in relation to Mr Alexander Litvinenko, whose death formed the background to and subject-matter of the offending television broadcast. I heard evidence from his widow, Mrs Marina Litvinenko, and I also received in evidence a written statement of Mr Litvinenko himself, which was dated 31 July 2003, and had been prepared for use in Mr Berezovsky’s asylum application, then still pending. Its relevance is that it touches

upon the disputed incidents which are alleged to have taken place in the summer of 2003 as part of the Second Defendant's plea of justification in these proceedings.

28. For various reasons, Mr Berezovsky considered his life to be in danger at the time he was still living in Russia in the mid 1990s. It was during this time that he met Mr Litvinenko, who had been an officer in the KGB and was at that time working for its successor, the Federal Counterintelligence Service ("FSK") which became, in 1995, the Federal Security Service ("FSB"). He received a good deal of support from him over the years and regarded him as a close friend.
29. On 7 June 1994, Mr Berezovsky's car was blown up in front of the Logovaz offices in Moscow. Although he was fortunate enough to escape with minor burns, his driver was apparently decapitated. Mr Litvinenko was one of the officers charged with the responsibility for investigating that assassination attempt, and that is how Mr Berezovsky first met him. As it happens, the perpetrators were never found.
30. On 1 March 1995, the Director General of ORT, Vladislav Listiev, was murdered. Two days later, the police in Moscow raided Mr Berezovsky's Logovaz office with a view to arresting him and questioning him about the murder. According to Mr Berezovsky, he believes that this too was politically motivated and that the arrest took place on the instructions of Alexander Korzhakov, who was at that time President Yeltsin's Chief of Security. He had been a general in the KGB and was seeking to consolidate power around President Yeltsin through what Mr Berezovsky describes as "the old KGB elite". His account of this is that Korzhakov was pitting himself politically against him and other "economic reformers and entrepreneurs". I emphasise that I am not in a position to make any finding as to where the truth lies in this matter: I merely record Mr Berezovsky's version of events.
31. It was in this context that Mr Berezovsky again called upon Mr Litvinenko for assistance. On the day of the raid, 3 March 1995, Mr Litvinenko came to the offices, identified himself as an FSB officer and told the police officers to "move along". Mr Litvinenko called his superior officers to the scene also and the situation, described by Mr Berezovsky as "a stand off", was brought to a conclusion. Mr Berezovsky claims that he would have been arrested and possibly killed had it not been for Mr Litvinenko's prompt assistance on that occasion.
32. In 1998, Mr Berezovsky had further reason to be grateful to Mr Litvinenko, who was at that time working for the FSB unit known as URPO. This had responsibilities for dealing with organised crime. In March of that year, Mr Litvinenko told Mr Berezovsky that he had been ordered in December 1997 by his commander's deputy, Alexander Kamyshnikov, to assassinate him (Mr Berezovsky). He was chosen for this task because he was believed to be close to him. Nevertheless, he regarded the instruction, not surprisingly, as unlawful.
33. Following this, Mr Berezovsky says that he invited Mr Litvinenko and his wife to his dacha in Moscow in April 1998, and arranged for this very serious allegation to be filmed by an ORT camera crew. This was in the presence of Sergei Dorenko, who I understand was a prominent television presenter. Mrs Litvinenko has said that she realised then that their lives would never be the same again. Equipped with that evidence, Mr Berezovsky then filed a complaint with the chief military prosecutor's office, which was dismissed eventually on 2 October of that year. According to Mr

Berezovsky's evidence, he was told that it had been accepted that the officers concerned had spoken the words alleged by Mr Litvinenko, but that they were not to be interpreted as a specific order to kill him. He produced in evidence his letter of complaint, objecting to the decision to close the case for the reason that what Mr Litvinenko took as an instruction was only a "casual remark".

34. In July 1998, Mr Putin became head of the FSB and Mr Berezovsky revealed the assassination plot to him. He also arranged for Mr Litvinenko to meet him, in order to present his evidence of corruption within the FSB. Mr Berezovsky says that Mr Putin took no action and that, therefore, on 11 November 1998, he wrote an open letter to Mr Putin, published in the newspaper *Kommersant*, inviting him to use his power to restore constitutional order.
35. A few days after the publication of that letter, on 17 November, Mr Litvinenko and other URPO colleagues announced publicly that they had been ordered to assassinate Mr Berezovsky. This took place at a press conference held at the Interfax Agency. They called upon Mr Putin to purge the FSB of corruption. According to Mr Berezovsky's perception, these events caused embarrassment to Mr Putin and he was critical of the "whistle-blowers".
36. Mr Litvinenko's activities, it seems, led to his dismissal from the FSB on 10 January 1999 on Mr Putin's instructions. Two months later, according to Mr Berezovsky, he was arrested on "trumped up" charges and spent several months in the Lefortovo Prison, where he is said to have been beaten. He says that he also spent 36 days in solitary confinement. On 26 November of the same year a judge found Mr Litvinenko not guilty on all counts, but he was re-arrested in the courtroom on different charges. I understand that he was accused of beating up suspects at a vegetable storage facility and extorting cans of peas from them worth 80 million roubles. Mr Litvinenko therefore returned to jail. Mrs Litvinenko told me that she had been warned at the time that the authorities had 11 charges against her husband up their sleeves and so, if he were acquitted of one, there were plenty of others available.
37. At this point, Mr Berezovsky went to see Mr Putin (by then Prime Minister) and appealed for his intervention. Mr Litvinenko was then released from jail on 26 December 1999. Nevertheless, he remained under FSB surveillance and his passport was taken away. Despite this, he managed to flee Russia finally in October 2000. When he arrived in Turkey, Mr Goldfarb, a colleague of Mr Berezovsky and a witness in the case, offered assistance to him and his family. Mr and Mrs Litvinenko and their son arrived in London on 1 November 2000. He applied for political asylum, which was granted in May 2001. By this time, Mr Berezovsky and Mr Litvinenko were firm friends.

*The "apartment bombings" and the "Ryazan incident"*

38. Once he arrived in England, Mr Litvinenko and a historian called Yuri Felshtinsky began to investigate an incident which had occurred in September 1999. It involved the bombing of some apartments, which led to many civilians being killed. It was their case that the FSB had been responsible for the attacks and that the motive was to provide a pretext for the invasion of Chechnya on 23 September, thus precipitating the second Chechen war. I need to stress once again that I am not in a position to make



any findings as to where the truth lies on these important and controversial events. They are not issues in the litigation before me and I am not called upon to resolve any dispute of that sort. These matters simply form part of the narrative in Mr Berezovsky's evidence.

39. Mr Litvinenko's researches led to a book called "Blowing up Russia, Terror from Within" and a documentary programme called "Assassination of Russia". Similar allegations had been made elsewhere, including on Mr Vladimir Gusinsky's channel, NTV, which broadcast a documentary called "The Sugar of Ryazan" just before the elections of 26 March 2000, when Mr Putin won an overwhelming majority. The "Ryazan incident" concerned an announcement by the police, on 23 September 1999 (the day of the invasion), that a bombing attempt had been foiled in an apartment block in Ryazan, which lies some 130 miles to the south of Moscow. That day, Mr Putin praised the vigilance of the local people in discovering the bomb and made a promise of victory in Chechnya. Two days later, a different account was given, to the effect that there had been an FSB training exercise and that what had been found was sugar – rather than the explosive hexogen. Furthermore, what had been thought to be a detonator turned out to be a dummy device. For reasons which I need not address, Mr Berezovsky and others found this later official explanation implausible.
40. NTV had commissioned the "Assassination of Russia" documentary in 2001. It was made by two journalists who were also responsible for the film "Sugar of Ryazan". Mr Gusinsky had intended to broadcast that film as soon as the documentary was finished, but in April 2001 the Russian government took NTV from Mr Gusinsky. The NTV journalists moved to Mr Berezovsky's channel, TV-6. He made it clear that his channel would continue to finance the film and ultimately to broadcast it. Mr Litvinenko and his colleague became the film's consultants.
41. On 14 December 2001, by means of a teleconference at a gathering in Moscow, Mr Berezovsky accused the FSB of masterminding the apartment bombs. This apparently led to the government's decision to confiscate the TV-6 channel. After a series of court decisions, its frequency was turned off on 21 January 2002. Accordingly, the film was never shown to the Russian public. Attempts to publish the book and show the film there failed. I am told that three members of the Russian Parliament who were involved were later killed or suffered sudden deaths; namely, Yuri Schekochikin, Vladimir Golovlev and Sergei Yuschenkov.
42. In the light of all the difficulties, Mr Berezovsky arranged for the documentary to be shown in London on 5 March 2002. At that time, he was engaged in forming a political party ("Liberal Russia"). It was formally registered as a political party in Russia on 7 April 2003. It was announced at the screening that a central platform of the new party would be to expose what was perceived as the "cover up". Another participant at the press conference was Mr Nikita Chekulin, who was at that time taking a similar line to Mr Berezovsky. After he returned to Russia two years later, however, he went through a remarkable conversion. He retracted what he had said at the press conference and claimed that it had been dictated to him by one of Mr Berezovsky's associates (Mr Alex Goldfarb). I mention Mr Chekulin at this stage because he reappears later in the narrative from time to time.
43. Leaders of the newly formed party came over to London for the viewing of the documentary, including Mr Yuschenkov (whose murder took place on 17 April 2003).

I was told by Mr Alex Goldfarb that he had been a member of the Duma since 1989 and had recently founded a public commission in Moscow to investigate the apartment bombings and the Ryazan incident. Another member of the Commission, until his death shortly afterwards, was Mr Shekochikin. I was told by one of Mr Terluk's witnesses, Mr Khinstein, who arrived unannounced towards the end of the trial, that the better view was that Mr Shekochikin's death was attributable to natural causes rather than poisoning. Be that as it may, with the founding members either dead or in exile, the Liberal Russia party ceased to function.

*The death of Mr Litvinenko*

44. Mr Berezovsky included this material in his witness statement, as part of the background, to show how closely linked he had become with Mr Litvinenko. Although Mr Litvinenko was not apparently interested in politics, he had strong views as to upholding the rule of law. This is all part of the context to which Mr Berezovsky points in seeking to demonstrate how unlikely it would be that he should be involved in Mr Litvinenko's assassination (which is one of the central charges he believes has been made against him in the television programme now sued upon).
45. These activities led to Mr Litvinenko and Mr Berezovsky becoming, according to their perception, targets for the FSB. They both believed that vigilance was necessary because their lives were in danger.
46. A contrasting account of Mr Litvinenko's character and record was advanced by the Russian prosecutors, through Mr Terluk, in the course of the trial. He was portrayed as something of a wild man. It was said that he was an unreliable fantasist, who was prone to emotional outbursts and to violent attacks on prisoners. The purpose of this was to undermine the credibility to be attached to his witness statement. (The reason why the prosecutors knew about its contents was because it was handed over by Mr Terluk in breach of his obligation of confidence, along with other disclosed documents.)
47. Mr Berezovsky drew attention to the evidence given by Mr Litvinenko in his earlier libel action in May 2006. I recall myself that he stated on that occasion that some people were afraid to appear in court, even to confirm that they had watched the television programme which was the subject-matter of those proceedings. He said he was quite sure that the case was being followed by the FSB and also mentioned that he knew of people who had been killed because they took their cases to the European Court of Human Rights in Strasbourg. This was six months before he was himself assassinated in London by means of polonium poisoning.
48. A few weeks before this occurred, on 7 October 2006, the Russian journalist Anna Politkovskaya was murdered. She had been the Chechen correspondent of the *Novaya Gazeta* and was known as a critic of the Chechen war and of Mr Putin's presidency. Reports appeared shortly afterwards to the effect that President Putin had made comments about the murder during a trip to Germany on 10 October. He apparently suggested that it might have been ordered by those living abroad and hiding from Russian justice – the motive being to create anti-Russian feelings around the world. Some took this to be a reference to Mr Berezovsky. Without mincing his words, Mr Litvinenko shortly thereafter accused Mr Putin of ordering her murder. This took place at a Politkovskaya commemoration at the Frontline Club in London.

Whatever else may be said about him, that no doubt took considerable courage. He first fell ill on 1 November and died a horrible death on 23 November. Afterwards, it was established that he had ingested polonium-210, which is a rare radioactive isotope. It destroyed his bone marrow, other organs and his immune system. Mr Berezovsky had visited him several times in hospital before his death. The funeral took place on 7 December 2006 at Highgate Cemetery.

