Claim No: CL-2019-000752

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)

IN AN ARBITRATION CLAIM
AND IN THE MATTER OF APPLICATIONS UNDER S.67 AND S.68 OF THE ARBITRATION ACT 1996

BETWEEN:

THE FEDERAL REPUBLIC OF NIGERIA

Claimant

– and –

PROCESS & INDUSTRIAL DEVELOPMENTS LIMITED

Defendant

Claim No: CL-2018-000182

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)

IN AN ARBITRATION CLAIM
AND IN THE MATTER OF AN APPLICATION UNDER S.66 OF THE ARBITRATION ACT 1996

BETWEEN

PROCESS & INDUSTRIAL DEVELOPMENTS LIMITED

Claimant/Respondent

– and –

THE FEDERAL REPUBLIC OF NIGERIA

Defendant/Applicant

OPENING SKELETON ARGUMENT OF THE FEDERAL REPUBLIC OF NIGERIA

A. INTRODUCTION

i. Overview

1. This is the skeleton argument of the Federal Republic of Nigeria ("**FRN**") in respect of its dispute with Process & Industrial Developments Ltd ("**P&ID**")[1] concerning three arbitral awards ("**the Awards**") given by a panel comprising Lord Hoffmann, Sir Anthony Evans and Chief Bayo Ojo ("**the Tribunal**"). The Awards were published on 9 July 2014 ("**the Jurisdiction Award**"), 17 July 2015 ("**the Liability Award**") and 31 January 2017 ("**the Final Award**"). They were based on an arbitration clause in a contract between the parties dated 11 January 2010 known as the Gas Supply and Processing Agreement ("**GSPA**").

2. The value of the Awards is very high. In its Final Award the Tribunal ordered FRN to pay damages of US$6.6 billion plus 7% pre- and post-award interest. The current value of the Awards is some US$11.1 billion.[2]

3. There are two applications before the Court:

   a. First, FRN's application dated 5 December 2019 to set aside the Awards (i) under s.68(2)(g) of the Arbitration Act 1996 ("**the 1996 Act**") on the basis that they were procured by fraud and/or they, or the manner in which they were procured, were

[1] P&ID's former solicitors, Kobre and Kim (UK) LLP ("**KK**"), withdrew from the record three months before trial. They were replaced by Quinn Emanuel (UK) LLP ("**QE**"). Hence the references to both law firms in these submissions.

[2] That represented more than five times Nigeria's annual education budget and ten times its annual health budget as of 2019 {H9/152}. The amount owing under the Awards is now even higher.

contrary to public policy; and (ii) under s.67 of the 1996 Act on the basis that the Tribunal lacked jurisdiction because the arbitration clause in the GSPA was procured by fraud.

b. Secondly, P&ID's application dated 16 March 2018 to enforce the Awards under s.66 of the 1996 Act.[3] In FRN's submission, this is an attempt to use the English courts as the vehicle for profiting from fraud and corruption. P&ID does not dispute that, if FRN's set aside application succeeds, its enforcement application must fail.[4]

4. In his judgment dated 4 September 2020, Sir Ross Cranston granted FRN an extension of the 28-day time limit for challenging the Awards on the basis of a strong *prima facie* case of fraud, and found that there was no reason why FRN should have uncovered P&ID's wrongdoing sooner than it did in late 2019 ("**the Cranston Judgment**").[5]

5. FRN's case is that the Awards were procured by an audacious and ongoing fraud on the part of P&ID. The story, in summary, is as follows:

a. P&ID lied to FRN, both prior to the GSPA and in its recitals, about (i) P&ID's readiness and ability to perform the contract, and (ii) whether a suitable gas source had been identified. The contract was nevertheless pushed through without due diligence, on onerous terms which placed the risk of non-performance on FRN, because of bribes paid and promised to key officials at the MPR.

b. P&ID continued to pay and promise bribes to officials after the GSPA was signed to keep them silent and onside. The original bribes and lies thus remained hidden.

c. P&ID took no more than risible steps to perform the GSPA, and refused to spend its own money on performance, because it knew that the project was never going to be brought to fruition. Yet P&ID had told the government (and later the Tribunal) that funding had already been obtained, that it already had a complete set of engineering designs, that a suitable source of gas had already been identified, and that it was therefore 'ready to go'. It knew that none of this was true.

d. Even prior to execution of the GSPA, more so thereafter and particularly once the arbitration was commenced, P&ID procured a steady stream of confidential and

[3] There are also parallel enforcement proceedings in the US, which have been stayed pending FRN's set-aside application in this jurisdiction.
[4] See P&ID's Re-Re-Re-Amended Defence ("**Defence**") at paragraph 89 {A1/2/71}.
[5] [2020] EWHC 2379 (Comm) {C/12}.

privileged documents ("**FRN Privileged Documents**") from FRN's lawyers which, as was evident from their content, there could be no legitimate basis for being shared with P&ID, giving P&ID a real-time inside track into FRN's litigation strategy. The only sensible explanation for this state of affairs is that the leakers of the documents had been corrupted. Remarkably, P&ID has entered a non-admission as to whether or not the documents were provided in return for corrupt payments by its representative Mr Adetunji Adebayo (who, the evidence shows, played a key role in procuring these documents).[6]

e. P&ID paid bribes to members of FRN's legal team not only to procure privileged material but also to divide their loyalty more generally. This was contrary to FRN's entitlement to *bona fide* and disinterested representation.[7] One among a number of results was that FRN's legal team defended its interests less vigorously than they should have done. The bribery became particularly active between November 2014 and the liability hearing. During this period, Mr Olasupo Shasore SAN, Ms Olufolakemi Adelore and Mr Ikechukwu Oguine (external counsel for FRN, a lawyer at the MPR and a lawyer at the NNPC, respectively), met in London with P&ID's representatives to discuss settlement, and then made increasingly desperate attempts to persuade their superiors to settle the claim for a massive sum. The corrupted members of FRN's legal team included Mr Ibrahim Haske Dikko, Ms Hafsat Belgore, Ms Adelore, Mr Oguine, Ms Clara Oluremi Aderemi and Mr Shasore (with his fellow law firm partner Mr Ovie Ukiri also paid to act as a conduit for collusion between P&ID and Mr Shasore).[8] Large, round-numbered cash deposits were made into their personal accounts at critical moments in the arbitration (save for Ms Belgore, who also received an electronic transfer of funds). These were the proceeds of bribes paid by P&ID, other ICIL group companies, Mr Adebayo, and/or Mr Shasore, each on P&ID's behalf and/or for its benefit.

f. P&ID procured the Awards on the basis of the perjured evidence of Mr Michael Quinn, whose statement in the arbitration sought to portray P&ID as a legitimate company that was ready, willing and able to perform the GSPA; perpetuated the lie that P&ID had already done most of the work needed to perform the contract; and

[6] Defence at paragraph 70L.
[7] FRN's Re-Re-Amended Statement of Case ("**SoC**") at paragraphs 4(4)-(5) {A1/1/3}, 71-79 {A1/1/44–57} and 79A-79L {A1/1/58–63}.
[8] SoC at paragraphs 4(4) {A1/1/3} and 72C {A1/1/53}.

concealed the fact that the contract had been procured through bribery rather than technical merit or feasibility. The latter point is the reason why FRN found itself liable for being unable to supply gas from what P&ID purported to have already identified as a suitable source.[9]

g. As a result of their being bribed, FRN's lawyers took a series of bizarre and ineffective steps to defend the arbitration at the liability stage. They did not properly defend the interests of FRN while they considered themselves to be in the pay of P&ID.

h. Moreover, as a result of the perjured evidence and bribery of the officials involved in the award of the GSPA and their continued silence, FRN was prevented from running otherwise viable defences that P&ID never could or would have performed the contract, and that the contract was in any event unenforceable because it had been procured by bribes.

i. Following the Awards, and as the frauds began to be unravelled, P&ID sought to resist a trial of the allegations now made against it by running a false case before Sir Ross Cranston, both as to the truth of Mr Quinn's evidence and as to the existence of bribes paid to officials associated with the GSPA. Moreover, P&ID continued to pay bribes to those who might otherwise reveal incriminating information, and took steps to suppress evidence of wrongdoing, including by paying off a whistleblower, Mr Bernard McNaughton, and seeking to withhold and/or ensure the destruction of damaging documents. The disclosure that has now been obtained is full of examples, including Mr Trevor Burke KC's WhatsApp message to Mr Seamus Andrew and Mr Brendan Cahill: *"Don't forget to get grace to delete her whatsapp messages. Getting paranoid"*.[10]

j. Shortly after the Cranston Judgment, P&ID's funder, VR Global Partners Limited ("**VR**"),[11] through its subsidiary holding company, Process Holdings Limited ("**PHL**"), commenced an arbitration against Mr Cahill and Mr Andrew's company, Lismore Capital Limited ("**Lismore**"), for fraudulent misrepresentations made at the time that PHL acquired its interest in P&ID (after the Final Award) in relation to payments made to Nigerian officials. The arbitration is ongoing. PHL alleges that Mr Cahill has failed to be *"candid"* with it and *"has behaved in a repeatedly untransparent*

[9] SoC at paragraphs 4(1) {A1/1/2} and 21-56 {A1/1/13–34}.
[10] {L/28/392}.
[11] VR is a 'vulture' fund which specialises in recovering sovereign debt named.

manner".[12]

k. It has recently come to light that P&ID has continued to harvest FRN Privileged Documents from compromised officials relating to this enforcement litigation.