49. As is well known, attempts were later made by the United Kingdom to obtain the extradition of a Russian citizen in connection with the murder of Mr Litvinenko. Much earlier, however, on 5 December 2006, it was announced by the Russian Prosecutor General, Yuri Chaika, that no Russian citizen would be extradited to Britain. In this connection, I was shown an extract from *Thomson Business Intelligence* confirming that announcement.
50. During that autumn, reports had appeared to the effect that an agreement had been signed between British authorities and the Deputy General Prosecutor of the Russian Federation, Alexander Zvyagintsev, with a view to smoothing the extradition of suspected financial criminals who had fled to London. It was said that Mr Berezovsky was “top of the hit list”. He was in no doubt that the Russian authorities were attempting to revoke his refugee status and to renew their application for extradition. Then, shortly after Mr Litvinenko’s death, reports began to emerge from Russia to the effect that Mr Berezovsky was to blame for the murder and that his motive was to embarrass Mr Putin.
51. Although he knew about them, Mr Berezovsky did not take these rumours seriously. He did, however, agree to be questioned by the Russian authorities, in the presence of British police officers, and the interview took place on 30 March 2007. It will be noted that this was two days before the broadcast which forms the subject-matter of this libel action. He insisted that the interview should be recorded and that he would have the opportunity to release the record of it if there was any attempt to misrepresent what had taken place. Indeed, one of the allegations on the programme in question was to the effect that he had declined to answer a substantial proportion of the questions put to him. In order to demonstrate that this was untrue, he released the full transcript of the recording, as he was entitled to do, on various websites including that of *Kommersant* and *Compromat.ru*.

*The content of the broadcast of 1 April 2007*

52. I have set out the background at some length in order to put the broadcast in context. It is now appropriate to rehearse the words complained of in the action (as translated into English):

“**[Announcer]** Today’s programme in the studio of Andrei Kondrashov: How Berezovsky obtained political asylum

**[Berezovsky]** If I particularly dislike someone, I’ll kill him

**[Kondrashov]** A sensational disclosure to *Newsweek* from a well-informed source now under the protection of Scotland Yard.

[Pyotr] When they made up their minds to take action, they obviously slipped something into my coffee.

[Kondrashov] A new version of the Litvinenko poisoning, he also knew too much...

[Other items in the programme]

[Kondrashov] We begin with an event which is hardly the main news of the past week, but it's quite a sensation. A new trail has emerged in the Litvinenko affair; a rather unexpected turn of events. Litvinenko may have been poisoned because he was one of two witnesses to a frame-up which helped Boris Berezovsky to obtain political asylum in Britain. The other witness is still alive, but has been afraid for some time now that he may share Litvinenko's fate, he has requested the protection of Scotland Yard and the Prosecutor General.

My colleague Andrei Medvedev managed to meet up with him in London. He told him how they tried to make him declare himself an FSB agent assigned to kill Berezovsky and how the oligarch escaped extradition as a result. This person, who is now under the protection of the British police, began talks with Berezovsky himself at the same time. Of course, Berezovsky has been interviewed by investigators this week.

[Caption]: **London, March 30<sup>th</sup> 2007**

[Medvedev] I assume the mixture of poorly concealed irritation and fear on his face during the press conference was brought on by his interview with the investigator. He was questioned by an English policeman in the presence of a Russian colleague. The questions were sent over to Britain three months ago; they were put to Berezovsky in English and translated into Russian. The oligarch repeats his claim that Alexander Litvinenko was poisoned by Kremlin agents who want to poison him too.

[Caption]: **Boris Berezovsky. London, March 30<sup>th</sup> 2007**

[Berezovsky] I considered it essential to meet them, as my sole aim is to find the people who killed my

friend. In this case, unfortunately, it has become a personal matter.

**[Caption]: Archive**

**[Medvedev]** The claims about spies, murderers and poison first surfaced four years ago in London. It was actually Alexander Litvinenko who thought up this scare story to save Berezovsky from extradition.

**[Caption]: London, March 2003**

In the Spring of 2003, the British were seriously planning to hand Berezovsky over to Russia. Apparently, it was a matter of months, even weeks. Supposedly, the oligarch was even arrested, then released, with bail set at \$200,000. The only way out was to prove that he was in mortal danger in his homeland.

**[Caption]: London, March 28<sup>th</sup> 2007**

The man we interviewed – let's call him "Pyotr" – is currently under State protection in two countries and agents of Scotland Yard are protecting him at the request of the Prosecutor General of Russia

In 2003 he attended the court proceedings for Berezovsky's case, as he himself was planning to apply for political asylum in Britain. On one of the days in court he met Nikita Chekulín, a friend of the disgraced oligarch at the time.

Chekulín came to the next meeting with a friend who introduced himself as Sasha Litvinenko

**[Caption]: Pyotr, acquaintance of A.Litvinenko, now protected by Scotland Yard. London, March 28<sup>th</sup> 2007**

**[Pyotr]** And this Sasha said to me, straight off, "We recognise you. You're a KGB colonel. And I recognise you for sure: you were following me two days ago at Heathrow." And Boris Berezovsky told me – Litvinenko that is – that he'd seen me at the Prosecutor General's Office in Russia and you'd been assigned to make an attempt on Berezovsky's life.

**[Caption]: London, Great Britain**

**[Medvedev]** Pyotr says he tried to explain that no way was he an agent and he was trying to get political asylum himself. Litvinenko replied that it didn't matter. "Confess that you have to poison Berezovsky with a toxin hidden in a fountain pen and we'll pay you two million pounds."

You had to confess to murder?

**[Caption]: Pyotr, acquaintance of A. Litvinenko, now protected by Scotland Yard. London, March 28<sup>th</sup> 2007**

**[Pyotr]** Yes, yes, to Berezovsky's murder, and they presented it as if I'd decided not to do this and met up with them and told them all about it.

**[Caption]: London, 2002**

**[Medvedev]** Litvinenko immediately explained that this would be a strong argument for the British court. If they're even trying to kill Berezovsky here, that means he's going to be persecuted for his political convictions and there's no way he should be sent back to Russia.

**[Caption]: Pyotr, acquaintance of A.Litvinenko, now protected by Scotland Yard. London, March 28<sup>th</sup> 2007**

**[Pyotr]** They needed my confession to help Boris Berezovsky when his case came to court; to help his lawyers make a sensational announcement, you know, and put Boris Berezovsky in a stronger position so they would not extradite him – that's what they were basically trying to achieve.

**[Caption]: London, Great Britain**

**[Medvedev]** But Pyotr refused. Litvinenko proposed another meeting and increased the payment to 5 million. In all, there were more like ten meetings and the pay eventually went up to 40 million. Pyotr recalled one of the final meetings, in particular. They were sitting in a sushi bar, by coincidence, drinking coffee.

**[Caption]: Pyotr, acquaintance of A.Litvinenko, now protected by Scotland Yard. London, March 28<sup>th</sup> 2007**

**[Pyotr]** Litvinenko went to get coffee and we were sitting with Dubov. That evening they made up their minds to take action and obviously slipped something into my coffee.

**[Caption]: London, Great Britain**

**[Medvedev]** “My head started to spin”, Pyotr says, “I couldn’t concentrate.” Litvinenko invited him to meet his lawyer, supposedly for a consultation. The lawyer asked him to explain in detail what Litvinenko was basically proposing. Evidently, they then recorded Pyotr’s story on tape.

**[Caption]: London, Great Britain**

**[Medvedev]** And at the end of August 2003, articles appeared in the British press with the headline, “Attempt on Berezovsky’s life”. The extradition trial was brought to a halt and the oligarch was given political asylum in early September. Soon after, Litvinenko phoned Pyotr and said, “you’ve got problems, come to my office.”

**[Caption]: Pyotr, acquaintance of A.Litvinenko, now protected by Scotland Yard. London, March 28<sup>th</sup> 2007**

**[Pyotr]** At our meeting in the office, Berezovsky’s lawyer told me, “young man, 70% of Boris Berezovsky’s success in obtaining political asylum is down to the information you gave to Alexander Litvinenko.” Then I realised that by somehow putting together all sorts of tapes they could send something somewhere and get someone wanting to look into it.

**[Caption]: London, Great Britain**

**[Medvedev]** During that meeting, they again proposed to him: tell people you’re an FSB agent and you’re planning to kill Litvinenko and Dubov. Pyotr refused and said basically, I don’t want to have any more meetings with you.

**[Caption]: Pyotr, acquaintance of A.Litvinenko, now protected by Scotland Yard. London, March 28<sup>th</sup> 2007**

**[Pyotr]** Then Alexander Litvinenko went crazy. He grabbed the edge of the oak table and in front of everyone literally banged his head on the table several times, shouting: “Don’t you understand that if we don’t get this confession, they’ll extradite Dubov to Russia and all of us will follow? Alexander Litvinenko rang Berezovsky and started to discuss the situation that had developed and I heard Berezovsky tell him, “Agree to all his conditions”.

**[Caption]: London, Great Britain**

**[Medvedev]** But he didn’t offer any conditions, he just went home. Then they started making threatening phone calls and watching his flat. In the summer of 2006, he asked the Russian and British authorities for protection. He wrote in his statement that they were trying to poison him. Three months later, Litvinenko died in strange circumstances.

If Pyotr’s story is true, then it’s clear what the Prosecutor General’s investigators meant when they stated that Alexander Litvinenko was a valuable witness for the Russian courts. And it’s also clear what is behind the insistence that there’s a “Russian trail” in the investigation into the death of the former KGB officer.

**[Caption]: Alexander Zviagintsev, Deputy General Prosecutor, Moscow**

**[Zviagintsev]** The investigation will show what happened. But I am categorically opposed to any sort of speculation during the investigation. We could say with equal justification that the trail leads to London. It is not for nothing that our investigators are working in Britain right now. But that’s not what we are saying. As far as our investigation goes, we are being very thorough. We have several lines of inquiry. One of these is a quite sound working hypothesis. But investigation can be an unpredictable thing, so we are following all lines of inquiry very carefully.



**[Caption]: London, Great Britain**

**[Medvedev]** Basically, Berezovsky and everyone hiding from the law in Britain must have been very worried by this. Last week a delegation from the office of the Russian Prosecutor General visited London for the third time in six months. They consulted with colleagues from the Crown Prosecution Service, the Home Office and Scotland Yard. They established that they hold the same positions on the investigation of specific criminal cases and the execution of orders in an investigation and that the English also understand the need to change European conventions on handing over criminals and on legal assistance in criminal cases. These conventions were agreed half a century ago at the height of the Cold War and are hopelessly outdated. The result is that a criminal can now be presented as a political refugee.

**[Caption]: Alexander Zviagintsev, Deputy General Prosecutor, Moscow**

**[Zviagintsev]** As I have already said, we discussed a number of practical issues. In particular, we agreed to conduct a joint study in Moscow, in which members of the Crown Prosecution Service, Home Office and Scotland Yard will take part. To help combat the legalisation of criminal proceeds, we have agreed to conduct a meeting in Moscow with colleagues from other states, to which we will invite members of Scotland Yard. We sensed some interest on the part of the Home Office in signing a memorandum on collaboration between the Prosecutor General of the Russian Federation and the Home Office. We signed a similar document last year with the Crown Prosecution Service.

**[Caption]: Great Britain, March 30<sup>th</sup> 2007**

**[Medvedev]** In a six-hour interview, the investigator asked Berezovsky more than a hundred questions and requested more information on as many points. As Berezovsky did not answer almost half the questions, we can only speculate on which points the oligarch remained silent. The investigators have made no comment.

**[Caption]: Great Britain, March 30<sup>th</sup> 2007**

Incidentally, British politicians announced back in January that the investigation into the Litvinenko affair was about to conclude. But it is still on-going. Evidently, not everything in this affair is clear to the English investigators and they still have an open mind as to who stands to gain from it.”

(Mr Berezovsky pointed out that the first words attributed to him, at the beginning of the programme, had been uttered by him sarcastically in the course of a press conference and were not intended to be taken seriously.)

*The defamatory meanings relied upon by Mr Berezovsky*

53. The natural and ordinary meanings relied upon in the particulars of claim are as follows:
- i) the Claimant was a knowing party to a criminal conspiracy to avoid his extradition and obtain political asylum in Britain by procuring a false confession from the so-called Pyotr (first by offering him massive bribes and then, when he refused to comply, by drugging him) that there was an FSB plot to poison the Claimant and hence he would be in mortal danger if returned to Russia; and
  - ii) the Claimant had been a party to the murder by poisoning of Alexander Litvinenko because the latter had been a witness to the said conspiracy and the procurement of the false confession from Pyotr; alternatively by his conduct the Claimant had given strong cause to suspect that he had been guilty of doing so; and
  - iii) the Claimant had been a party to threats which made Pyotr fear for his life.

*The extent of Mr Terluk's role in the programme*

54. There can be no doubt that the First Defendant is responsible in law for the content of the programme as a whole. Also, “Pyotr” would be liable for any defamatory allegations made by him in the course of the interview (subject to any distortion through editing). Issues arise as to whether the Second Defendant was in fact “Pyotr” and, moreover, whether “Pyotr” should be regarded as liable for defamatory imputations not directly derived from his own words. On both these issues, of course, the burden of proof lies on the Claimant.
55. Mr Berezovsky and Mr Yuli Dubov are in no doubt that Mr Terluk was the person interviewed. This has never been admitted, although it is difficult to come to any other conclusion. At so many points the events attributed to “Pyotr” in the programme correspond, to a greater or lesser extent, to occurrences involving Mr Terluk.