6. The Awards are accordingly liable to be set aside under s.68(2)(g) of the 1996 Act on the basis that they were obtained by fraud and/or they, or the manner in which they were procured, are contrary to English public policy. The specific heads of fraud and breach of public policy on which FRN relies are set out at paragraph 4 of the SoC.[13] They are that:

a. The GSPA was procured by payments and promises of bribes, which P&ID concealed throughout the arbitration, including through its continued collusion with the individuals to whom it had paid bribes and the perjured evidence of Mr Quinn.

b. The Awards were based on the perjured evidence of Mr Quinn, which (i) made false statements about P&ID's readiness, willingness and ability to perform the contract; and (ii) gave a false story about how the GSPA came about which omitted to mention the fact that the contract was won by paying bribes.

c. P&ID colluded with members of FRN's legal team, not only dividing the loyalty of those lawyers, but also unlawfully obtained FRN Privileged Documents from them in return for corrupt payments and/or promises of payments.

7. These are each separate and free-standing grounds for setting aside the Awards:[14] they do not depend on each other in a legal sense, and the Court will need to determine them individually. They are also, however, part of one overall course of conduct designed to dupe FRN, the Tribunal, and this Court, into giving P&ID an extraordinary amount of money on the back of a campaign of bribery, corruption and deception which has continued even throughout these (English) set-aside proceedings. It is important to consider each of the alleged frauds both individually and as part of the overall picture.

8. FRN advances two additional points, that: (i) P&ID's enforcement claim and/or its defence to the set-aside application should be struck-out for abuse of process because of its destruction of documents and suppression of evidence;[15] and (ii) the arbitration clause in the GSPA was procured by a specific fraud, such that the Tribunal lacked jurisdiction under s.67

[12] PHL emergency measures application at paragraph 6.6(d)(ii) {Q1/21/20}.
[13] {A1/1/2}.
[14] SoC at paragraphs 5 {A1/1/3} and 80-82 {A1/1/64–66}.
[15] SoC at paragraph 7 {A1/1/4}.

of the 1996 Act. These are addressed in Sections G and H below.

9. In its Defence P&ID denies that it paid any bribes;[16] denies that Mr Quinn's evidence was false in any respect;[17] denies that it knowingly sought or obtained FRN's confidential and privileged documents;[18] denies any wrongdoing in respect of Mr McNaughton or the destruction of documents;[19] and denies that it colluded with FRN's legal team.[20] Upon examination of the evidence, these blanket denials will fall apart. They must moreover be taken with more than a pinch of salt. P&ID has confirmed that its pleas are based on the current knowledge of its current directors, who are Mr Andrew (P&ID's counsel in the arbitration), and Mr Jeffrey Johnson and Mr Emile du Toit (of VR).[21] The two VR directors had no involvement in the company until VR acquired a stake in it, through PHL, for enforcement purposes in late 2017. P&ID's pleaded denials and the statements of truth that accompany them are therefore worth very little. They are based on the knowledge of a hollowed-out BVI corporate entity which has attempted to cut its links with the past. The only director with a connection to the relevant period (although even then only from mid-2012)[22] is Mr Andrew. He is dealt with below. The Court must read his evidence and averrals in the context of his eye-watering stake in the outcome of this litigation, and the fact that PHL, the directors of which are the self-same Mr Johnson and Mr du Toit, has chosen to bring a fraud claim against Lismore (Mr Andrew's company) and Mr Cahill based on allegations that P&ID made unlawful payments to Nigerian officials, that Mr Cahill's and Lismore's warranties to the contrary were *"plainly false"*, and that VR's stake has become worthless *"in circumstances where the true position has been established"* ("**the Shareholder Arbitration**").[23] PHL applied for an emergency freezing Order against Mr Cahill and Lismore on the basis that the evidence which had emerged from the present proceedings demonstrated that Mr Cahill had *"previously engaged in unsatisfactory commercial conduct"*, had *"failed to be candid about his actions"*;[24] and had acted in a *"repeatedly untransparent manner"*.[25]

10. The Shareholder Arbitration makes P&ID's statements of truth all the more spurious: they

[16] Defence at paragraph 7.1 {A1/2/3}, 28 {A1/2/19-20} and 31 {A1/2/21}.
[17] Defence at paragraph 7.2 {A1/2/3}.
[18] Defence at paragraph 7.3A {A1/2/4}.
[19] Defence at paragraphs 12A-12F {A1/2/5-9}.
[20] Defence at paragraph 7.3 {A1/2/4}.
[21] P&ID RFI Response dated 7 September 2022 at paragraph 1 {A2/19/2}. List of Directors of P&ID {P/25}.
[22] Andrew 5 at paragraph 17 {D/6/5}.
[23] PHL Request for Arbitration dated 12 May 2021 at paragraphs 4.6, 5.13, 6.1-6.2, 7.3-7.4 {Q1/28/8}, {Q1/28/13}, {Q1/28/18} and {Q1/28/20–22}, emphasis added.
[24] PHL emergency measures application at paragraph 6.6(d)(ii) {Q1/21/20}.
[25] Ibid paragraph 6.6(d)(iii) {Q1/21/20}.

are based on the knowledge and belief of three individuals, two of whom (via PHL) are suing the third (via Lismore) in respect of the very corrupt activity that is alleged in these proceedings.

11. Besides denying the bribery, collusion, perjury, and improper receipt of FRN Privileged Documents, P&ID's only real answer is that FRN's set-aside application is precluded under s.73 of the 1996 Act because FRN ought with reasonable diligence to have discovered the grounds during the arbitration. [26] Yet:

    a. This argument applies to only one limb of FRN's set-aside application: that Mr Quinn put forward perjured evidence on P&ID's readiness and ability to perform.

    b. P&ID has not advanced any pleaded (let alone particularised) case that FRN had or ought reasonably to have uncovered the other aspects of the alleged fraud, namely the bribery and its concealment, the collusion with its lawyers, and the improper receipt of FRN Privileged Documents. Rightly so. There is no basis to assert that FRN's uncorrupted representatives ought to have known about these concealed activities. Their discovery has only come about as a result of a global investigation involving multiple limbs of the state and millions of pounds of expenditure.

    c. In any event, the contradiction between P&ID's assertion that FRN ought reasonably to have uncovered the perjury as to P&ID's readiness and ability to perform, and its denial that there was any perjury (or indeed any wrongdoing) at all, is obvious. P&ID has advanced no positive case as to the moment at, or the trigger by, which FRN should have discovered the perjury: nor could it in circumstances where it continues to deny that Mr Quinn's evidence was false. That is the basis on which P&ID failed before Sir Ross Cranston. It must fail for the same reason here.

    d. Moreover, as explained below, Sir Ross Cranston has <u>already</u> decided that FRN could not with reasonable diligence have discovered the perjury sooner for the purpose of granting FRN an extension of time. There is no reason of logic why the position should be different under s.73.

12. Beyond denying the existence of the various frauds, P&ID's answer to FRN's challenge is therefore very thin indeed. It has resorted instead to diversionary tactics:

    a. It contends that FRN's allegations of bribery and corruption are irrelevant as a matter

[26] Defence at paragraph 8 {A1/2/5}.

of law and must therefore be ignored.[27] That is based on a misreading of the authorities, as explained below. There is no blanket rule that an award may never be set aside on the ground that a contract was procured by bribery. The question in each case is whether the award was obtained by fraud or in breach of English public policy. That test is amply met where has there been not only bribery to procure the contract (all the more so when on the industrial scale of the present case), but also ongoing bribery and corruption to conceal that fact and to hobble the defence in the arbitration, such that the issue of the original bribery was not and could not have been raised before the arbitrators. The public policy threshold is also met where there is a direct link between the bribery and the award, which there is in this case: the bribery induced FRN to sign up to a contract without any proper due diligence which was never going to be performed, and placed the risk of such non-performance on FRN. That allocation of risk provided the foundation for the Tribunal's Awards. As a result, there can be no doubt that the Awards were procured by bribery and corruption (and thus by fraud and/or contrary to public policy), and/or that the Awards themselves are contrary to public policy.

b. P&ID has served a hearsay notice containing what appears to be a series of personal attacks on Nigeria's Attorney General, Mr Abubakar Malami CON SAN, based on press articles.[28] P&ID's disclosure reveals it to have itself been behind a concerted negative press campaign.[29] The allegations against Mr Malami are without foundation but are in any event irrelevant: this trial is not about the integrity of Mr Malami. It is a set-aside application brought by FRN, the outcome of which will turn on whether the Court is satisfied on the evidence before it that the bribery and corruption are proven.

c. P&ID relies on the fact that FRN continued to instruct Mr Shasore in an arbitration following the discovery of evidence of corruption against him ("**the Sunrise Arbitration**").[30] Even taking P&ID's case at its highest, that FRN was incompetent in failing to disinstruct Mr Shasore from the Sunrise Arbitration earlier, or that Mr Malami made an error of judgment, or even that he personally does not believe that Mr Shasore was corrupted (which is denied), the Court must consider the allegations made against Mr Shasore on the evidence before it.