56. For example, Mr Terluk attended hearings relating to Mr Berezovsky's extradition at Bow Street Magistrates' Court on 2 April and 13 May 2003. He also attended meetings during the summer with Mr Litvinenko, including one on the evening of 18 June 2003 in a Japanese restaurant, at which Mr Alex Goldfarb was also present. (Although "Pyotr" suggests on the programme that Yuli Dubov was also present, Mr Terluk now accepts that this was not so.) Later the same evening, they all attended a meeting at the office in Carter Lane of Mr George Menzies. He was the lawyer who had acted for Mr Litvinenko in connection with his application for political asylum. He gave evidence before me in the course of the trial. It is denied, however, that Mr Terluk was pressed to tell a false story, that he was offered money (in any amount) and that he was drugged.
57. Furthermore, Mr Terluk appears to accept in evidence given, both in the trial and at an earlier hearing in March last year, that he did attend at the Russian Embassy in London on or about 28 March 2007. He claims, however, that he thought he was being interviewed by someone from the Russian prosecuting authorities rather than by a television interviewer. He denies also having spotted any television camera or recording equipment. That is implausible, not least because of the special lighting arrangements that were made. I received expert evidence from Mr Anderson to the effect that a camera and operator would have been located about six feet behind him and that an obvious microphone would have been placed to his left. There would also have been a powerful light to his left pointing at Mr Medvedev (in fact reflected off his shaven head) and on to the net curtains behind him. This left the back of Pyotr's head in relative shadow.
58. This is not the only relevant evidence. Long ago the prosecuting authorities were openly referring in Russia to Mr Terluk's involvement. I referred to this in my judgment of 31 July 2008 at [12]-[14] in these terms:
- “12. ... On 19 March 2008 (within a matter of days of the proceedings being served, following considerable delay, upon the First Defendant), a resolution was issued by the Russian prosecutor and notified to Mr Berezovsky's representatives in Russia which accused him of “false denunciation about a serious crime linked to the artificial creation of prosecution evidence”. The essence of the accusation against him is that he created false evidence to bolster his asylum application in 2003 by means of exercising continuous psychological pressure, in the form of threats and bribery, on Mr Terluk. It is said that the purpose of this was to provide the British law enforcement authorities with false evidence to the effect that Mr Terluk, being an officer of the Russian special services, was charged with the responsibility of killing Mr Berezovsky by poison.
13. It will be noted that the commencement of these criminal proceedings took place after a very significant period of delay, following the incidents alleged to have

taken place, and that in the resolution no attempt is made to conceal the identity of Mr Terluk. ...

14. There was a second resolution issued on 22 April 2008, with the purpose of extending the time available to the prosecutor's office for the investigation of the crimes to which the 19 March resolution related. This document not only reveals, once again, the identity of Mr Terluk as the person against whom pressure is said to have been brought, but it also identifies him as the person who gave the interview to the First Defendant's television channel. ... ”
59. I have no doubt that “Pyotr” was indeed Mr Terluk and that he must have known that he was being filmed and recorded.
60. On the other hand, I cannot be sure that he was a party to the overall message conveyed by the programme. If he was a party to the plan, he could also be made liable for the underlying theme that Mr Berezovsky was behind Mr Litvinenko's murder (or, at least, that there were strong grounds to suspect him of it). But he does not actually say that on the programme. It is true that the interview with him is relied upon in the programme itself by its makers (and the First Defendant) as supporting that central proposition. What Mr Terluk said is supposed to provide Mr Berezovsky with the motive for assassinating Mr Litvinenko. Yet the allegation does not directly derive from his words as broadcast.
61. Mr Terluk seems to me to be accusing Mr Berezovsky, albeit indirectly through others, of having offered him massive payments to tell a false story to help him gain refugee status. He also makes the allegation of drugging. But he does not himself make the suggestion that Mr Berezovsky was behind the murder. He may well have been party to that also, but the evidence does not persuade me of that to the required extent (i.e. a balance of probabilities). It is conceivable that Mr Terluk was persuaded to go along with the interview he gave, with some reluctance, but that he was outside the loop of the programme makers' overall plan to lay the murder at Mr Berezovsky's door. Another possibility is that he was simply doing what he was told.
62. In those circumstances, Mr Terluk can be fixed with responsibility for the first of the defamatory meanings listed above – but not the second.
63. It is also Medvedev, rather than Mr Terluk, who says that “ ... they started making threatening phone calls and watching his flat”. It is quite possible that the story originates from Mr Terluk, but it is equally possible that it did not. This means that I have to exempt him from liability for the third of the pleaded meanings also. Only the First Defendant can be shown to be responsible for that.
64. So far as Mr Terluk is concerned, therefore, the central issue remaining in the case is whether he can prove on the balance of probabilities that Mr Berezovsky, indirectly through his associates, in particular Mr Litvinenko and Mr Goldfarb, attempted to bully and browbeat him into making a false statement to assist in Mr Berezovsky's asylum claim in 2003. Mr Terluk says that he turned down millions of dollars and refused to have anything to do with it. It was accepted in the course of cross-

examination that Mr Terluk had collaborated with the Russian prosecutors in the preparation of his defence. Rather curiously, the defence has never been verified by a statement of truth – even after the court’s order on 8 December 2009 that the omission should be rectified.

65. It is important to be clear on one of the central points in Mr Berezovsky’s case. He does not allege that Mr Terluk was himself out to kill him or part of a plot to do so. Nor does Mr Dubov or Mr Goldfarb. It is also clear from Mr Litvinenko’s full statement of 31 July 2003 that neither did he. They never put it any higher than that he was instructed to carry out certain reconnaissance tasks on behalf of handlers at the Russian Embassy (specifically, Mr Smirnov). Moreover, they only alleged that on the basis of what they say Mr Terluk himself told them (which he, of course, denies).
66. Mr Goldfarb and Mr Litvinenko made contemporaneous statements as to what they had been told by Mr Terluk on, respectively, 4 August and 31 July 2003. In addition, Mr Goldfarb made a statement for these proceedings and gave oral evidence bearing it out.
67. As Mr Goldfarb put it, “ ... I did not regard Mr Terluk himself as a direct threat – my assessment was that he was an insignificant figure being used by the Russian Embassy”. Mr Terluk did not make a written statement in 2003, although Mr Goldfarb and Mr Litvinenko encouraged him to do so. Indeed, they suggested that an appointment was made for him to come back and see Mr Menzies for the purpose on 20 June 2003. An interpreter would have attended on that occasion. Mr Menzies confirmed that, but said that an English speaking person rang before the meeting was to take place and cancelled it on Mr Terluk’s behalf.

*Mr Terluk’s interview with Special Branch in September 2003*

68. There is, nonetheless, a brief written record of Mr Terluk’s account dating from that period. After an article appeared about a plot to kill Mr Berezovsky in the *Sunday Times* on 21 September 2003, which seems to have been to a large extent inaccurate, two police officers interviewed him. Det. Chief Inspector Rose (then a detective sergeant) gave evidence before me and confirmed the accuracy of his written report summarising his manuscript notes (no longer in existence themselves). That was obtained as a result of an order I made last year for third party disclosure against the Commissioner of the Metropolitan Police. Mr Browne QC submits that it is the single most important document in the case. It is a purely internal police report dated 26 November 2003. It sets out what Mr Terluk had said to him and the other officer (Det. Constable Cadman, now retired). It appears to be consistent with what Mr Goldfarb and Mr Litvinenko were saying at the time. Mr Terluk, therefore, finds himself in the position of having to say that it was a false and twisted account. I see no reason to believe that at all. As Mr Rose himself said, what possible motive could he have for making it up? Moreover, he confirmed in re-examination that he had not seen the earlier statements made by Mr Litvinenko and Mr Goldfarb at the time the interview took place.
69. The relevant part of the note (some of which was redacted) contains these words:
  - “1. An article was published in the Sunday Times on 21<sup>st</sup> September which purported to expose a plot to assassinate

the billionaire dissident Boris BEREZOVSKY (Attached as *Appendix A*). The article stated that an agent of the SVR / KGB who had been tasked to assassinate him at Bow Street Magistrates Court by stabbing him with a poisoned pen, had lost his nerve and informed Mr BEREZOVSKY of the plot. Police subsequently interviewed the alleged assassin who completely denied his involvement.

2. Vladimir TERLYUK (dob 04/10/51) is a former KGB officer who arrived in the UK on 15<sup>th</sup> Feb 1999 and claimed political asylum. ... He states he is not currently working. His asylum application is still pending and TERLYUK is currently involving his local ... and the Refugee Legal Centre ... on ... in attempting to speed up his application.
3. TERLYUK stated that shortly after he arrived in the UK he had been walking near the park in Camden Town when he had first become aware of two men talking Russian nearby. He went over to the men and began to talk to them. One of these men, who he subsequently developed a relationship with he knew as Mr SMIRNOFF (ph). TERLYUK stated that SMIRNOFF told him that he worked for the Russian Trade Delegation and he supplied him with his telephone contact number there.
4. Their relationship developed over time and one day SMIRNOFF introduced the subject of the review of the extradition of BEREZOVSKY. From previous conversations it was clear to TERLYUK that SMIRNOFF had an extremely low opinion of BEREZOVSKY. The two men arranged to attend the next hearing but SMIRNOFF called TERLYUK the day before to say that he had another commitment and would not be able to attend.
5. They met again after the hearing and TERLYUK stated that SMIRNOFF asked lots of questions in minute detail about what went on at the hearing. He asked about the layout of the building, BEREZOVSKY'S security detail, the general security and how members of the public were shown in and out. TERLYUK attended a total of three hearings, always alone, SMIRNOFF phoning to make his apologies at the last moment.
6. After the last of the three attendances SMIRNOFF was asking about how people were searched when they entered, if they used metal detectors, if they checked inside folders and if they examined pens. It was at this point that Mr TERLYUK claimed that he became very

uncomfortable with what was going on and was worried that he was going to be set up as a fall guy for some form of conspiracy.

7. TERLYUK then contacted one of the security officers at BEREZOVSKY'S next court hearing and told him what had happened. He stated that the story in the Sunday Times was not what he had told them and that it had been substantially 'twisted and spun' by the newspaper. He stated that he had never been tasked or asked to carry out an assassination, that although he was a former Russian Intelligence Officer post 1991 he had had no contact with the Intelligence services and that he was not in the employment of the Russian Trade Delegation (KGB).
8. TERLYUK stated that he realised that SMIRNOFF worked for the Russian Security Services and that he was being used by him but he still attended the first three hearings as he was genuinely interested in the BEREZOVSKY case. He denied that he was receiving any form of payment for attending these court hearings.
9. TERLYUK stated that the legal team for Mr BEREZOVSKY had subsequently badgered him for a statement, which would be used to bolster BEREZOVSKY'S asylum application. They offered him legal help with his asylum application in return. TERLYUK stated that he had refused to do this and had consulted his own asylum lawyers who had told him that there was nothing more that could be done to speed up his claim.
10. TERLYUK subsequently re-contacted this Branch on Friday 21<sup>st</sup> November to say that he was being followed by a surveillance team when he went out shopping. Officers subsequently met TERLYUK on Monday 24<sup>th</sup> November to obtain further details. ... Should TERLYUK be subject to surveillance again he has been briefed to call 999 so that a member of the surveillance team can be stopped and spoken to.
11. Mr BEREZOVSKY is a multimillionaire who has a very large security entourage and a substantial reputation in the Russian community for paying for information / intelligence and has very strong motivation for uncovering plots to assassinate him as this will assist his efforts to avoid extradition. BEREZOVSKY currently has indefinite leave to remain in the UK but has not been granted citizenship.

12. Mr TERLYUK is a former KGB/FSB and is a very sharp minded and intelligent man. He has stated that he accepted taskings from the Russian Security Service and he has passed this information on to BEREZOVSKY'S team. He denies taking any payment for any of this but does not work and lives in a well-appointed semi-detached house ...

... ”

It is to be noted that there is no record of Mr Terluk making any complaint to the police officers of the bullying and bribery attempts that he now raises in this litigation. Nor did he mention anything about being given psychotropic substances.

70. What Mr Terluk says now about that statement is that it is bogus and probably manufactured by the police to help Mr Berezovsky. Although he knew a Mr Smirnov, who he had bumped into a few times while out for walks in the park, he only ever talked to him about such innocent matters as the best way of transporting furniture to the Ukraine in containers.
71. Before I go on to consider the events of the summer of 2003, it is necessary to introduce briefly two other associates of Mr Berezovsky, who participated in those events and gave evidence in the course of the trial.

*Mr Alex Goldfarb*

72. Mr Alex Goldfarb was, before his retirement, a professional research scientist specialising in experimental biology. He was born in Moscow in 1947. Having graduated from the University of Moscow in 1969, he emigrated to Israel in 1975 and obtained a PhD in biochemistry from the Wiseman Institute. Thereafter, he worked at the Max Planck Institute in Munich between 1981 and 1982. Next, he moved to New York, where he worked from 1982 to 1992 as a professor at the Department of Microbiology at Columbia University. Meanwhile, he became a citizen of the United States in 1987. He is the author of over 70 research papers in his subject.
73. He told me that throughout his life he had been involved in the Russian democracy movement. He was an anti-Soviet dissident and, after the collapse of Communism, he became a pro-democracy activist. He described himself as a “close associate” of Andrei Sakharov, who was a Nobel Peace Prize laureate.
74. It seems that between 1987 and 2000 he advised Mr George Soros on Russian affairs and directed a number of his projects in Russia concerned with promoting democracy. One of his tasks was to become involved in a project intended to improve conditions in Russian prisons and in pre-trial remand centres. Since January 2001, he has been the executive vice-president of the International Foundation for Civil Liberties, founded by Mr Berezovsky, who is also the chairman of its board. It is registered as a corporation in New York.
75. It was in the course of his work for Mr Soros that Mr Goldfarb first met Mr Berezovsky in May 1995. He has been friends with him since that time.



76. Mr Goldfarb was also instrumental in assisting the escape, through Turkey, of Mr Litvinenko and his family in October 2000. He arrived with them in England on 1 November of that year. He told me that he had not been back to Russia since that time because his assistance to Mr Litvinenko might render him “a potential target for the Russian Intelligence Service”.

*Mr Yuli Dubov*

77. I need also to introduce Mr Yuli Dubov, who is a long-standing friend and associate of Mr Berezovsky, having known him since May 1972. He was also a friend of Mr Litvinenko. He was born in Moscow in 1948 and has lived in London since 2002. He obtained refugee status and indefinite leave to remain shortly after Mr Berezovsky, on 30 September 2003.
78. Having originally worked with Mr Berezovsky in the Institute for Control Sciences, he was also a colleague in Logovaz, of which he was General Director between 1995 and 1999. He is closely associated with him on a number of political projects as well as in business. He denied in cross-examination by Mr Terluk that he was an employee of Mr Berezovsky. He described himself as self-employed, although his clients include Mr Berezovsky and/or companies with which he is associated.
79. With those brief introductions, I shall now turn to the sequence of events during the summer of 2003, as to which there is something in common between the parties but also a great deal in dispute.

*The Bow Street hearing on 2 April 2003*

80. Mr Terluk accepts that he attended a hearing at Bow Street Magistrates’ Court on 2 April 2003, followed by a press conference given by Mr Berezovsky at the Meridien Hotel in Piccadilly. The following day he attended an Economic Forum, at which Mr Berezovsky was also present. Mr Browne invites the inference that he was taking a close interest in Mr Berezovsky, for one reason or another. Mr Terluk, however, says that he was interested in the court proceedings because he might learn something of value in connection with his own asylum application. This is not very compelling, since his command of English would not enable him to follow the proceedings. Nor would it provide an explanation for following Mr Berezovsky to the press conference or coming along next day to the Economic Forum.
81. On occasion, Mr Terluk has claimed that he attended the court hearings on the recommendation of a friend called Susanna. The account seems to have varied, however, from time to time. He told me on the penultimate day of the trial that, at last, he had made contact with her and that she would be able to come on the morrow. She would confirm that she had thought it would be helpful if he attended because Mr Berezovsky had taken proceedings against the Home Secretary to help speed his asylum application. She apparently suggested that Mr Terluk might do likewise. The story does not quite stand up, however, because Mr Berezovsky had not sued the Home Office. Unfortunately, Susanna developed a cold overnight and was unable to attend.
82. Another difficulty about it is that a different account was given by Nikita Chekulin. This matters because Mr Terluk relies himself upon evidence from Mr Chekulin (in

writing, as he was unable to obtain a visa to attend in person). What Mr Chekulín said on a television programme broadcast on 19 March 2006 by NTV was that Mr Terluk attended court in the hope of striking up an acquaintance with somebody in Mr Berezovsky's entourage. "He needed money". If true, of course, that would lead one to suppose that he would wish to give the "entourage" the impression that he had information of value to offer in exchange.

83. This is not the only mention of a financial motive for attending the court hearings. Mr Chekulín had earlier promulgated the same story during an interview with Alexander Khinstein published in Russia for the purpose of debunking Mr Berezovsky on his 60<sup>th</sup> birthday (23 January 2006). It is headed as "The story of how Berezovsky found himself 'a killer' and got a (*sic*) political asylum". In the course of the interview, Mr Chekulín was asked why "Teplyuk" as "a petty businessman from Kazakhstan" should have attended the court hearings. He replied, "I asked him. He explained that it was his friend that advised him to find ways to approach Berezovsky. She said that he was a rich man, there were many people around him and maybe something would come his way. In principle it looks like truth. As I see Teplyuk, he was a typical adventurer, the adventurer without money at that". Furthermore, Mr Khinstein brought copies of one of his books to court. It was entitled "Oligarchs from the Highway" and published in September 2007. At p.574 he wrote (as translated): "... [Terluk] confessed that one of his lady friends advised him to try and find some approach to Berezovsky ... Maybe you also could get something". This was a reference back to the interview with Mr Chekulín the previous year. A little later in the book, he also cites Mr Chekulín as saying that "Teplyuk" had attended the hearings to become a part of Berezovsky's circle and that he was prepared to communicate with Mr Litvinenko because he understood that he might be useful.
84. In all the circumstances, I have concluded that the primary reason for Mr Terluk's attendance at the court proceedings in April and May 2003 (and indeed the press conference of 2 April and the Economic Forum of 3 April) was to meet one or more of Mr Berezovsky's associates in the hope of making them believe that he could be of use or interest to them. That is why he recounted the story about being tasked to reconnoitre the security arrangements at Bow Street. It is a separate issue whether that story was true or whether it was merely a way of arousing their interest in him. He can be seen hanging around in the background of photographs taken outside the Magistrates' Court. But there seems to have been no direct engagement with him until the later hearing on 13 May.
85. Nevertheless, he did strike up a conversation on 3 April with a journalist who also appears in some of the photographs. He is called Mr Kara-Murza and worked for *Kommersant*. He was interviewed by Mr Lomovtsev, one of the prosecutors, on 5 June 2009. The record was introduced by way of a Civil Evidence Act notice. What he recounted was that Mr Terluk approached him and asked him how he might arrange a meeting with Mr Berezovsky. Mr Kara-Murza responded that he would be better advised to approach one of his entourage. When he asked who Mr Terluk was, he answered, "I am from structures close to the Kremlin". That would appear to be consistent with the story he later told Mr Berezovsky's associates. Mr Browne asks me to infer that the reference to "structures" can only be to the Russian security services.

*The events of 13 May 2003*

86. It seems that Mr Dubov first noticed Mr Terluk on 13 May 2003 at Bow Street Magistrates' Court, where proceedings were taking place in relation to both Mr Dubov's and Mr Berezovsky's pending extradition proceedings. On that occasion a journalist pointed out to Mr Dubov the person who subsequently was identified as Mr Terluk, as he was sitting in the front of the courtroom. The journalist enquired who he was, but Mr Dubov at that stage was unaware of him. According to his own evidence, this was an occasion when Mr Terluk's conduct or demeanour attracted the attention of a security guard who asked him to produce some form of identification.
87. Later that day, Mr Berezovsky received a call from Mr Nikita Chekulin and passed the phone to Mr Dubov. At that time, Mr Chekulin seems still to have been an associate of Mr Berezovsky. As I mentioned before, he had been one of the participants in the press conference about the apartment bombings in March 2002. Later, in April 2004, he returned to Russia, since when he has taken a stance rather hostile to Mr Berezovsky. It appears that Mr Chekulin was asking that evening for someone to go with him to a meeting with the man who had been seen in the courtroom (i.e. Mr Terluk). He seems to have been apprehensive about meeting him alone. Mr Chekulin asked Mr Dubov to accompany him and he agreed.
88. Mr Dubov's account is that he and Mr Chekulin met near a church close to Hyde Park, outside Mr Chekulin's then home, and went on to a Thai restaurant near the Edgware Road. There, they met Mr Terluk who introduced himself, according to Mr Dubov, as "Vladimir Tepluk". Mr Chekulin's son was also present.
89. Mr Terluk's version of events is somewhat different. He says that, as far as he was concerned, the purpose of the meeting was to discuss transporting furniture from England to Russia. He had no idea that Mr Dubov was coming, regarded him as unwelcome and thought that he had simply elbowed his way in. There is, of course, not necessarily any inconsistency between these two stories. That might very well have been Mr Terluk's perception of events, since he was not a party to the conversation between Mr Dubov and Mr Chekulin; indeed, there is no reason why he should have known of the prior arrangement. As this appears to be the first meeting between Mr Terluk and any of Mr Berezovsky's associates, and it is the subject of dispute, I propose to set out Mr Dubov's account of what took place from his written statement, and as he later repeated it in the course of cross-examination:

"During the dinner, [Mr Terluk] told us quite freely his life story and information about his life in London. What he said made me think that [Mr Terluk] had connections with the KGB, or at least that he wanted it to appear to us as if he had such connections. [He] said that he came from a family of political convicts and that his grandfather and the whole of his family had been sent to the labour camp at Magadan. [He] told us he had been born there and that after Stalin's death, [his] family were not allowed to go back to where they had come from and instead were sent to Kazakhstan. [Mr Terluk] also told us that he was then employed in the Administrative Office of the Council of Ministers (the government) and the Central Committee of the Communist Party of Kazakhstan. I was

aware that this office was very important and was responsible for everything that could be needed by top Party officials including things like apartments, transport, telephones, aeroplanes, train tickets, medical treatment, books and theatre in Kazakhstan. Whatever there was a shortage of in the Soviet Union, this office had access to it because it provided these things to Government Ministers. For this reason, it was not a job given to just anybody from the street and I was aware that in order to get such a job, you needed someone high in authority and clearance from the KGB to help you get there. For someone with [Mr Terluk's] family history, it would be absolutely impossible to get KGB clearance unless he was already employed by them. In my experience, people in these sorts of positions were members of the KGB.”

90. According to Mr Dubov, Mr Terluk also told them something of how he had come to London in 1999 and thereafter applied for political asylum. He said this was because he had information about crimes committed by officials in Kazakhstan and believed that several attempts had already been made on his life. He also gave some details as to where he was living and his monthly rental. The reason he gave for attending the extradition hearings at Bow Street was that he himself was hoping to be granted asylum and was interested in the proceedings for that reason.
91. Mr Dubov said that he had no particular interest in Mr Terluk, as he had only attended at Mr Chekulin's request because he thought that he was wary of him. But he concluded that Mr Terluk had indeed worked for the KGB or, at the very least, that he was anxious for some reason to convey the impression that he had done so.
92. It is interesting that Mr Chekulin has published a book (*The Oligarch's Secret*) in which he gives his account of this Thai dinner. It is consistent with Mr Dubov's account, in the sense that both recall Mr Terluk mentioning Mr Brezhnev. The suggestion seems to have been that Mr Terluk was involved in organising hunting parties for Communist Party grandees including Mr Brezhnev. This was also described by Mr Chekulin in one of his interviews with the prosecutors (dated 18 January 2010). As Mr Dubov pointed out in the witness box, no one would have been allowed anywhere near guns in the presence of Mr Brezhnev unless he was KGB or KGB approved. What Mr Terluk now says is that he was merely in the kitchens and would have seen the game only at the stage when it was ready to be cooked. Be that as it may, it appears that he was making rather different claims on the night in question. I take particular note of the similarity between Mr Dubov's account and that of Mr Chekulin.
93. Mr Dubov was keen to leave the dinner rather early because he had guests staying, but when he left Mr Terluk followed him outside and asked for his mobile phone number. He declined to give it but suggested that if he wanted to speak to him he should ring him on the office number. That already appeared to be recorded in Mr Terluk's notebook. When he left to hail a taxi, Mr Terluk again followed him and stayed close beside him. Mr Dubov said he felt uncomfortable and formed the view that he was trying to overhear the address that he gave to the driver. He therefore simply told him “Hyde Park Corner” and left.

94. I should add that I reject the suggestion made by Mr Terluk that Mr Dubov was “the worse for wear” on this occasion. Mr Chekulin claimed in his interrogation of 18 January this year that Mr Dubov ordered a bottle of “dry wine” which he drank entirely by himself. He also added that he was not sober even when the meeting began. Mr Dubov denied this. It seems to be contrary to the probabilities, given (a) the purpose of his attendance that evening and (b) the fact that he had guests waiting for him at home.
95. When these events were reported by Mr Dubov to Mr Berezovsky, he suggested that Mr Litvinenko should “check him out”, as he had experience of the KGB and would be better able to find out more about him. According to Mr Dubov, Mr Terluk rang him a few days later and asked if he wanted to help him write a book about his (Mr Terluk’s) life story. Mr Dubov was not interested and the conversation ended there. He had nothing further to do with Mr Terluk directly until January 2006 (a matter to which I shall return later).