[27] Defence at paragraph 7.4.2 {A1/2/4}.
[28] {D/19}.
[29] See, for example, {L/27/27}, {L/27/41}, {L/27/44}, {L/27/44}, and {L/27/47}.
[30] Defence at paragraph 67A.2 {A1/2/49}.

d. Moreover, P&ID's attempt to make FRN's case stand or fall with the allegations against Mr Shasore must fail. Mr Shasore is only one of a number of lawyers who were corrupted; P&ID's fixation on Mr Shasore alone ignores the majority of FRN's case on collusion. Furthermore, even were the Court not to find that FRN's lawyers in the arbitration (including Mr Shasore) were corrupted, that would not help P&ID, because (*inter alia*): (i) FRN and any non-corrupted lawyers acting for it were entitled, as a matter of law, to assume that Mr Quinn's evidence was honest: it is not open to a fraudster to contend that his opponent has acted negligently in failing to uncover his own dishonesty; and (ii) in any event, P&ID continued to conceal, including through Mr Quinn's perjured evidence and the continued bribery of the individuals with knowledge, the corrupt manner in which the GSPA was awarded.

e. P&ID has attempted to reduce the bribes and corruption orchestrated by Mr Adebayo to a technical question on the law of agency.[31] Mr Adebayo was P&ID's agent when he paid bribes, but in any event P&ID knew that he was paying bribes to officials: that was his true role. See further, below, at paragraphs 439-447.

f. Some of P&ID's witnesses have made allegations of mistreatment by the EFCC in the course of Nigerian criminal proceedings. These allegations are irrelevant to the present civil proceedings. There is no pleaded issue relating to the EFCC's treatment of suspects, and the Court is not being asked to make any findings on these issues. FRN is not relying on the outcome of any Nigerian criminal proceedings in support of its application to set-aside the Awards. This is therefore another tactic intended to prejudice and divert, rather than tackle the central issue of whether the fraud took place as alleged.

ii. The Cranston Judgment

13. The Cranston Judgment {C/12} is a careful and detailed judgment which, unhelpfully for P&ID, makes very serious *prima facie* findings against it. It provides a starting point for this trial. P&ID is keen to minimise the importance of the judgment, and has suggested that it followed just a *"short threshold hearing"* and contained *"just a few short paragraphs of analysis"*.[32] In fact, the hearing was P&ID's attempt to kill FRN's challenge and was thus fought very thoroughly, with the evidence running to *"some thirty-four bundles with hundreds of pages of evidence*

[31] Defence at paragraph 70A {A1/2/55}.
[32] See P&ID's skeleton argument for the hearing on 22 November 2022 {N8/10}.

and thousands of pages of exhibits" ([4]) and just under 140 pages of skeleton argument.

14. In summary, Sir Ross Cranston found that:

    a. There was a *"strong prima facie case that the GSPA was procured by bribery"*. P&ID's explanations for payments to Nigerian officials were unproven, and in any event could not detract from the fact that they were unlawful bribes ([196]-[197], [199]).

    b. There was a *"strong prima facie case that Mr Quinn gave perjured evidence to the Tribunal to give the impression that P&ID was a legitimate business and was able and willing to perform the GSPA"* ([210]). Likewise, there was a strong *prima facie* case that P&ID was not in fact in a position to perform the contract ([226]).

    c. There was a *"prima facie case that the arbitration proceedings were tainted"*, including *"at the least"* a *prima facie* case that Mr Shasore made payments to Ms Adelore and Mr Oguine, two government lawyers, to purchase their silence in relation to his conduct of the arbitration and settlement negotiations ([225]).

    d. Sir Ross Cranston was troubled by the fact that neither Mr Cahill nor Ms Taiga had confessed in their initial witness evidence to payments made before the GSPA was entered into, which subsequently came to light through disclosure obtained by FRN from a US section 1782 application before the New York District Court ([198]). (As explained below, a torrent of further payments made before and around the time of the GSPA has come to light since the Cranston Judgment as a result of FRN seeking disclosure from third parties around the world, none of which were mentioned by Mr Cahill or Ms Taiga to Sir Ross Cranston.)

    e. As regards the period leading up to the Final Award, Nigeria had *"made a good case that, at the time it took part or continued to take part in the arbitration, it did not know and could not with reasonable diligence have discovered the grounds it now advances"* ([233]). In this respect FRN's counsel for the quantum hearing, Chief Ayorinde SAN, had *"no reason to suppose that Mr Quinn's evidence to the Tribunal had been perjured, that P&ID was not a legitimate business which was ready and able to perform the GSPA, or that Mr Shasore was implicated in illegitimate payments"* ([235]).

    f. Following the Final Award, FRN had acted reasonably in not bringing its fraud challenge sooner than it did. There was *"no specific information such that Nigeria ought to have become aware of the building blocks of the fraud now alleged"* ([254]). Moreover, P&ID continued (and continues) to deny any fraud and instead chose to wear a *"cloak of*

legitimacy" ([245], [260]).

g. There was no deliberate decision by FRN at any point not to investigate the fraud ([253], [275]). Overall, *"… there was nothing which Nigeria ought to have been aware of to act as a trigger causing a reasonable person, exercising reasonable diligence, to have discovered the alleged fraud"* ([264]).

h. Given the strong *prima facie* evidence of fraud, *"certainly of the through-going character alleged in this case"*, it would be contrary to public policy for an award to be enforced without serious scrutiny: *"Not only is the integrity of the arbitration system threatened, but that of the court as well, since to enforce an award in such circumstances would implicate it in the fraudulent scheme"* ([273]).

15. The Judge's finding that there was no trigger which would have caused a reasonable person to investigate the fraud is important. It would be very odd if, Sir Ross Cranston having made a finding that FRN could not reasonably have uncovered the fraud sooner for the purpose of the extension of time application, this Court reached the conclusion that it could reasonably have uncovered the fraud *during* the arbitration for the purpose of s.73 of the 1996 Act. In each case the answer is the same: there was no trigger to put FRN on notice of P&ID's dishonesty. On the contrary, P&ID has taken every possible step to ensure that the fraud remains concealed, as described in the following section.

16. Following his finding that there was a strong *prima facie* case of fraud, Sir Ross Cranston ordered the release of a US$200 million bank guarantee that FRN had previously been ordered to post as security for its challenge.[33]

iii. The unravelling of P&ID's case

17. P&ID has gone to great lengths to hide its corruption and dishonesty. This has included, at least, using physical cash and a complex network of offshore companies and middlemen to make transfers, using codewords for bribes in its internal records, burning and otherwise destroying documents evidencing the wrongdoing, continuing to bribe individuals to buy their silence and bury evidence, even during these English proceedings, and, at every turn, fighting tooth and nail to prevent FRN uncovering the corruption; all this, while also denying there has been any wrongdoing at all.

18. At each stage of these proceedings, P&ID has responded only to the bribes and other

[33] {C/15/2}.

corrupt behaviour that FRN has managed to uncover, and has chosen to conceal the rest. However, as FRN's investigations have progressed and disclosure has been obtained in England and around the world, P&ID's case has unravelled spectacularly. Every pull of the thread has revealed further evidence of wrongdoing, which is no doubt why P&ID has resisted disclosure at every possible opportunity. A schedule of the rolling discoveries, which the Court is asked to read, is set out at Appendix 1. Some of the key points are summarised below:

a. Prior to the extension of time hearing, FRN asked P&ID to provide a list of the payments made to two key officials involved in the award of the GSPA: Ms Taiga and Mr Taofiq Tijani, a senior technical assistant at the Ministry of Petroleum Resources.[34] P&ID refused, saying that would be disproportionate and require P&ID to review 12 years of its own financial data. Yet P&ID's disclosure shows that Mr Cahill had in fact already gathered at least some of this incriminating information.[35] FRN was thus forced to seek disclosure in many jurisdictions, as described in Appendix 1. Numerous payments have since been discovered, which P&ID had tried to hide.

b. Mr Cahill and Ms Taiga gave the impression in their initial witness statements opposing the extension of time application that payments were made to her only many years after she retired from the Ministry of Petroleum Resources ("**MPR**") and long after her involvement with the GSPA.[36] For example, Mr Cahill said *"From 2015, I made a number of payments to Ms Taiga …"* and *"[she] retired from Government service sometime in 2010"*.[37] He said this because, at the time of his first witness statement, FRN had only uncovered payments to Ms Taiga from 2015 onwards. However, FRN then obtained (shortly prior to the hearing before Sir Ross Cranston) a disclosure Order from the New York District Court which revealed a payment had been made to Ms Taiga in the critical period just days before the GSPA was awarded in January 2010. Sir Ross Cranston described this payment as *"especially significant"*.[38] Yet P&ID had vigorously resisted disclosure by the US banks, and the use of the disclosed payments in these English proceedings.

c. Disclosure since has revealed that, following the New York District Court's Order

[34] FRN RFI dated 20 May 2020 {A2/1/2}; P&ID response dated 24 June 2020 {A2/2.02}.
[35] See, for example, {H9/216} and {H9/217}.
[36] Taiga 1 at paragraphs 11-12 {E/16/4} dated 26 April 2020; Cahill 1 at paragraphs 99 and 101 {E/17/29-30} dated 27 April 2020.
[37] Ibid.
[38] Cranston Judgment at [198] {C/12/32}.