*The first meeting with Mr Litvinenko*

96. The next event in this sequence took place a few days later at a pizza restaurant near Piccadilly Circus (probably on 21 May). It was attended by Mr Chekulin, Mr Terluk and Mr Litvinenko. According to Mr Litvinenko’s statement, by the time he arrived (deliberately a little late) Mr Terluk was trying to interest Mr Chekulin in setting up a business selling trainers to Kazakhstan. As Mr Litvinenko sat and listened, the conversation about business “gradually withered and stopped”. Mr Litvinenko then asked Mr Terluk what he really wanted and why it was that he had attended the court hearings. When Mr Terluk said that the proceedings were interesting to him, Mr Litvinenko raised the point that Mr Terluk did not speak very good English. Even now, seven years later, Mr Terluk requires everything to be translated. It is, therefore, not easy to understand how he could follow English court proceedings at that time. Mr Litvinenko also told Mr Terluk that he regarded his behaviour as somewhat suspicious, at which Mr Terluk said that he wished to consider his position. Mr Litvinenko invited him to make contact as and when he had done so.
97. At paragraph 2.9 of his defence, Mr Terluk alleged that on this occasion Mr Litvinenko offered him dozens of millions of dollars to make a false statement to the effect that he was involved in a Russian plot to kill Mr Berezovsky. There was also supposed to be mention of a house, cars and employment by Mr Berezovsky. The accounts given of the offers, and in particular the amounts of money involved, have differed significantly from time to time. Mr Browne submits that this in itself undermines the credibility to be attached to them. The sums involved have fluctuated from £2 million to £40 million and then again to 50 million dollars. In the interrogation of Mr Chekulin by the prosecutors on 22 January 2010, he alleged that Mr Litvinenko told Mr Terluk that if he co-operated “he could choose any house he liked in London and he would be supported by money”.
98. Since Mr Litvinenko’s brief at that stage was to “check out” Mr Terluk, it seems more likely that he would be feeling his way and trying to find out what story he had to tell. It does not seem plausible that, simply out of the blue, he would suddenly offer millions of pounds (or dollars) for a manufactured story.

*The second meeting with Mr Litvinenko at Café Nero*

99. Eventually, after a few failed attempts, Mr Litvinenko and Mr Terluk again spoke on the telephone and arranged to meet in early June at Café Nero near the Meridien Hotel on Piccadilly. On this occasion, according to Mr Litvinenko's statement, Mr Terluk told him that he had attended court on the instructions of an intelligence officer from the Russian Embassy. He said that he had made an asylum claim, although in a different name, and that he was not himself an intelligence officer. Mr Litvinenko was told that Mr Terluk's main handler at the Embassy was Mr Alexander Smirnov, but he declined to give the name of his superior. He had been instructed to attend court and to establish contact with someone close to Mr Berezovsky. He added that he had served the KGB and its successor organisations for many years, not as an officer, but rather as a "civilian collaborator". Mr Litvinenko recorded that Mr Terluk claimed to have been in charge of the department which ran meetings between the Communist Party and foreigners. He showed a series of photographs, including one of him (Mr Terluk) driving Mr Brezhnev in his car.
100. This is a curious little episode and, although apparently rather trivial, may be revealing. Although I thought Mr Terluk denied Mr Litvinenko's account, there came a point in the trial when copies of various photographs were produced from the files of the Russian prosecutors, including one of Mr Brezhnev being driven in an open car. It is not possible to identify the driver because of sun reflecting off the windscreen, but I understood that the purpose of introducing this was to confirm that Mr Terluk had indeed produced such a photograph to Mr Litvinenko. If so, it would surely confirm Mr Litvinenko's impression that he was wishing to establish his KGB credentials (whether genuine or not). It would appear to be the second time that Mr Brezhnev's name was dropped into Mr Terluk's conversation.
101. Mr Litvinenko, like Mr Dubov, formed the view that Mr Terluk was someone with long-standing links to the Russian intelligence service. One might well query why a genuine asylum seeker in London should be working for the FSB – a point raised by Mr Terluk himself. Mr Litvinenko gave the following explanation:
- "I was not surprised that a person who was in the United Kingdom seeking political asylum in respect of Russia had nonetheless been recruited by the Russian Embassy. From my knowledge and experience this is not a surprising tactic because such a person is a perfect choice in terms of deniability (that is to say, if anything goes wrong with a particular operation, the Embassy can deny having anything to do with the individual and his activities)."
102. Mr Litvinenko pressed Mr Terluk as to the information in which his handlers appeared to be interested. He apparently replied that they were interested in everything about Mr Berezovsky and that they were also interested in Mr Goldfarb and Mr Litvinenko. He also mentioned another well known dissident, Mr Bukovsky. One detail he was given by Mr Terluk was that on a particular occasion someone had casually approached Mr Bukovsky, apparently to strike up a friendship, who was actually working for the Russian intelligence services. He therefore contacted Bukovsky and enquired whether this was so, by way of cross-checking Mr Terluk's

*bona fides*. Mr Bukovsky confirmed that this information was entirely correct but that he had not appreciated that the individual was connected with the security services.

103. He also pressed Mr Terluk (so he said) as to what it was that the handlers wanted of Mr Berezovsky. At this, Mr Terluk showed him a photograph of a group of special force snipers, wearing camouflage and holding sniper rifles. He told Mr Litvinenko that the photograph was taken at a training camp. Mr Litvinenko asked directly whether he was suggesting that Mr Berezovsky's life was in danger, but at this point Mr Terluk became "visibly uncomfortable" and avoided giving a direct answer. Mr Litvinenko said that he brought the meeting to an end and decided that, if another meeting took place, someone else should be there with a recording device. Also, he wanted to consider his own position and whether or not Mr Terluk was involved in an attempt to set him up as well.
104. This episode was echoed in the trial when, as I have said, the prosecutors produced a selection of photographs. Apart from the one of Mr Brezhnev, there was one of young people with guns. The object was apparently to demonstrate that there was nothing sinister about them. The prosecutors clearly thought that idea very droll. They were not snipers but harmless students enjoying themselves. Wherever the truth may lie on this point, the only reason for producing it must have been to confirm that it was shown to Mr Litvinenko. If so, it is difficult to understand in the context why he would be shown a photograph of cheery students with guns and dressed in fatigues – unless it was intended in some way to confirm Mr Terluk's credentials.
105. When Mr Litvinenko reported back on his meeting with Mr Terluk, Mr Berezovsky's response was apparently to enquire whether the man was "a nut". Mr Litvinenko's assessment was that this was unlikely and that no chances should be taken. It was decided that he should meet Mr Terluk again, accompanied by Alex Goldfarb, so that he too could make an assessment.

*The Leicester Square meeting on 16 June 2003*

106. On 16 June 2003, Mr Terluk, Mr Goldfarb and Mr Litvinenko met near the Odeon Leicester Square and went to a nearby Starbucks. Mr Goldfarb was apparently late and Mr Terluk and Mr Litvinenko sheltered from the rain while waiting for him. Mr Litvinenko decided to let the conversation go wherever Mr Terluk wanted, but he had by this time decided against attempting a tape recording. He was reluctant to frighten him off. He set out, however, in his statement how Mr Terluk gave further information about his instructions from his handlers at the Embassy. The extradition proceedings were to be carefully monitored. "He then said that if things went badly, the plan was to kill Berezovsky."
107. Apparently, Mr Terluk described his most recent meeting with Mr Smirnov, who had instructed him to attend at the Magistrates' Court on 30 June for a hearing in a case concerning Mr Zakayev, another dissident. He was to observe the procedures for gaining admission to the court, the security checks, the layout of the building and whether smoking was allowed. He was also asked to keep an eye on the parts of the building where journalists were permitted to gather. As a result of this conversation, Mr Litvinenko said that he warned Zakayev and his assistant Abdulaeva to be more vigilant.

108. It seems that the most critical piece of information imparted to Mr Litvinenko (still before the arrival of Mr Goldfarb) was that Mr Terluk had received instructions to take into the court, on 30 June, a packet of ballpoint pens and a sealed packet of cigarettes. They wanted to establish whether he would be allowed to take these in with him and/or whether they would examine the pens closely or open the packet of cigarettes. Mr Terluk had been told that the object was to see whether there was a place within the court building where someone, perhaps posing as a journalist, would be able to get sufficiently close to Mr Berezovsky to drip fluid from the pen on to his clothing or a shoe and then to light a cigarette. The intention was to blow smoke in the direction of the liquid.
109. At this point Mr Goldfarb arrived. The three men went into the café and Mr Terluk gave a brief summary to Mr Goldfarb of what he had already told Mr Litvinenko, without mentioning the ballpoint pens or cigarettes. Mr Goldfarb had rather assumed that Mr Terluk was after financial help of some kind and told him that he could not make any payment, although it might be possible to assist with legal representation and legal fees. This is a service regularly provided by the Foundation run by Mr Berezovsky and Mr Goldfarb. Mr Terluk, however, said that he was not interested in financial support, but rather wanted to extricate himself from his involvement with the Russians. The meeting then broke up because Mr Goldfarb had to leave, and they agreed to meet again on another occasion.
110. When Mr Litvinenko was walking down the road with Mr Goldfarb, he recalled what Mr Terluk had said about the ballpoint pens and cigarettes. Mr Goldfarb was apparently startled at this and asked if Mr Litvinenko realised its significance. Mr Goldfarb, in the light of his professional knowledge and experience, pointed out that the introduction of smoke could be a catalyst for a binary action poison. He suggested to Mr Litvinenko that there should be another meeting with him present, so that he could hear Mr Terluk's account for himself. In the light of this information, he also warned Mr Berezovsky to take greater precautions over his security. Then he made contact with one of Mr Berezovsky's legal advisers, who said that this should be brought to the attention of the police – whether or not Mr Terluk was prepared to provide a statement.

*The meeting at the Japanese restaurant on 18 June 2003*

111. Thus it came about that on 18 June Mr Goldfarb, Mr Litvinenko and Mr Terluk foregathered at a Japanese restaurant in Soho. In his witness statement of 4 August 2003, Mr Goldfarb summarised his recollection of Mr Terluk's story in these terms:

“In the Soviet times Vladimir worked in the Protocol Department of the Council of Ministers, and worked covertly for the KGB with a codename and secret ID number. His work for the KGB lasted for well over a decade.

After the collapse of the Soviet Union, his relationship with the KGB stopped and he went into private business.

In the course of his business activity he ran into trouble with some powerful interests and had to flee from imminent arrest.



He arrived in the UK some years ago and applied for asylum. His wife and children were with him and he had no close relatives in Russia. By the time of our conversations, his asylum application was still pending and there had been no interview or word from the Home Office.

About six months into his stay in London, he met with a Russian diplomat; he could not say whether this meeting was accidental or deliberate. In a conversation he gave the diplomat his name.

After a while, the diplomat contacted Vladimir. When they met again, the diplomat gave him his codename and secret ID number and asked him to work for 'his motherland' or else the Russians would see to it that he goes back home. However, if he co-operated, they would help him with asylum through their own people at the Home Office.

Over three years he has done 'many assignments' for his handlers, for which he was paid. His last assignment was to attend all Berezovsky and Zakayev events.

He confirmed that he stood close to me in an elevator at the Russian Economic Forum, as I was leaving the building after Berezovsky, and I clashed with Russian spokesmen at the session on Press Freedom.

He said that his assignment was to study approaches to Mr Berezovsky's person, to see whether he was shielded from physical contact with well-wishers by his security detail, to have a general plan of the courthouse, particularly the toilets, etc. From his description of this activity, it appeared that he had some training of this kind of operation.

He essentially confirmed what I heard from Alexander Litvinenko about the ballpens and the cigarettes."

112. Mr Goldfarb recorded in his statement that this "confirmed my alarm". He asked Mr Terluk whether he knew the implications of what he had told him and he appeared to appreciate that "this could be a preparation for a hit using poison". He enquired whether he had worked this out for himself or whether he had been told by his handlers. He replied that when he had asked his Embassy contact a direct question about this, he was told "We are not God. We are not the ones who decide".
113. Although Mr Terluk accepts that he was present on this occasion in the Japanese restaurant, he denies that any conversation of this kind took place. He recounts the events as though it were simply one more attempt to pressure him into giving a statement for use in Mr Berezovsky's claim for asylum.

*The visit to Mr Menzies' office*

114. At all events, both sides agree that after the meal in the Japanese restaurant they attended a meeting in Carter Lane with Mr George Menzies (the solicitor who had advised Mr Litvinenko in connection with his asylum claim two years earlier). After the meal was over, Mr Goldfarb and Mr Litvinenko took Mr Terluk to the office by cab. There is a dispute between the witnesses as to whether this meeting began at about 10 p.m. or at midnight. At all events, Mr Menzies had invited them to come round when they rang his mobile because he happened still to be working late at his office that night. There was no interpreter present, and Mr Goldfarb claims that he relayed what Mr Terluk was saying to Mr Menzies, with a view to obtaining his advice and possibly at some point taking a full statement from Mr Terluk. Mr Terluk does not accept that Mr Goldfarb gave Mr Menzies an accurate account of his story. He claims that they stayed there from midnight until 3 in the morning. Mr Menzies, on the other hand, was quite sure they did not leave after midnight. He thought the meeting took place between approximately 10 o'clock and 11.30 p.m. The timing probably does not matter a great deal.
115. As I have said earlier, there was a tentative arrangement apparently for Mr Terluk to return to Mr Menzies' office on 20 June, by which time it was hoped that an interpreter could be arranged, with a view to making a statement. This was in accordance with Mr Menzies' advice. But it was cancelled and the meeting never took place. Mr Browne has suggested that the reason for this was that Mr Terluk received on 19 June a letter from the Home Office inviting him to an interview in connection with his asylum application on 30 June. He would not wish to put his prospects of asylum in jeopardy. That may or may not be so. I am not prepared to speculate.
116. A rather curious aspect of this evening is that Mr Terluk has claimed from time to time (as, of course, did "Pyotr" in the television programme) that he may have been drugged by Mr Goldfarb and Mr Litvinenko. It seems, on the other hand, that this claim was made at a time when Mr Terluk believed that there might have been a secret recording made of the conversation. It may be, therefore, as Mr Browne QC submits, that this was merely a false story to explain how he came to make any incriminating remarks that might show up on the record. No such recording was made, however, and that would have become apparent following disclosure of documents. Accordingly, the need for this account of drugging with psychotropic substances has receded into the background. Indeed, it was not mentioned in Mr Terluk's statement of 16 November 2009.
117. Before that stage was reached, however, Mr Terluk appears to have gilded the lily by claiming to have told his GP (Dr Lopes) about the possibility of drugging back in the autumn of 2003. When ordered to disclose the relevant medical notes, he was unable to offer confirmation. The explanation for this became rather complicated. He eventually said that he tagged along to one of his wife's consultations and, as there were a few minutes to spare at the end, he took the opportunity to mention it to the doctor then. This was supposed to account for why no note was made of it. I am afraid I do not believe any of that. It should be noted, however, that at one stage, in his much earlier witness statement of 30 November 2006, he went so far as to allege that Mr Litvinenko had secretly "spiced" (or "spiked") his drinks during *every* conversation with him.

118. Mr Goldfarb recalls how, at one point in the evening, Mr Terluk asked whether it would be worthwhile him meeting his handlers again in an attempt to obtain more corroborative evidence. But Mr Goldfarb said that they did not wish to become involved in any way in activity directed against a foreign embassy. Mr Menzies suggested that he knew a retired MI5 officer, who was a consultant, and wondered whether he should seek his advice. According to Mr Goldfarb, Mr Terluk became very enthusiastic at this point and said that he wanted to have the opportunity of speaking to this person and obtaining advice. Mr Menzies suggested that this would only be of any use if a written statement had been obtained first.
119. All of this Mr Terluk denies. Ms Margiani, his McKenzie friend, told the court during the trial that at this meeting “Mr Terluk insists that he never ever said anything”. This, of course, lies uncomfortably with his assertion that he might have said things under the influence of drugs. He says that he could not understand why he was there at all and certainly had no interest in meeting a retired MI5 officer. There is an outright conflict, as so often in this case, between the witnesses. In the end, nothing was achieved by the meeting at Mr Menzies’ office.

*Mr Terluk agrees to a further meeting with Mr Litvinenko on 3 July 2003*

120. Mr Terluk was unable to attend the Magistrates’ Court hearing on 30 June, relating to Mr Zakayev, because he had to go to the meeting with the Home Office in Liverpool in connection with his asylum application. It was at about this time that Mr Litvinenko read in a newspaper of the death, from suspected poisoning, of Mr Berezovsky’s political ally Mr Shekochikin. For this reason, he says, he arranged to meet Mr Terluk on 3 July at between 5 and 6 p.m., again in the vicinity of Piccadilly Circus. On this occasion Mr Litvinenko told him that he did not want the same to happen to Mr Berezovsky and asked him whether he was “on the level”. Mr Terluk confirmed that he had been entirely serious in what he had said about his instructions to reconnoitre at the Magistrates’ Court. He told Mr Litvinenko that Mr Smirnov had been displeased that he had been unable to attend on 30 June at Bow Street because the “preparations had been completed”.
121. Once Mr Terluk had confirmed to Mr Litvinenko that his account was truthful, Mr Litvinenko repeated that it was necessary for him to take this information to the police, but Mr Terluk was reluctant to “rock the boat” in relation to his asylum application – especially at that point, when he was optimistic that it would shortly be decided in his favour. He confirmed to Mr Litvinenko that, if the police approached him for an account, he would tell them the truth. On the other hand, he repeated that he was anxious not to do anything at that point to prejudice his pending application. He asked Mr Litvinenko to hold off until a decision had been made. At that stage he would be happy to clarify things with the police.
122. Mr Terluk’s angle on this is quite different. He asks, rhetorically, why Mr Goldfarb and Mr Litvinenko were delaying in going to the police if he really had told them that an assassination plan was in the offing.

*The meeting at Marble Arch on 30 July 2003*

123. At all events, there was further contact on or about 30 July 2003, when Mr Litvinenko attended the offices of Gherson & Co near Marble Arch to discuss his evidence in the

Berezovsky case with someone from the firm, which was at that time acting for Mr Berezovsky. He was asked there whether it would be possible to try and make contact with Mr Terluk in order to see if he would make a statement. He telephoned him and arranged a meeting at Marble Arch at around 6 p.m. He had hoped that he might come round the corner with him to the offices of Gherson & Co to make a statement. He was accompanied by Mr Joe Levtov, who had been acting as an interpreter for Mr Litvinenko during the course of his meeting. Mr Levtov gave evidence before me in the course of the trial and recalled the events of that evening.

124. Mr Litvinenko, according to his statement, sought to persuade Mr Terluk to come to the office and to make a statement, since the decision had been taken that he would go to the police anyway and inform them of what Mr Terluk had said. He was disinclined to do anything immediately. Mr Levtov told me that he was present throughout the conversation until the end, when Mr Litvinenko and Mr Terluk went round the corner out of sight. It was on this occasion that Mr Terluk told Mr Litvinenko that his two “friends” (i.e. Mr Smirnov and his superior) were being sent back to Moscow. For this reason, Mr Terluk sought to reassure Mr Litvinenko that the situation was not as serious as he had previously thought. The two Russians were to leave on 1 August 2003 because, according to Mr Litvinenko’s understanding, the British authorities had given them the choice of returning quietly or being expelled.
125. Mr Litvinenko, therefore, thought it all the more important to obtain a statement from Mr Terluk immediately, because he had it in mind to inform the police before the two Russians left on 1 August. This brought a degree of urgency to the matter. Mr Litvinenko was concerned that if Mr Smirnov and his colleague went back to Russia, they would only be replaced by another pair of would-be assassins. Mr Goldfarb gave evidence to the effect that he carried out some checks and discovered that a Russian diplomat called Smirnov had left London, although somewhat later than 1 August. His impression was that he left after publication of the *Sunday Times* article of 21 September 2003 (which led to the Special Branch interview with Mr Terluk).
126. Mr Terluk suggested that this meeting at Marble Arch was in some way disreputable and that it was unprofessional of Mr Levtov to have taken part in it. Mr Levtov saw nothing wrong with it and I do not understand the complaint either.
127. Mr Browne points out that it would be very odd, if there were any truth in the drugging allegations, that Mr Terluk should have voluntarily presented himself for further meetings with Mr Litvinenko on 3 and 30 July.

*Mr Terluk’s evidence of a later meeting with other lawyers*

128. Mr Terluk put to Mr Levtov also that he had been present at another meeting, placed by him variously between 24 and 27 September 2003, when he and Mr Litvinenko had taken him in a cab from Marble Arch to a different lawyer’s office, somewhere in the City and not far from the river. Originally, it was pleaded (at paragraph 2.12 of the defence) that this occurred at Mr Menzies’ office, but this allegation was withdrawn shortly before trial. It was said to be simply a mistake. There is no precision as to where or when this second meeting took place, or as to who was present. Since the date, the place and the name of the firm are not supplied, the story is impossible to check. It was said that further pressure was exerted on him at this meeting.

129. Mr Levtov denies that any such meeting took place in the premises of a different firm of solicitors. A vivid description was given by Mr Terluk in the course of his cross-examination of Mr Levtov, in which it was suggested that Mr Litvinenko had banged his head on the table or, at least, if he did not bang his head on the table, there was definitely the sound of flesh on wood. He further described how at various points in the meeting two other, unidentified, lawyers were present. One was aged in his early sixties with red or sandy coloured hair. The other was a tall respectable man who came in at a later stage. They were supposed to represent Mr Berezovsky, but neither he nor any of his associates appeared to recognise who these extra lawyers could have been.
130. The whole of this incident was denied by Mr Levtov and it is difficult to see what purpose it was supposed to serve. It will be remembered that by this time Mr Berezovsky had obtained refugee status on 10 September. Accordingly, by letter, the Secretary of State invited the Russian Federation to withdraw its extradition request or offer no evidence. It declined to take either step, but the District Judge discharged Mr Berezovsky in any event on 12 September. (We now know that the Russian Federation was advised on 17 September by James Lewis QC that there was no point in an appeal for so long as Mr Berezovsky continued to enjoy “asylum status”. We know this because Mr Terluk disclosed the opinion.)
131. Mr Terluk suggests that the meeting might have been to assist Mr Dubov with his application. Mr Litvinenko was supposed to have said at the meeting that, unless Mr Terluk provided a statement, Mr Dubov would be sent back to Russia and Mr Litvinenko as well. It is difficult to understand the logic of this scenario, since Mr Berezovsky and Mr Litvinenko had already been given refugee status, and there was no reason to suppose at that time that there was any risk of being deported. This clearly undermines the suggestion made by Mr Terluk, in his witness statement of 30 November 2006, to the effect that the red-haired lawyer told him that a statement was required for the Home Office so as to make Mr Berezovsky’s (and Mr Dubov’s) position “unshakeable”. The objective had already been achieved, at least so far as Mr Berezovsky was concerned. Indeed, on 12 September 2003, Clare Montgomery QC, acting for Mr Dubov, had felt able to tell the Bow Street Magistrates’ Court that a plot had recently been uncovered to assassinate Mr Berezovsky. In these circumstances, I cannot see (even on Mr Terluk’s perception of events) why Mr Litvinenko should have been desperate to obtain a written statement from Mr Terluk at this stage. As it happened, Mr Dubov acquired refugee status, within days of this supposed meeting, on 30 September.
132. Mr Terluk invites me to conclude that Mr Levtov was lying in the witness box and suggested that he could see from where he was sitting that he went pale and his legs were shaking. But I saw no reason to disbelieve what appeared to me to be clear, straightforward and credible evidence.
133. Meanwhile, Mr Goldfarb recalls that he had a meeting with Mr Terluk on 17 September, at his (Mr Terluk’s) request, at Bibendum in South Kensington. On this occasion, he asked for payment for the assistance he had supposedly given towards Mr Berezovsky’s asylum application. This would appear, at least, to be consistent with the suggestion made by Mr Chekulin that Mr Terluk had made contact with Mr Berezovsky’s entourage in the first place with a view to obtaining financial help. Mr Goldfarb felt that there were no grounds to make any such payment. I see no reason

to reject this evidence. Accordingly, the urgent need for a meeting at the end of September is even more difficult to fathom. It was in the course of the Bibendum meeting that Mr Goldfarb said that he felt rather sorry for Mr Terluk because he was “between a rock and a hard place”. He assessed him as “an insignificant figure being used by the Russian Embassy”.