and FRN's RFI seeking a list of payments, Mr Cahill asked his assistant to identify payments routed through US clearing banks (i.e. those likely to have to be disclosed pursuant to the New York order). Mr Cahill's assistant assured him that other payments, made from Cyprus bank accounts, were carried out *"without reference to a US clearing bank"*.[39] Mr Cahill's intention was to set out evidence for the Cranston hearing which was not full and frank as to payments made, but which instead addressed only those payments which would be revealed in the US clearing banks' disclosure which he knew he needed to confess to. Similarly, Mr Andrew was alert to structuring payments to avoid FRN discovering them via the s1782 application, warning Mr Smyth to avoid transactions which might be routed through US clearing banks by instructing him by WhatsApp on 25 August 2020, *"this will come up on 1782 disclosure. no more us$ transfers for now please"*.[40]

d. Mr Cahill and Mr Andrew conspired to ensure that their solicitors at the time, KK, were not given a full list of payments made by P&ID and its associated companies,[41] and P&ID deliberately chose not to reveal in its evidence or submissions before Sir Ross Cranston a series of payments to Ms Taiga specifically which it knew had taken place.[42] In his second statement for the Cranston hearing, Mr Cahill said that he had been unaware of the payment to Ms Taiga in late 2009, and implied that he was not aware of any further payments.[43] Both statements were, it transpires, false.

e. Sir Ross Cranston expressed concern in his judgment that Mr Cahill and Ms Taiga had not mentioned any payments before 2015, when in fact there had been *"one suspicious payment"* made just days before the GSPA was awarded ([194]). In fact, many more payments from this period have since come to light, including payments made to Ms Taiga's family members to avoid detection. Yet P&ID allowed Sir Ross Cranston to write his judgment on the false basis that there was only one.

f. Following the extension of time hearing, FRN sought and obtained *Norwich Pharmacal* disclosure orders against banks and corporate service providers in the BVI, Cayman

[39] See e.g. Mr Smyth email to Mr Cahill dated 25 May 2020 {H9/461}.
[40] WhatsApps between Mr Andrew and Mr Smyth on 25 August 2020 {L/26.1/69}.
[41] WhatsApps between Mr Cahill and Mr Andrew on 22 June 2020 {L/33/123}.
[42] Compare the table at {H9/217} and the table provided to KK at {D/27/13}. In any event, neither list of payments was revealed to FRN or the Court at the time of the Cranston hearing. Instead, at Cahill 2 at paragraph 24 {E/22/8} Mr Cahill falsely claimed that he was unaware of the payments of US $4,969.50 and US $5,000 to Ms Vera Taiga on 30 December 2009 and 31 January 2012 respectively until Nigeria obtained the disclosure from the banks in the US, and omitted any mention of the other payments for the benefit of Ms Grace Taiga.
[43] Cahill 2 at paragraph 24 {E/22/8}.

Islands and Cyprus, revealing a torrent of further payments to officials. These are described in further detail in Annex 1.

g. On 29 October 2021, KK, P&ID's solicitors at the time, revealed to FRN that they held extensive confidential and privileged documents belonging to FRN, *i.e.,* FRN Privileged Documents.[44] An allegedly independent lawyer at KK reviewed and eventually disclosed them in late 2021. The disclosure revealed the extraordinary fact that P&ID had been harvesting privileged documents from FRN's lawyers during the arbitration on a massive scale, and had been freely circulating these documents within P&ID (including to Mr Andrew and Mr Burke), often with a request to confirm when the document had been read so that it could be deleted. P&ID has failed to disclose how it acquired these documents,[45] leaving FRN to put the pieces of the jigsaw together. Even now FRN has an incomplete picture.

h. The commencement of the arbitration between Tita Kuru Petrochemicals Limited and P&ID ("**the Tita Kuru Arbitration**"**)** led P&ID to make a raft of concessions in which it all but admitted, belatedly and contrary to its previous sworn Defence, that Mr Quinn's evidence was false in certain respects: Section E below.[46] This *volte-face* is a departure from the case that P&ID had previously run both before the Tribunal and at the extension of time hearing. As a result, on its own case, P&ID must now accept that it ran a series of false arguments before Sir Ross Cranston, and thereby sought to bar FRN from a trial of its fraud allegations.

i. P&ID's disclosure revealed a series of internal spreadsheets which show Mr Cahill and others using codewords such as *"PR"* and *"Dublin Expenses"* in a concerted attempt to hide records of bribes from outsiders. The spreadsheets record that P&ID and its associated companies were involved in corruption on a grand scale: barely a day went by over a period of many years without a *"PR"* or *"Dublin Expense"* payment being made to a Nigerian government official. The payments were made both in respect of the GSPA and a whole host of other projects carried out by Mr Michael Quinn and Mr Cahill in Nigeria. Bribery was their *modus operandi* for making money. As it happens, a number of P&ID's internal records of *"PR"* and *"Dublin Expense"* payments up to 2012 have been recovered (mainly, it seems, as a result of an attempt in 2012 to

[44] KK's Letter to MdR dated 29 October 2021 {O/134/2}; Stephen Hayes' Letter to MdR dated 29 October 2021 {O/135/1}.
[45] See P&ID's RFI response dated 17 May 2022, at paragraph 4A {A2/11/3}.
[46] See, in particular, the deletions at P&ID's Defence at paragraphs 57.2.3 and 57.2.4A {A1/2/38} and {A1/2/39}.

expunge them from the group's accounts in anticipation of a tax audit).[47] Thereafter, the records dry up.

j. When pushed by FRN, P&ID disclosed agreements with its Nigerian intermediary, Mr Adebayo, entitling him to eye-watering rewards (of hundreds of millions of dollars) if this litigation is successful. The reason for the scale of Mr Adebayo's remuneration is that he was used as a conduit for paying bribes to officials and for soliciting FRN Privileged Documents from them, as described in greater detail below. P&ID has conspicuously not called Mr Adebayo to give evidence.

k. P&ID has belatedly, just a few months before trial, disclosed a cache of WhatsApp messages revealing (*inter alia*) that Mr Andrew, Mr Burke and Mr Cahill discussed recent concealed payments to Ms Taiga,[48] and shared the need to destroy incriminating documents.[49] There was no mention of any of these messages in either individual's early witness evidence. Indeed P&ID barely disclosed any WhatsApp messages at all until FRN pushed them to do so in a contested application before Jacobs J.[50] That application revealed that P&ID was sitting on thousands of relevant messages which had not been disclosed.

l. P&ID's eleventh-hour WhatsApp disclosure has also revealed new evidence of document destruction, such as the message to Mr Cahill from his assistant that *"I assume Tunji [Adebayo] has deleted all emails between us from his phone"*.[51] P&ID's attempts to suppress evidence, and its consequences for these enforcement and set-aside proceedings, are addressed in Section G below.

m. On 29 October 2021, P&ID disclosed a handful of documents revealing that a former employee, Mr McNaughton, had identified his willingness to disseminate evidence of corruption by P&ID.[52] FRN sought further disclosure from P&ID which revealed that

---

[47] See {H6/86} and {H6/156}.

[48] See e.g. a WhatsApp message from Mr Cahill to Mr Andrew and Mr Burke dated 6 January 2020 in which Mr Cahill stated *"Funds ($25k) gone to Isha [Taiga] same route as before. I suggest you confirm to Aisha and explain we had misunderstanding on who was sending. I always worry that G [Taiga] could be persuaded by the dubious lawyer to act as he suggests"* {L/31/81}. A few days earlier, Mr Cahill had expressed concerns relating to Ms Taiga and her daughter that *"We need to hold their hands all the time. Their thinking and attitudes change when left to think alone"* {L/31/33}.

[49] See e.g. a WhatsApp message from Mr Cahill to Mr Andrew and Mr Burke {L/36.1/57} in which he forwarded a message he had sent to Ms Grace Taiga's daughter, Ms Isha Taiga, on 19 December 2020 instructing her, *"Jim [Nolan] will have funds for you as discussed on Monday latest. I agree about the WhatsApp messages and she [Grace Taiga] needs to delete all earlier messages urgently."*

[50] Order of Jacobs J dated 19 July 2022 ("**the Jacobs Order**") {C/29}.

[51] Mr Smyth WhatsApp to Mr Cahill dated 14 September 2019 {H9/233}.

[52] MdR's Letter to KK dated 8 December 2021 at paragraph 8 {O/180/5}.

Mr Cahill had subsequently paid off Mr McNaughton to the tune of around £100,000 and offered him a 'bonus' for not responding when he was contacted by FRN's solicitors, Mishcon de Reya ("**MdR**"), for evidence. None of P&ID's witnesses volunteered Mr McNaughton's existence or communications to Sir Ross Cranston. It has had to be forced out of them, almost document by document, by FRN threatening to make applications.[53]

n. As trial has approached, P&ID has taken an increasingly obstructive approach to disclosure. For example, once it became clear that Mr Cahill was in possession of unsavoury documents, P&ID increasingly hid behind assertions that his documents were not in the company's control.[54] That is despite him being listed as one of P&ID's custodians,[55] and despite an agreement with Mr Cahill entitling P&ID's main shareholder, Lismore, to access Mr Cahill's documents.[56] P&ID itself has a legal right to obtain documents from Mr Cahill and Lismore,[57] but has sought to deny this.[58] Indeed, P&ID has confirmed in correspondence that no documents have been requested from Mr Cahill under this agreement.[59] This is all inexplicable in circumstances where Mr Cahill was the driving force of P&ID at the time of the GSPA and arbitration. The only inference can be that those behind P&ID have put in place artificial barriers to seek to justify failing to provide proper disclosure of incriminating documents.

o. FRN's own investigations have revealed many suspect transactions involving FRN's lawyers at key moments in the arbitration. For example, banking records show deposits of hundreds of thousands of dollars on the account of the MPR's internal lawyer, Ms Adelore, around the time of purported 'settlement meetings' with P&ID's Nigerian representative, Mr Adebayo; many cash deposits into Mr Shasore's account around the same time; a dishonest payment of US$150,000 by Mr Shasore to another lawyer, Mr Augustine Alegeh SAN, who was brought in to assist with the defence but