*An assessment of the Claimant’s witnesses*

134. As I recorded earlier, a wholesale attack was made on the character of Mr Litvinenko by the Russian prosecutors. Reliance was also placed on his conviction in a Russian court in his absence. In deciding how much weight to attach to his contemporaneous statement, I take into account the following factors.
135. First, it is internally consistent and presents a cogent account of events. Secondly, it is consistent with other evidence; specifically, that of Det. Chief Inspector Rose, Mr Menzies, Mr Levto, Mr Goldfarb, Mr Berezovsky, Mr Dubov and Mrs Litvinenko. Thirdly, as to his character, it seems to be common ground that he made public his allegation that he had been instructed, in December 1997, to assassinate Mr Berezovsky and that he campaigned against corruption in the FSB. In so doing, he was putting his livelihood and welfare at considerable risk. It is not easy to understand why he would do this unless he was a man of courage and conviction. The same is true, as I observed earlier, of his public denouncement of Mr Putin in October 2006. No doubt he had his faults, like anyone else, but nothing I have seen suggests to me any solid ground for rejecting his evidence.
136. As for Mr Dubov and Mr Goldfarb, I had the advantage of observing them give evidence and be cross-examined. They are obviously both highly intelligent and articulate men. They also speak excellent English. Nothing in cross-examination caused them to change or qualify their evidence. Again, it was in each case internally consistent and coherent. It also accorded with the other witnesses and presents a credible account of what are admittedly rather unusual events.

*The scope of Mr Terluk’s plea of justification*

137. As to his plea of justification, Mr Terluk was somewhat equivocal with regard to the murder of Mr Litvinenko. His primary case was that he made no such allegation – even though it was undoubtedly the cornerstone message of the programme as a whole. He no longer wishes to allege, in the alternative, that such a charge would be well founded. As he said in the course of the trial, “I don’t care who killed him”. Nevertheless, he did dally with the suggestion that Mr Berezovsky had given reasonable grounds to suspect him of complicity in the murder. The basis of this remained unclear. The allegation in the programme was premised on Mr Berezovsky’s wish to dispose of Mr Litvinenko because he witnessed the pressures said to have been exerted on Mr Terluk in 2003. By that logic, he would presumably also have a motive to murder Mr Goldfarb.
138. I can say unequivocally that there is no evidence before me that Mr Berezovsky had any part in the murder of Mr Litvinenko. Nor, for that matter, do I see any basis for reasonable grounds to suspect him of it. He himself, when being cross-examined, asserted that the whole world knows that it took place on the instructions of Mr Putin. Obviously, it is not part of my function to make any finding as to who was

responsible. The only issue that arises in this case is whether there are reasonable grounds to suspect Mr Berezovsky – and plainly there are not.

139. The central issue on Mr Terluk's defence of justification is whether his allegations about Mr Berezovsky's associates' activities between May and September 2003 have been shown by him, on a balance of probabilities, to be correct. In particular, did Mr Litvinenko and Mr Goldfarb exert pressure on Mr Terluk to persuade him to make a false statement for use in Mr Berezovsky's application for political asylum? If so, were they acting on his behalf or simply on a "frolic" of their own?

*Is the central allegation true?*

140. It is accepted by Mr Berezovsky and his witnesses (including in the contemporaneous statement of Mr Litvinenko) that there were attempts to persuade Mr Terluk to make a written statement for submission to the police. But they say that they were only asking him to reduce into writing what he had told them orally. Mr Terluk denies that he told them what they allege, namely that he had been asked by handlers at the Russian Embassy to carry out surveillance at Bow Street Magistrates' Court, with particular regard to the layout of the building and security arrangements. If true, this would plainly be a matter of concern to Mr Berezovsky and his friends. Equally, it would be a proper matter to submit to the police. That is why they say Mr Terluk was asked to put his story into a written statement. They were primarily concerned to take steps to protect Mr Berezovsky, with the aid of Special Branch, against what appeared to be a possible assassination attempt. It might well have been, in addition, a relevant document to place before the Home Office in connection with the application for asylum, but the primary concern was for his physical safety.
141. Mr Terluk's case is that this was all fantasy. He was not involved in any plot to kill Mr Berezovsky and had no connection with the FSB or any other hostile Russian agency. One of his arguments was that Mr Berezovsky's associates would have had nothing to do with him if he had truly posed a threat to Mr Berezovsky. He says, in particular, that Mr Berezovsky would not have sat near him in February 2004 at a press conference which took place in London. No one has any recollection of this, apart from Mr Terluk, but he contends that Mr Berezovsky actually sat next to him – within poisoning reach.
142. Mr Berezovsky's case is, however, not that Mr Terluk was himself a would-be assassin, but rather that he was being used by Mr Smirnov and others (possibly against his better judgment) to find out how easy or difficult it would be to smuggle the necessary ingredients into the Magistrates' Court. Their view of him was, in Mr Goldfarb's words quoted above, that he was between a rock and a hard place. He had made contact with this group with a view to extricating himself from the Embassy pressures. It was in this connection, they suspected, that he had eventually told them of his reconnaissance duties. Because he had done so, they would be unlikely to see him as a direct threat and they might even have reason to be grateful to him for putting them on notice.
143. His case, on the other hand, involves the rather less plausible scenario that Mr Berezovsky's associates simply picked on him for no good reason and tried to pressure him into writing a false statement to boost the asylum application (i.e. without any genuine belief that there was a threat at all). On this basis, he simply has

to dismiss the connection with Mr Smirnov as an invention. Yet, as I have already said, following the article in the *Sunday Times* of 21 September 2003 which prompted Special Branch to contact him, he told them a very similar story – including reference to Mr Smirnov. I can imagine no reason why that important note of Det. Chief Inspector Rose should have been dishonestly compiled. It obviously bears out what Mr Goldfarb and Mr Litvinenko were saying at the time.

144. It is significant that Mr Terluk included a misleading account of his meeting with the police in his defence at paragraph 2.19. He made the allegation that the Home Office had chosen to give Mr Berezovsky refugee status *despite* the information he had given to the police. This plainly implies, quite falsely, that his interview with the police preceded the grant of 10 September 2003. It also suggests that he had told the police that Mr Litvinenko had tried to extract false statements from him. Yet it is obvious from the police record that this was not so.
145. It is of some interest that one of the excuses Mr Terluk gave at one point for not committing himself to a written statement was that any urgency had gone out of the situation as Mr Smirnov and his colleague were about to be sent back to Russia. According to Mr Litvinenko's witness statement of 31 July 2003, this is what Mr Terluk had told him only the day before. Mr Smirnov and his superior were said to be due to leave on 1 August – in something of a hurry.
146. Criminal proceedings were begun against Mr Berezovsky in Russia founded upon these allegations of Mr Terluk. It seems that the Russian government wishes to have Mr Berezovsky's refugee status withdrawn and yet again to try for extradition. It is said that he sought to manufacture a false case, by exerting pressure on Mr Terluk, in order to defeat the original application for extradition. There is thus clearly an overlap between the prosecutors' case in the Russian criminal proceedings, Pyotr's allegations in the programme and Mr Terluk's defence in the libel action. That is the reason the prosecutors have given when pressing me to stay the libel action. On the other hand, neither they nor Mr Terluk have ever quite addressed the divergence between the story they attribute to Mr Berezovsky and the case he actually advances. He has never said that Mr Terluk was an assassin, or that *he personally* was going to poison him, or that he had been sent to England for that purpose. That would hardly be consistent with his spilling the beans to Mr Litvinenko and Mr Goldfarb. Yet this is the account the prosecutors, through Mr Terluk, like to ridicule as outlandish and absurd. Mr Berezovsky's case has never been painted in those primary colours.
147. Mr Terluk was keen for me to see a recording of an NTV television broadcast of 19 March 2006. This too was clearly aimed at conditioning the viewers into seeing just how absurd Mr Berezovsky's story was and how easy it was to see through it. It attributed to him the claim (to the United Kingdom authorities) that Mr Terluk had confessed to being "an agent of Russian Special Services" and that he "had come to London to jab the oligarch with a poisoned pen during court hearings". Of course that sounds absurd and the viewers were clearly being encouraged to wonder how such a crude and transparent melodrama could have fooled the Home Office in 2003. But that was not Mr Berezovsky's account and never has been. Nor, critically, would that be compatible with what Mr Terluk actually told Special Branch at the end of September that year. That account marries up in all practical details with what he is alleged to have told Mr Litvinenko and Mr Goldfarb. We do not know what he told



the Russian prosecutors because they have not supplied any record of his interviews. For all I know, he may have been the source of NTV's fanciful story.

148. It seems clear that Mr Chekulin has been used from at least January 2006 to January 2010 to lend credence to the prosecutors' case. One has to be very careful, however, in giving weight to anything he has said since his return to Russia. He was interviewed by Mr Lomovtsev on 13 and 21 March 2006. Following the second of these interviews, Mr Chekulin sent a letter to Mr Terluk asking him twenty questions. It is to be assumed that the answers would be fed to the prosecutors.
149. Later that year (apparently in September, according to Mr Terluk's list of documents), a coded letter was sent by Mr Chekulin to Mr Terluk. It refers to various people posing a threat to him and his family and to warnings received. He uses adjectives (in translation) such as "especially dangerous", "extremely unscrupulous". He concludes by warning Mr Terluk, "Two of us will stay alive to the same period in time, if not the day". He refers to a delegation of Russian prosecutors who had arrived in England the previous July. They were sent over to investigate and discuss with the United Kingdom authorities what had gone wrong with a number of unsuccessful extradition applications. The opportunity seems to have been taken during the visit to interview Mr Terluk, and Mr Chekulin was pressing him to reveal what had passed between them: "What questions in reality have you been asked in the first, second and third meetings?"
150. He also comments, "Bear in mind that they arrived at the third meeting after they were given a dressing down from Ptichkin, who got it from the Head". Mr Browne invites the inference that "Ptichkin", which means "bird" in Russian, must refer to Mr Chaika who was appointed by Mr Putin as chief prosecutor to put some backbone into the service. "Chaika" happens to be the Russian for "seagull". When asked about this, Mr Terluk responded rather feebly that perhaps "Chaika" meant "sparrow". As for the "Head", Mr Browne suggested that this was Mr Putin. I cannot come to any conclusion about this. But, in the end, all that matters for present purposes is that Mr Chekulin and Mr Terluk would appear to be in a very unenviable position, to say the least. I was shown a witness statement of Mr Yuschenkov dated 25 April 2002, which had been prepared to assist Mr Chekulin's asylum application. This made clear his view at the time that Mr Chekulin's life would be in danger if he returned to Russia. Anything Mr Chekulin says about Mr Berezovsky or Mr Terluk has to be approached with the utmost caution unless otherwise corroborated.
151. Because their interests coincide, Mr Terluk has been assisted both before and during the trial by a team from the Russian prosecutor's office. Four to five people have accompanied him throughout the hearing. One or two of the team have been sitting in the silks' row and asked for the opportunity to cross-examine Mr Berezovsky. I thought that a step too far. But they were able to assist Mr Terluk by presenting him with lists of questions to ask the witnesses in cross-examination. They also prepared applications for him to be allowed to introduce new evidence in the middle of the trial.
152. One of the ironies of the case was that Mr Berezovsky paid for an instantaneous interpreting service for Mr Terluk, so that he could follow the trial through headphones. From the outset, at least one of the prosecutors took advantage of this

service as well, but unfortunately Mr Berezovsky did not provide enough headsets to accommodate the full team.

153. Unhappily, Mr Terluk decided to hand over documents disclosed by Mr Berezovsky in these proceedings to the Russian prosecutors in breach of his obligation of confidentiality. This despite being given clear information about this rule in letters dated 28 August and 9 October 2009. Mr Terluk made expressly clear his contempt for the English court when he said at the trial, "If you don't want me to have them, do not send them to me but, if I have them, I will decide myself what to do with them". The disclosed documents have been used to further the criminal proceedings in Russia and also to launch civil proceedings there at the suit of Mr Terluk (presumably funded by the Russian government).
154. The civil claim was launched against Mr Berezovsky, Mr Dubov and Mr Goldfarb. It emerged from the *Moscow Times* for 25 January 2010 that an order was made in those proceedings for the seizure of a flat in New York (which the court believed belonged to Mr Berezovsky).
155. Further, the criminal proceedings were recently extended (on 2 February 2010) by Mr Lomovtsev in reliance upon the witness statements of Mr Litvinenko and Mr Goldfarb taken in 2003.
156. This co-operation and community of interest between Mr Terluk and the prosecutors is relied on by Mr Browne, who says that it simply undermines Mr Terluk's credibility and is thus consistent with Mr Berezovsky's case that he was working for the Russian government all along (including in 2003). It is no doubt relevant material to take into account, but it can hardly be determinative in itself. It is clear that Mr Terluk has been treading a fine line for some years. I was shown a letter of 27 October 2006 from his asylum lawyer, Mr Symonds, who pointed out to him, effectively, that the closer he became to the Russian prosecutors, the greater the risk to his asylum application. He advised that "... the fact that the Russian authorities have offered you witness protection would likely be regarded by the Home Office and the Tribunal as a good indication that adequate measures would be taken in Russia for your safety". Mr Terluk has no wish to be deported to Russia. On the other hand, he can hardly afford to fall out with the Russian prosecutors.
157. What is of central importance is Mr Rose's note of 26 November 2003 (set out above at paragraph [69]). There is captured, more or less contemporaneously, the account Mr Terluk was giving to the authorities in this jurisdiction, in September 2003, as to his links to the Russian government. He there named Mr Smirnov, as he had also apparently named him to Mr Litvinenko a couple of months earlier. That note had lain in the Metropolitan Police files, apparently undisturbed, for nearly six years until it came to light in June 2009 as a result of my order. I do not accept what Mr Terluk seems to be suggesting; namely, that it is a bogus document created by the police to assist Mr Berezovsky. Its contents are, of course, wholly at odds with what Mr Terluk is now saying. It is, on the other hand, consistent with the evidence called by Mr Berezovsky as to the events of that summer.
158. It would be perverse for me to conclude that Mr Rose was lying in court or that he concocted a false record of his interview with Mr Terluk. I can think of no reason why he should do so. Nor can Mr Terluk suggest any.

159. Furthermore, that scenario would account for the close interest taken in Mr Terluk by Mr Litvinenko and Mr Goldfarb in 2003. It is far more plausible than the explanation that Mr Terluk and the prosecutors put forward; that is to say, that they singled out a total stranger out of desperation and kept on pestering him, at meetings he had no wish to attend, to come up with and confess to a plot to murder Mr Berezovsky.
160. The evidence of Mr Litvinenko, Mr Goldfarb, Mr Dubov, Mr Levtov and Mr Menzies is in all essentials consistent and plausible. I am not only asked to disbelieve Mr Rose, a senior police officer, but also Messrs Levtov and Menzies, who are two experienced practising solicitors. They are officers of the court and appeared to me to be scrupulously careful as to their professional responsibilities. Nor can I see why they would have any motive to mislead the court and put their careers in jeopardy.
161. I do not believe that Mr Terluk would have gone on attending fairly regular meetings with Mr Berezovsky's associates unless he had a story to tell. If they were merely pestering him, and he wanted nothing to do with them, he is quite determined and strong-minded enough to have told them to "get lost". It is clear beyond doubt that he was recounting the same story to the Special Branch officers who interviewed him. It is hardly surprising that Mr Berezovsky and his friends would want to know as much as they could about a possible plot to kill him. Nor is that far-fetched fantasy, since earlier attempts had been made on his life and everyone knows what happened to Mr Litvinenko. Furthermore, there was a later assassination plot in relation to Mr Berezovsky himself, which was discovered by the police in June 2007. This led to the deportation of Mr Atlamgeriev (as reported in *The Times* for 18 July 2007).
162. On the other hand, one can understand Mr Terluk's reluctance to reduce his story into writing. He had to consider the risk to his own asylum application and, moreover, he would be reluctant to incur the displeasure of the FSB and the Russian Embassy. He was feeling his way at that time. Mr Chekulin's son (in his interrogation notes of 27 January 2010) recounts that after the 13 May dinner meeting Mr Dubov's immediate reaction was, in effect, to describe Mr Terluk as "our man", which perhaps connotes "one of us". Mr Chekulin Senior in his interrogation of 22 January said that Mr Dubov used the expression "our insider". Moreover, Mr Dubov has himself confirmed that this had been his initial impression. That would not be surprising as a tentative view. Indeed, for all I know, at that time Mr Terluk might well have wished to throw in his lot with other asylum seekers who, like him, had no wish to return to Russia.
163. I mentioned earlier that Mr Dubov had no direct dealings with Mr Terluk between May 2003 and January 2006. What happened was that Mr Terluk telephoned Mr Dubov after the publication of Mr Khinstein's article on 23 January 2006. He was displeased that he had been mentioned in it and a photograph of him published. He asked of Mr Dubov how Mr Chekulin could possibly have done this, as he had thought him "one of us".
164. At all events, having fed information to Mr Berezovsky's entourage, Mr Terluk cannot have been surprised at their interest in getting to the bottom of what he was saying.
165. Mr Terluk did himself no favours in cross-examination. Although articulate and never lost for words, he was truculent and evasive throughout. As often as not, he

simply failed to engage with the questions he was being asked and tried to quip his way out of difficulty. This tactic made it very difficult to take what evidence he did give at face value. He tended to dismiss anyone who gave evidence inconsistent with his story as a liar in Mr Berezovsky's pay. He also accused Mr Browne of being a disgrace to his profession and even of "palming" one of the documents he was passed by Mr Terluk in court. He seemed to be directing his performance more to the team of Russian prosecutors than the court; this plainly was not calculated to boost his credibility.

166. I am driven to conclude that the central allegation that is directly attributable to Mr Terluk in the programme is false; namely, that corresponding to the first pleaded defamatory meaning (set out at paragraph [53] above).

*The accuracy or otherwise of the third defamatory meaning*

167. It remains for me to rule on the third meaning – to the effect that Mr Berezovsky threatened Mr Terluk or in some way posed a danger to him. This led to what Mr Browne called the "pantomime" about Mr Terluk's security. It was difficult to serve him with the pleadings at the outset, because he was making himself scarce. (That emerges clearly from evidence of a conversation between Ms Middleton, one of the legal team acting for Mr Berezovsky, and a solicitor at a Law Centre who had been representing Mr Terluk, albeit to a limited extent.) Thereafter there were continuing difficulties about communication with him which caused major inconvenience and delay. The reason given for this was the need to protect his security. At the earlier hearings in the case, Mr Terluk was brought into court by my clerk through the Judges' entrance for the same reason. By the later stages, however, this precaution had been dispensed with and, so far as I am aware, was quite unnecessary. On 8 June 2009, I received a letter from the Russian Embassy complaining that I had revealed to Mr Berezovsky's lawyers the documents previously received by me from the Russian prosecutors. It was said that by so doing I had increased the risk to Mr Terluk's security, but no reasons were given. I see no evidence at all of any risk to Mr Terluk's safety and welfare originating with Mr Berezovsky or his entourage. Nor did he lead any evidence to that effect.

*Reputation*

168. At various stages during the proceedings, the Russian prosecutors have sought to introduce evidence attacking Mr Berezovsky's character, sometimes directly and sometimes through Mr Terluk. I think the purpose was to demonstrate that he has no reputation worth protecting. They wrote to me more than once through the Russian Embassy enclosing information I was asked to keep to myself. Obviously, this was impossible. It had to be handed over to the Claimant's advisers. There were also requests to stay the proceedings until the conclusion of the criminal proceedings in Russia against Mr Berezovsky. That did not appear to be consistent with his Article 6 rights.
169. We do not in this jurisdiction have a rule to the effect that a bad reputation precludes a person from suing in defamation. We do have a rule, which is in some respects unsatisfactory no doubt, to the effect that (subject to proper notice) evidence may be introduced of "general bad reputation" – for the purpose only of mitigating damages. On the other hand, it is not legitimate, for that purpose, to introduce evidence of

specific acts of misconduct: see generally *Duncan & Neill on Defamation* (3<sup>rd</sup> edn) at 23.20 *et seq.* This is the so called rule in *Scott v Sampson* (1882) 8 QBD 491. Despite a recommendation contained in the report of the Supreme Court Procedure Committee in 1991 (the Neill Report), Parliament decided when considering the Defamation Bill in 1996 not to abrogate this rule. The reasoning was that to enact such a provision would be to establish a “muckraker’s charter”.

170. It has been recognised that if a claimant has been convicted of a criminal offence, this can also be admitted in evidence provided that it is in the relevant sector of the claimant’s life and, of course, does not fall within the definition of a “spent” conviction under the Rehabilitation of Offenders Act 1974. The Russians wanted to introduce evidence of a conviction of Mr Berezovsky in a Russian court in his absence. They also sought to introduce the judgment of a Swiss court relating to the conviction of someone else, because there are some references to Mr Berezovsky. For reasons I explained more than once, I was obliged to rule this out. Mr Terluk nonetheless introduced it in his closing speech. He tends to treat rulings of the court as minor irritations rather than directions to be complied with. (As I have already explained, he handed over disclosed documents to the Russian prosecutors and also failed to verify the contents of his defence with a statement of truth or to specify what errors and inaccuracies it contained, as ordered on 8 December 2009. The reason for this order was to finalise his case and to enable the Claimant’s advisers and the court to concentrate on that – rather than a moving target.)
171. Nevertheless, it would be unreal to ignore the fact that, in the eyes of many people, including Russian speakers living in this country, Mr Berezovsky has acquired the reputation of a criminal on the run from Russian justice. He has been sentenced to 13 years imprisonment in his absence. On the other hand, he is seen by others as a political dissident who is working for justice and democratisation. Many see the criminal proceedings against him as politically motivated. It is not for me to take sides in that wider debate. I need to focus only upon the specific issues raised in this litigation. I merely recognise the realities. He does not have a settled “general bad reputation”. There are contrasting views. None of this means that he is deprived of the right to sue these Defendants in respect of the broadcast and, if successful, to recover damages by way of vindication.

#### *My approach to damages*

172. Having found that the defence of justification has failed, I must assess damages against Mr Terluk, as well as against the First Defendant. There is something of a difficulty about this, as I am confronted with joint tortfeasors. Mr Browne argues that they are as bad as each other, in the sense that they have committed the same tort and have each, in their different ways, aggravated the damage. I do not believe this is the right way to approach it.
173. First, I have found on the evidence that Mr Terluk is only responsible for what he actually said on the programme. He did not expressly state that Mr Berezovsky posed a continuing danger to him. Nor did he make any accusation that Mr Berezovsky was implicated in Mr Litvinenko’s murder. What he did say, which is plainly serious in itself, is that Mr Berezovsky through his associates (or, as Mr Khinstein called them, his “marionettes”) had exerted pressure on him to produce false evidence of a murder plot. This was to deceive the British authorities. There is no truth in any of the

allegations, but I am not persuaded that Mr Terluk (as opposed to RTR) is to be held responsible for publishing them all. He may have been a party to the entirety of the messages proclaimed in the programme: on the other hand, he may have been confined to a subsidiary role.

174. Secondly, the aggravation has been different in the case of each Defendant. In *Cassell v Broome* [1972] AC 1027, 1063F-H, 1090D-E, it would appear that Lord Hailsham and Lord Reid were of opinion that, in such circumstances, any joint tortfeasor will only be liable for the lowest common denominator (that is to say, only to the limit of their joint responsibility). In *Hayward v Thompson* [1982] 1 QB 47, 62E-G, on the other hand, Lord Denning MR thought this unsatisfactory. He seemed to think that in the case of a joint publication, such as a newspaper article, one should not draw fine distinctions as between one defendant and another. I do not read the judgments of his brethren (Sir George Baker and Sir Stanley Rees) as expressing a view on this point either way. Accordingly, the law in this respect cannot be definitively stated.
175. I have indicated that the words complained of bear each of the Claimant's pleaded meanings and that, in respect of each of those meanings, the allegations are false. Nevertheless, I plan to compensate in respect of only the first of those meanings – for the reason that Mr Terluk cannot be shown to have published all the allegations. I propose to ignore individual aggravating factors, as something of a distraction, because I think the lowest common denominator approach is likely to be preferred by a modern appellate court – not least because it is more compatible with Article 10 of the European Convention on Human Rights. There would seem to be an inhibiting or “chilling” effect on freedom of expression in so far as the law may render each individual contributor to an investigative story liable for the words or conduct of other people. In a genuine case of “joint enterprise”, that may be appropriate, but I am not persuaded that this is such a case. Yet I do not believe that for the purposes of this case I need to resolve this dilemma.
176. What I propose to focus upon is the seriousness of the allegation and the fact that it has gone uncorrected for about three years. The figure selected needs to compensate for distress, as well as the fact that the allegation was calculated to put at risk Mr Berezovsky's refugee status and leave to remain in the United Kingdom. It needs also to serve the purpose of vindication. Obviously, many people have fixed views about Mr Berezovsky and most will not change them as a result of this judgment. He is nevertheless entitled to his remedy as reflecting the court's clear and unequivocal finding, on the evidence, that the relevant allegations are false.

### *Conclusion*

177. Apart from that primary objective, the quantification of the damages may be academic in the sense that there are likely to be formidable obstacles in recovering the money. This may indeed be a matter of only peripheral interest to Mr Berezovsky. I doubt that he brought the proceedings to make money. It will be for him to decide whether it is worthwhile to attempt to enforce the award. But that is by the way. I have concluded that there should be judgment for the Claimant and that an appropriate award in respect of these joint tortfeasors is £150,000. It would have been higher if I were also compensating for the equally unfounded allegation that he was responsible for the death of Mr Litvinenko.

178. Finally, as I said at the conclusion of the hearing, I should like to record my thanks to Ms Margiani, who assisted Mr Terluk in the preparation and to some extent in the presentation of his case, and also to Ms Bayliss. As the interpreter, she had a very difficult task in circumstances where quite often several people insisted on speaking at the same time. I found their contribution very valuable and they enabled Mr Terluk to get across what he wanted to say. I should also like to express my thanks to counsel, who have assisted the court to focus on rapidly developing issues when they were often under considerable pressure themselves.