[53] The correspondence trail, which spans more than 12 months, includes {O/180/5}, {O/197/7}, {O/219/4}, {N1/11/5}, {N3/10/2}.
[54] In its Second Letter to MdR dated 19 April 2022, KK stated that *"Mr Cahill does not act on behalf of our client. The fact that he has given evidence in proceedings involving our client is irrelevant to the question of control, as is the fact that Mr Cahill has a financial interest in the outcome of the instant proceedings"* {O/296/1}.
[55] P&ID's Disclosure Certificate dated 29 October 2021 at p. 2 {N1/3/250-274}.
[56] Litigation Management Agreement dated 16 October 2017 between Lismore and Mr Cahill, clause 4.1 {H8/468/6}.
[57] Shareholders' Deed dated 27 October 2017 between P&ID, Lismore, Mr Cahill and Process Holdings Limited (a wholly-owned subsidiary of VR) ("**the Shareholders' Agreement**"), clause 5.8 {H9/74/14}.
[58] See KK's letter of 19 August 2022: *"we are instructed that no agreements or arrangements have been put in place to ensure that our client has the right to obtain documents from third parties and/or former representatives of our client"*.
[59] KK's First Letter to MdR dated 21 September 2022 at paragraph 1 {O/431/1}.

rapidly withdrew as soon as the payment was made; and a further dishonest payment of US$300,000 by Mr Shasore to a co-partner at his firm, Mr Ukiri, who had leaked privileged documents to P&ID: Section F below.

p. Most recently, and importantly, FRN's investigations uncovered incontrovertible evidence of the payment of a bribe to a member of FRN's legal team, Ms Belgore, in late 2014 by P&ID's Nigerian representative Mr Adebayo.[60] Following the discovery, P&ID immediately attempted to distance itself from Mr Adebayo, seeking to cast him as a mere *"contractual counterparty"*,[61] despite the obvious reality that he was acting on behalf of P&ID as its man on the ground in Nigeria, and has already received in excess of US$1 million for his 'assistance' on the case.[62]

q. Finally, FRN has discovered through a letter from VR's lawyers in s.1782 proceedings against VR and its related companies in the US that PHL has commenced a claim against Mr Andrew's company, Lismore, and Mr Cahill, based on the existence of unlawful payments made to Nigerian officials.[63] P&ID fought tooth and nail to resist disclosure of the details of this claim, but capitulated when FRN issued an application.[64] It will not escape the Court's attention that the pleaded position of P&ID in the present proceedings, based on the instructions of the same two individuals who act as directors of PHL, is that there were no unlawful payments to Nigerian officials.

19. This history of discovery, in the face of P&ID's concerted resistance, demonstrates two things. First, it gives the lie to P&ID's assertion that FRN should have discovered the fraud sooner. In circumstances where P&ID denies that there was any fraud, has resisted at every turn FRN's attempts to uncover the truth, and has presented a false case in these proceedings, only changing its position as and when the true picture has been uncovered by FRN, it does not lie in P&ID's mouth to contend that FRN should have uncovered the fraud during the arbitration. Second, it demonstrates that FRN has not yet uncovered the full extent of the fraud. P&ID continues to conceal the full picture.

iv. The factual and expert evidence

20. P&ID has served statements from eight factual witnesses: Mr Cahill, Mr Andrew, Ms Taiga,

[60] Bribery Statement of Facts at paragraphs 84-85 {A5/2/29}.
[61] Defence at paragraph 70A (*"Mr Adebayo did not act as P&ID's agent but merely as a contractual counterparty"*) {A1/2/55}.
[62] Bribery Statement of Facts at paragraphs 20-21{A5/2/8-9}.
[63] {Q/36.1}.
[64] {C/36}.

Mr Neil Murray, Mr James Nolan, Mr Burke, Mr Niall Lawlor and Mr Mohammed Kuchazi.[65] P&ID has conspicuously not called its representative, Mr Adebayo, as a witness, nor has it provided any disclosure from him. The consequence is that the serious allegations made against Mr Adebayo will go unanswered in evidence by him.

21. The evidence of P&ID's witnesses must be seen through the prism of the life-changing sums of money they stand to earn if this litigation succeeds:

    a. Lismore, which is owned and controlled by Mr Andrew, has a 75% stake in P&ID.[66]

    b. Mr Cahill is purportedly entitled to 30% of Lismore's proceeds. Accordingly, he would collect some US$2.47 billion if the Awards were enforced.[67]

    c. Mr Burke, who it transpires is Mr Michael Quinn's nephew, is said to be entitled to 10% of Lismore's proceeds. He personally would collect around US$825 million if P&ID were to succeed.[68] (Mr Burke has not explained how this is consistent with his professional duties or the strict rules applicable to damages based remuneration.[69]) In addition, P&ID admits that Mr Burke has already been paid at least US$1,175,000 for 'work' done on the case, although he raised no invoice for the work, says he *"does not know exactly how the sum was calculated"*, and the payment was not made through his

[65] A list of the key individuals and their roles is set out at paragraph 30 below.
[66] Andrew 5 at paragraph 29 {D/6/7}.
[67] Lismore letter dated 25 January 2019 {H9/159}.
[68] Ibid.
[69] It seems that the agreement with Mr Burke and Mr Andrew from the outset (i.e., July 2012) was that they would receive a portion of any proceeds received from FRN. As Mr Burke admits at Burke 1 paragraph 13 {D/1/4}, *"since the beginning of my involvement in the P&ID case, Mick had made it clear to me that he would not be able to pay for my fees in the ordinary way, meaning not on a regular basis by reference to time spent. Mick said that I would be compensated as and when the case resolved itself, which I understood as meaning that I would be paid a portion of the proceeds of any award."* However, damages based agreements ("**DBAs**") were impermissible as champertous until 1 April 2013 (a prohibition applying equally to arbitration: see *Bevan Ashford v Geoff Yeandle (Contractors) Ltd (In Liquidation)* [1999] Ch 239 at 249), and even thereafter, are controlled, with the requirements including that they be in writing: see s58AA(4) of the Courts and Legal Services Act 1990 ("**CLSA**"). Namely, DBAs only became authorised in specified circumstances by section 154 of the Coroners and Justice Act 2009, which inserted a new section 58AA into the CLSA. Their scope was limited to employment matters. The limitation to employment matters was removed by section 45 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which came into force on 19 January 2013. Shortly thereafter, on 1 April 2013, the Damages-Based Agreements Regulations 2013 were brought into force, which set out a number of regulatory conditions regarding DBAs. As Marcus Smith J identified in *Farrar (Deceased) v Miller* [2021] EWHC 1950 (Ch) at [35] and [54(1)(c)], a contingency fee agreement which is not sanctioned by statute is champertous and contrary to public policy. A particularly strict standard applies to agreements with legal representatives, as Lord Phillips MR explained in *Factortame Ltd v Secretary of State for the Environment, Transport and the Regions (Costs) (No 2)* [2003] QB 381 (CA) at [60], citing *Wallersteiner v Moir (No 2)* [1975] QB 373 at 401–402 where the public policy behind this was explained: *"First, in litigation a professional lawyer's role is to advise his client with a clear eye and an unbiased judgment. Secondly, a solicitor retained to conduct litigation is not merely the agent and adviser to his client, but also an officer of the court with a duty to the court to ensure that his client's case, which he must, of course, present and conduct with the utmost care of his client's interests, is also presented and conducted with scrupulous fairness and integrity. A barrister owes similar obligations. A legal adviser who acquires a personal financial interest in the outcome of the litigation may obviously find himself in a situation in which that interest conflicts with those obligations."*

Chambers, 3 Raymond Buildings.[70]

d. Mr Andrew is entitled to 10% of Lismore's proceeds (some US$825 million), being what is left after various other commitments.[71] The fact that Mr Andrew represented P&ID in an arbitration and subsequently acquired a stake of almost a billion dollars in that same litigation is, putting it at its lowest, extremely odd.

e. Ms Taiga, who has already received hundreds of thousands of dollars from P&ID, was recorded as the beneficiary of a 'commitment' of up to US$500,000 when VR acquired its 25% stake in P&ID for an initial consideration of US$22.5 million.[72] Her entitlement must be commensurately higher in the event that the Awards are actually enforced, hence her many WhatsApp messages to Mr Cahill along the lines of: *"I keep remembering Papa [Mr Quinn] telling me Grace u will be so wealthy u will travel all over d world as much as u wish"*[73] and *"It appears that Nigeria will delay the execution of the Award. The only consolation I have is that they will pay interests* [sic] *accruing from their delay."*[74]

f. Likewise, Mr Kuchazi was listed as having a 'commitment' of up to US$3 million following the initial consideration paid by VR for its stake.[75] He, too, will presumably be entitled to a higher amount if the Awards were to be enforced.

g. Finally, Mr Adebayo (who has not given evidence) would also be personally entitled to 10% of Lismore's proceeds, being around US$825 million, through a complex arrangement with a company known as Castleknock Holdings Limited.[76]

22. FRN has not called its own witnesses. P&ID has sought to create a sideshow of this. However, there are no witnesses that FRN could properly be expected to call, or who could otherwise give relevant evidence, on the issues before the Court:

a. As regards FRN's case on bribery and corruption, FRN cannot reasonably be expected to adopt as its own the evidence of individuals who have been corrupted against it.[77] That would require FRN to adopt the self-serving denials of those people as its own

[70] Cherryman 2 at paragraphs 7-9 {E/27/3}.
[71] Lismore letter dated 25 January 2019 {H9/159}.
[72] "Commitments" document at {H9/208}. The commitment figure fluctuates in various drafts.
[73] Ms Taiga WhatsApp to Mr Cahill dated 6 July 2015 {H7/312}.
[74] Ms Taiga WhatsApp to Mr Cahill dated 11 October 2018 {L/26/6}.
[75] "Commitments" document at {H9/208}. The commitment figure fluctuates in various drafts.
[76] Lismore letter dated 25 January 2019 {H9/159}. The Castleknock arrangement is set out in clause 4 of an agreement between Mr Adebayo and various other parties dated 2 October 2017 {H9/57/3}.
[77] The fact that a person accused of bribery or corruption is not called by either party to give evidence does not preclude the Court finding that he or she was implicated in such activity. Such findings are routinely made: *Lynton Exports (Alsager) Ltd v Revenue and Customs Commissioners* [2022] UKFTT 244 (TC) at [37]-[47].

evidence, in the face of the overwhelming evidence of dishonesty and corruption on the documents.

b. Nor is it open to FRN to call one or more witnesses who were not involved in the bribery and corruption for the purpose of walking the Court through the documents. That would be precluded by PD57AC.

c. As regards the alleged perjury, no one in FRN's camp can speak to the content of Mr Quinn's statement. That is a matter for P&ID's witnesses.

d. P&ID alleges that FRN could with reasonable diligence have uncovered the perjury as to P&ID's readiness and ability to perform during the arbitration.[78] However, FRN cannot reasonably be expected to call and adopt the evidence of the lawyers that acted for it at the first two stages of the arbitration (i.e. Mr Dikko, Ms Belgore, Ms Adelore, Mr Oguine and Mr Shasore). Those lawyers were corrupted to act against its interests.[79]

e. P&ID separately alleges that FRN could reasonably have uncovered the perjury during the quantum stage of the arbitration, at which point the conduct of the arbitration had transferred to Mr Malami and Chief Ayorinde.[80] FRN's answer to this point is a legal one: it was not possible to re-open the Tribunal's findings on the truth of Mr Quinn's evidence at the quantum stage.[81] That is not an issue which calls for factual evidence. Even if FRN were wrong on that legal point, it contends that it was reasonable for its legal team not to seek to re-open Mr Quinn's evidence in the absence of any specific reason to believe that evidence that went unchallenged and was accepted at the liability stage was perjured. Whether or not FRN acted reasonably is an objective question: there is no material evidence that could be given by Mr Malami, Chief Ayorinde, or anyone else, on that issue, save to walk the Court through the documents on how the arbitration was conducted, which would not be permitted under PD57AC. The question of how the quantum hearing was in fact conducted, in terms of the arguments advanced and expert evidence served by FRN, is a matter of record: it is not the subject

[78] P&ID rightly does not run a case that FRN could with reasonable diligence have uncovered the bribery and corruption now alleged. Nor could it in circumstances where it continues to deny that it happened (see paragraph 11 above).
[79] Sir Ross Cranston already found that there was a *prima facie* case of corruption involving those individuals (see paragraph 14 above).
[80] E.g. Defence at paragraph 63 {A1/2/45}.
[81] SoC at paragraph 68 {A1/1/43}.

of factual dispute.

23. FRN has served a hearsay notice containing a number of discrete statements by third parties on which it relies (as has P&ID).[82] These statements largely fall into two categories. The first is statements by individuals alleged to have been corrupted, whose evidence FRN could not reasonably be expected to adopt in its entirety as its own. This includes, for example, certain statements made by Ms Taiga, Mr Nolan, Mr Kuchazi and Mr Shasore to the Economic and Financial Crimes Commission ("**EFCC**"). The second category is statements or confirmations from administrative agencies, such as written confirmations in correspondence that the GSPA was never submitted to the Bureau of Public Procurement. There is no need, and it would not be proportionate, to call a witness from each of these agencies to give such simple confirmations.

24. Prior to the Cranston hearing, the MPR technical officer who signed off on the GSPA, Mr Tijani, confessed to having received payments from P&ID and to having overlooked the obvious deficiencies in the proposal for the GSPA. His admissions were before Sir Ross Cranston in a sworn witness statement. Mr Tijani subsequently died of Covid-19 and his statement is the subject of a hearsay notice.[83] Mr Cahill has described the statement as a *"work of fiction"*.[84] The Court will take a view on that once P&ID's witnesses have been cross-examined.

25. Beyond Mr Tijani's statement for which a hearsay notice has been served, the parties' previous witness statements for the extension of time do not stand as evidence for trial.[85] They can, however, obviously be relied on to point out inconsistencies between the witnesses' various statements, of which there are many on P&ID's side.

26. The parties have served expert evidence in the following four fields:

    a. **Engineering experts:** Mr Bunten (for FRN) and Mr Newenham (for P&ID). Their evidence goes to two main points: (i) the falsity of Mr Quinn's evidence (although, as explained below, they are largely aligned on this) and (ii) the causal significance of that false evidence, in the sense of whether the Tribunal would or might have reached the view that P&ID could or would not have performed the GSPA had it been appraised of P&ID's true situation. The evidence also goes to whether the GSPA was a properly

[82] FRN Amended and Consolidated Hearsay Notice {D/21}; P&ID Hearsay Notice {D/19}.
[83] {D/21}.
[84] Cahill 2 at paragraph 8 {E/22/3}.
[85] Butcher J Order dated 27 April 2021 at paragraph 5 (*"For the avoidance of doubt, witness statements served previously in the proceedings shall not stand as evidence at trial without compliance with paragraphs 3 and 4 above"*) {C/19/3}.

thought-through project which was awarded on its merits, as P&ID contends, or the result of bribery and corruption, as FRN contends.

b. **Finance experts:** Mr George (for FRN) and Mr Dimitroff (for P&ID). Their evidence goes to the same two main points as that of the engineering experts (although, again, it is common ground between them that Mr Quinn's evidence relating to the availability of finance was false). Mr George explains why it is fantastical to believe that P&ID could ever have obtained finance for the project.

c. **Nigerian law experts:** Professor Ojukwu SAN (for FRN) and Professor Bamodu (for P&ID) have given evidence on a number of discrete issues of Nigerian law, including the law on bribery and the principles that the Tribunal would have applied had it been appraised of the true situation rather than the fiction that Mr Quinn presented to it (the GSPA being governed by Nigerian law).

d. **Cash economy experts:** Mr Ojike (for FRN) and Mr Adebajo (for P&ID) have served short reports on the use of cash in the Nigerian economy. This evidence goes to P&ID's attempts to explain away the eye-watering levels of (mainly large and round-numbered) cash withdrawals on its bank statements. Curiously, Mr Adebajo chose not to serve a reply expert report.

27. Finally, FRN has served Statements of Facts and Documents relied upon in respect of two document-heavy aspects of the case: bribery and the FRN Privileged Documents (the "**Bribery Statement of Facts**" and "**FRN Privileged Documents Statement of Facts**", respectively). FRN will refer to these as appropriate at trial.

B. THE FACTS

28. The story surrounding the GSPA and the Awards is complex and has various moving parts. FRN sets out the main elements below. Further aspects will be explored with P&ID's witnesses in cross-examination.

i. The main characters

29. P&ID is a BVI-registered company currently owned 75% by Lismore, a BVI company owned by Mr Andrew, and 25% by VR, through its Cayman subsidiary PHL.[86] P&ID has

[86] P&ID owns a local operating entity named Process & Industrial Developments (Nigeria) Limited ("**P&ID Nigeria Limited**"). Since the start of the arbitration proceedings in question, P&ID and P&ID Nigeria Limited have been treated for all intents as purposes as a single entity. See e.g. Quinn 1 at paragraph 22 {G/9/7}.

no published accounts and had nominee directors throughout the period before this enforcement litigation. P&ID's current directors are understood to be Mr Andrew, Mr du Toit and Mr Johnson.[87]

30. Beyond these corporate entities, there are a number of key characters (and many others, whose details are set out in the *dramatis personae*):

a. **Mr Quinn**, together with Mr Cahill, was the co-founder and directing mind of P&ID. He also owned and controlled a network of associated companies based largely in Nigeria, the BVI and Cyprus.[88] He was an Irish national with a background in managing musical acts. He signed the GSPA and gave P&ID's sole factual evidence in the arbitration. Mr Quinn died in February 2015.[89] P&ID now all but accepts that his evidence in the arbitration was false.

b. **Mr Cahill** is the surviving co-founder of P&ID.[90] He was the ultimate beneficial owner of P&ID[91] until he sold P&ID to Lismore and then VR (receiving more than US$5 million immediately, plus a stake in the proceeds of the Awards of 22.5%[92]) in October 2017. The contemporaneous documents now obtained show that Mr Cahill is not an honest man and was complicit in the bribery and corruption of Nigerian officials.

c. **Mr Andrew** is an English-registered solicitor (previously barrister) and was P&ID's counsel in the arbitration. Through his BVI company, Lismore, he owns a 75% stake in the Awards (some of which has been committed to other individuals, such as Mr Burke and Mr Cahill). He purports to have acquired his stake almost immediately after the arbitration concluded through an undocumented deal in which Lismore acquired the entirety of P&ID, in return for nothing of substance,[93] with Mr Cahill to be paid

---

[87] {Q/56/57}.
[88] Although P&ID was run by nominee directors, Mr Quinn was appointed a director on or around 10 December 2009 to ensure that he had the authority to sign the GSPA {H3/82}.
[89] Cahill 1 at paragraph 10 {E/17/3}.
[90] It is apparent that Mr Cahill was arrested by the Irish Gardai in Ireland in December 2021. P&ID have refused to provide information or clarity as to the basis of Mr Cahill's arrest or status of such criminal investigation into him. Reports in the press (see, for example, https://www.irishtimes.com/news/crime-and-law/irishman-arrested-in-nigerian-bribery-investigation-1.4761459), indicate that Mr Cahill was detained on suspicion of conspiracy, contrary to section 71 of the Irish Criminal Justice Act 2006, which allows the Irish Gardai to investigate offences committed outside the State. By WhatsApp message from Mr Smyth to Mr Andrew dated 20 December 2021, Mr Smyth stated, *"Seamus, Brendan was arrested this morning sometime before 7am local time. They were from the National Economic Crime Bureau and the charges were for bribery"* {L/26.1/200}.
[91] Andrew 5 at paragraph 29 {D/6/7}.
[92] Being 30% of Lismore's 75% interest in the Awards {H9/159}.
[93] Lismore did not, as far as FRN can tell, provide any actual funding for the enforcement proceedings. This was provided by VR.

40% of the proceeds recovered by Lismore.[94] Mr Andrew's inbox was full of FRN Privileged Documents. His glib response is to dismiss his receipt of them as an *"irritation"*,[95] yet he positively engaged in discussions about these documents while he was acting as P&ID's counsel. There is no indication in the documentary evidence of his ever suggesting that they should be returned or asking not to be sent any more. Mr Andrew also machinated with Mr Cahill and Mr Burke to ensure covert payments to Ms Taiga have continued, and has sought to ensure that potentially damaging evidence is withheld.[96] That Mr Andrew stooped to such depths is perhaps unsurprising given the scale of his financial interest in the Awards. He stands to make a life-changing amount of money from a case in which he acted as counsel. It is an extraordinary situation.

d. **Mr Burke KC** is Mr Quinn's nephew. He has a stake in the Awards worth hundreds of millions of dollars, yet is described as having acted as P&ID's 'counsel'. He had no written retainer in place with P&ID, and it has been confirmed that millions of pounds of payments he has received from the company to date were not routed through his Chambers, 3 Raymond Buildings.[97] Mr Burke had his hands all over the FRN Privileged Documents. His excuse is that he was *"not well-acquainted with the international commercial arbitration disclosure process"*.[98]

e. **Mr Hitchcock** was P&ID's sole employee at the time of the GSPA.[99] He appears to have made some efforts to implement the contract but was repeatedly frustrated by Mr Cahill, who refused to allow him to spend money on the project: paragraph 109 below. He died in December 2015.

f. **Mr Adebayo** is the elephant in the room. He is a Nigerian businessman appointed to represent P&ID in facilitating a settlement. In reality he was used as a middle-man to access to corrupt officials, pay bribes and harvest privileged documents across party lines.[100] Mr Cahill did not mention him in his evidence before Sir Ross Cranston. His role has only come to light through disclosure. Since then, P&ID has engaged in

[94] The agreement was documented, *ex post facto*, in the Litigation Management Agreement dated October 2017 {H8/468}.
[95] Andrew 5 at paragraph 77 {D/6/21}.
[96] See, for example, {L/33/123}.
[97] Cherryman 2 at paragraphs 7-9 {E/27/3-4}.
[98] Burke 1 at paragraph 15(a) {D/1/5}.
[99] Schedule to P&ID's RFI Response dated 6 July 2022 {A2/15.1/1}.
[100] It appears that Mr Cahill also intended to use some of the proceeds of the Awards to fund an investment into one of Mr Adebayo's business projects. See e.g. {H6/357}.

desperate attempts to distance itself from him, as increasingly unattractive documents concerning Mr Adebayo's actions have come to light. Mr Adebayo has already received a US$750,000 payout for the role he played,[101] and stands to make some US$825 million if the Awards were enforced. Significantly, Mr Adebayo has not been called to give evidence, nor have his documents been provided for inspection. That is despite Mr Adebayo remaining firmly in P&ID's camp and the documents indisputably demonstrating that he made payments to one of FRN's lawyers (Ms Belgore) and Ms Taiga during the arbitration, and that he obtained FRN Privileged Documents from, amongst many others, Ms Adelore and members of Mr Shasore's office.

g. **Mr Kuchazi**, like Mr Adebayo, was a Nigerian representative of P&ID who acted as one of its intermediaries in Nigeria. His role was a murky one. Mr Cahill said that P&ID engaged Mr Kuchazi for his contacts within the Nigerian government, including Dr Lukman, but that he otherwise played a *"largely administrative"* role.[102] That is inconsistent with him being awarded 3% of the company's post-tax profits (worth hundreds of millions of dollars, given the value of the Awards),[103] as well as receiving further payments.

h. **Ms Grace Taiga** was the Legal Director of the MPR at the time the GSPA was executed, seconded to the MPR from the Ministry of Justice ("**MoJ**"). According to her evidence she retired on 1 September 2010.[104] She witnessed Dr Lukman's signature of the GSPA, and was the individual responsible for negotiating its terms. She was the beneficiary of numerous bribes paid to her and her family members from long before to long after the GSPA, including during the arbitration and these proceedings. The contemporaneous documents are littered with promises to Ms Taiga of great riches in return for her co-operation. Ms Taiga denies that she ever received a single bribe from P&ID.[105] The Court will take a view of the truth of that statement following her cross-examination.

i. **Mr Tijani** was another key contact at the MPR. He was the chairman of the MPR's team appointed to consider the technical merits of P&ID's proposal. Alongside Ms

[101] P&ID spreadsheet entitled *"Reconciliation of VR Funds"*, *"Bank"* tab {H9/95}.
[102] Cahill 1 at paragraph 34 {E/17/11}.
[103] Cahill 1 at paragraph 135 {E/17/37}. The agreement is documented at {H3/301}.
[104] Taiga 3 at paragraph 7 {D/8/3}.
[105] Taiga 1 at paragraph 41 {E/16/12}.

Taiga, he was the company's main point of contact at the MPR. He received bribes both before and after the GSPA was signed. Before his death of Covid-19 in March 2021, he made a sworn witness statement accepting that he had received payments from P&ID, and that he had deliberately overlooked the shortcomings in P&ID's proposal.[106]

j. **Dr Lukman** was the Minister for Petroleum from 2008 to 2010, at which point he was replaced by Ms Diezani Alison-Madueke. He was a co-signatory of the GSPA alongside Ms Taiga. Dr Lukman died in July 2014 and FRN has not been able to obtain access to his personal email accounts or a full set of his banking statements. Nonetheless, P&ID's disclosure reveals evidence of large cash withdrawals being made by P&ID at the exact times of meetings with Dr Lukman, and at the critical moments when he approved and signed the contract. FRN's case is that he had been corrupted alongside (at least) Ms Taiga and Mr Tijani by the time the GSPA was signed.

k. **Ms Adelore** was the Legal Director at the MPR (following **Mr Dikko**,[107] who had succeeded Ms Taiga) from 2013 to 2017. She was responsible for the conduct of the jurisdiction and liability phases of the arbitration on behalf of the MPR. As well as receiving a US$100,000 payment from Mr Shasore, she made large round-figure cash deposits into her bank account at key points in the arbitration, including around the time of a critical settlement meeting in person with P&ID's representatives in November 2014, at which point she began a campaign of persuading her superiors that FRN had no arguable defence and they should therefore settle for in excess of US$1 billion. Tellingly, she has been caught leaking FRN Privileged Documents to P&ID at the time of the arbitration. She was clearly in P&ID's camp.

l. **Ms Hafsat Belgore** was the Assistant Legal Adviser to the MPR during the time of the GSPA and the arbitration. She remained in the position until at least April 2015.[108] She worked with Ms Taiga, Mr Dikko and Ms Adelore, and actively advised on, and was involved in, the conduct of the arbitration.[109] FRN recently identified in her bank

[106] Tijani 1 at paragraphs 32-39 {E/19/7-9}.
[107] FRN contends, and P&ID does not seriously deny, that Mr Dikko received a bribe from Mr Quinn (see paragraph 463 below).
[108] See {H7/181}.
[109] See, for example, Ms Belgore memo dated 30 October 2012 {H5/223}, Twenty Marina Solicitors email to Ms Belgore dated 12 March 2013 {H5/359}, Mr Shasore email to Ms Belgore dated 19 April 2013 {H5/387}, Ms Belgore's memo dated 29 July 2013 {H5/481}, Mr Shasore email to Ms Belgore dated 31 July 2013 {H5/485}, Mrs

statements an incoming payment of NGN 500,000 made to her by Mr Adebayo, which has been cross-checked to Mr Adebayo's own bank account. The payment was made during the conduct of the arbitration, on which she was working for FRN. When the payment was uncovered, Ms Belgore confessed to having received it following a visit from Mr Adebayo to the MPR's offices in relation to the P&ID dispute. She distributed part of the payment to other members of FRN's legal team, as Mr Adebayo intended.[110] Following this discovery, she was suspended from office.

m. **Mr Shasore SAN** is a Nigerian lawyer who was FRN's counsel for the jurisdiction and liability stages of the arbitration. He repeatedly advised FRN that it had no defence, without carrying any investigation into the actual merits of the case. He has been caught red-handed making corrupt six-figure payments to the two lawyers instructing him on the case, Ms Adelore and Mr Oguine, as well as to a partner at his law firm who leaked privileged documents to P&ID.[111] He received an extraordinary number of round-figure cash payments into the bank accounts for which FRN has managed to obtain statements, including a total of US$140,000 in the run-up to the main arbitration hearing on liability.[112] Mr Shasore repeatedly advised FRN that it had no viable defence to the claim and insisted on settlement discussions with P&ID which (only) he, Ms Adelore and Mr Oguine attended. FRN's case is that he was corrupted by P&ID or, at the very least, members of FRN's legal team who were giving instructions to Mr Shasore were corrupted.

n. **Mr Oguine** was a lawyer at the NNPC from May 2014 to May 2015. He gave FRN's sole factual evidence in the arbitration, which the Tribunal found to be unhelpful and irrelevant.[113] Like Ms Adelore, he received a corrupt US$100,000 payment from Mr Shasore and attended settlement meetings with the two of them 'behind closed doors' in November 2014.

o. **General Danjuma** is a prominent businessman in Nigeria. He owns a company known as Tita Kuru Petrochemicals Limited ("**Tita Kuru**"), which engaged P&ID to project manage the design of a gas processing plant in Lagos ("**Project Alpha**")

Hakeem-Bakare emails to Ms Belgore dated 7 August 2013 {H6/2} and {H6/5}, Ms Kekere-Ekun email to Ms Belgore dated 25 November 2013 {H6/184}, Ms Belgore memo dated 31 July 2014 {H6/368}, Ms Belgore memo dated 3 September 2014 {H6/414}, Ms Belgore email to Mr Shasore dated 17 September 2014 {H6/453}, and Ms Belgore memo dated 24 April 2015 {H7/181}.

[110] Ms Belgore's EFCC interview dated 30 June 2022 {J/14}.

[111] See paragraph 429.c below.

[112] Bribery Statement of Facts at paragraph 94(7) {A5/2/33-34}.

[113] Liability Award at paragraph 35 {G/31/7}.

several years prior to the GSPA. Tita Kuru spent US$40 million on the design work, technology licences and P&ID's management fees. The project was a failure. As described below, P&ID stole the General's designs for the Lagos plant and used them as P&ID's pitch for its own project, the GSPA. P&ID repeatedly relied on the work done and money spent by Tita Kuru on Project Alpha as evidence that it was ready to perform the GSPA. Tita Kuru recently commenced an arbitration against P&ID arising out of the misuse of its Project Alpha designs and the enforcement of a purported settlement agreement entered into many years earlier. As a result, P&ID backtracked and belatedly admitted the obvious: that it had not done any engineering or design work on the GSPA project at all, and that the Project Alpha drawings were of no relevance to.

31. There is an issue as to whether Mr Adebayo's actions are attributable to P&ID.[114] Beyond that, there is no dispute and P&ID has admitted (as it must) that a long list of individuals were acting on behalf of the company including Mr Cahill, his assistant Mr Smyth, Mr Michael Quinn, Mr Murray, Mr Nolan, Mr Adam Quinn, Mr Lloyd Quinn, Ms Anita Quinn, Mr Andrew, Mr Burke, Mr Michael McElligott and Mr Isaac Ebubeogo.[115]

ii. Mr Quinn and Mr Cahill's background

32. Neither Mr Quinn nor Mr Cahill have, or had, any engineering qualifications or a track record in gas processing. Prior to the events in this case, they had never been involved in the design or construction of a gas processing plant. They had, through their companies, carried out a number of minor engineering projects in Nigeria, most of which failed.[116]

33. It now transpires from the disclosure in relation to these proceedings that Mr Cahill and Mr Quinn did have a track record of making money in Nigeria by paying bribes. This, in itself, is evidence that the same practice was followed in respect of the GSPA.[117] Disclosure has revealed a host of documents showing large, round-numbered payments, often in cash, to Nigerian ministers and officials involved in contracts awarded to companies associated with Mr Cahill and Mr Quinn. For example, their associated companies made repeated payments to General Martin Luther Agwai, the Chief of Nigerian Army Staff, between 2003 and 2006; and to Dr Baba Kaigama, the Permanent Secretary of the Ministry of Defence ("**MoD**") in

[114] Defence at paragraph 70A {A1/2/55}.
[115] P&ID's RFI response dated 17 May 2022 at paragraph 3A {A2/11/3}.
[116] See Reply at paragraph 5 {A1/3/4}.
[117] See e.g. *Red 12 Trading Ltd v Commissioners for Her Majesty's Revenue and Customs* [2009] EWHC 2563 (Ch), [2010] STC 589 at [109] per Christopher Clarke J.

the early 2000s;[118] and won a series of lucrative contracts from the MoD at this time. The documents also show that their companies were paying bribes to Ms Taiga as far back as 2004, when she worked as the Legal Adviser to the MoD.[119] The historic bribes FRN has discovered, together with references to the underlying banking documents and contracts awarded, are set out in the Bribery Statement of Facts.[120] P&ID has made no serious attempt to explain these payments, save for Mr Murray's feeble excuse that they might have been travel expenses for 'inspection visits'. That assertion will be explored at trial.

34. P&ID's documents use codewords designed to conceal their meaning to outsiders, including *"PR"* and *"Dublin Expenses"*. P&ID produced regular spreadsheets of *"PR"* payments and *"Dublin Expenses"* which record numerous payments to Nigerian officials and ministers with whom P&ID and its associated companies carried out business. FRN will be inviting the Court to find that both terms are codewords for bribes, at least in the vast majority of cases where they are used. Once this is accepted, P&ID's case that it did not pay bribes in connection with the GSPA will collapse. The contemporaneous documents contain numerous references to *"PR"* and *"Dublin Expenses"* payments being made specifically in relation to the GSPA.

iii. Project Alpha

35. P&ID was incorporated on 30 May 2006 for the original purpose of conducting a gas processing project, Project Alpha on behalf of Tita Kuru.[121] The history of the project, which ultimately failed, is set out in a recent award of an UNCITRAL arbitral tribunal chaired by Ms Judith Gill KC dated 29 July 2022,[122] to which FRN returns below ("**the Tita Kuru Award**").[123]

36. P&ID entered into two contracts with Tita Kuru. The first was an Engineering Services Agreement dated 27 June 2006,[124] which required P&ID to procure a set of designs for a gas processing plant to be located in Lagos. The second was a Services Agreement on 6 September 2006, which set the capped total expenditure on the project at US$39,182,000 (clause 6.1).[125] That figure was the basis of Mr Quinn's later (mis)representation that P&ID

[118] Bribery Statement of Facts at paragraphs 134-135 {A5/2/53-58}.
[119] Bribery Statement of Facts at paragraph 135 (13) {A5/2/55}.
[120] See Bribery Statement of Facts Section C {A5/2/52-61}.
[121] See e.g. {H1/74/2}.
[122] {K/28}.
[123] The Court may wish to read the Tita Kuru Award for the basic background to the relationship between Tita Kuru and P&ID, although the case turned on points of law rather than fact.
[124] {H1/83}.
[125] {H1/191}.

itself had sunk US$40 million into the GSPA Project.

37. P&ID did not itself do any design or engineering work on Project Alpha, but was an intermediary which outsourced work to third parties. Those third parties produced detailed engineering designs for a single-train gas processing plant, to be located in Lagos, which included a facility to produce polypropylene from the processed gas.[126] Project Alpha differed in fundamental respects to the GSPA Project, as the experts agree: paragraph 44 below. Tita Kuru paid for a licence with ABB Lummus for a key piece of technology required to operate the Project Alpha plant. It cost US$9,500,000.[127] It is not in dispute that the licence belonged to Tita Kuru, not P&ID. Nor is it in dispute (at least not any more) that the technologies were not transferable to the GSPA Project.[128]

38. The idea of moving Project Alpha (or a version of it) to Calabar seems to have originated with Mr Hitchcock emailing Mr Cahill in late February 2008 to say that there would be suitable gas available there to feed the Project Alpha facilities.[129] General Danjuma, who owned the designs and licence, did not want his project moved to Calabar.[130] On 11 June 2008, Mr Hitchcock sent Mr Cahill the first draft of a proposal for a plant in Calabar, without informing General Danjuma.[131] The draft stated *"We have purchased and already hold the licences for which we have completed the detail design"*.[132] This was untrue. P&ID did not own any licences. P&ID's subsequent pitch for the GSPA project in late 2008 was designed to make the government believe that P&ID had already completed the bulk of the engineering design for the project, and that General Danjuma had provided the necessary finance. It wrongly gave the impression that P&ID was 'ready to go'.

39. General Danjuma eventually learned of P&ID's (mis)use of the Project Alpha plans, alleging that *"my consultant was going to steal my project"*.[133] A dispute arose and on 30 July 2010 a Memorandum of Agreement ("**MoA**") was concluded, with the purported intention of settling the dispute.[134] On its face, the MoA entitled Tita Kuru to a 40% shareholding in

[126] Bunten 1 at paragraphs 136-142 {F1/1/44-46}.
[127] Tita Kuru Award at [108] {K/28/27} and {H1/162}.
[128] Bunten 1 at paragraphs 156-159 {F1/1/49-51}.
[129] Mr Hitchcock email to Mr Cahill dated 26 February 2008 {H1/245}.
[130] {H1/283} and {H1/307}.
[131] {H1/298} and {H1/299}.
[132] {H1/299}.
[133] Bloomberg article 'Is one of the World's Biggest Lawsuits Built on a Sham?' dated 4 September 2019 at {H9/225/15}. See also Tita Kuru's letter to the EFCC dated 20 September 2019 at paragraph 3.1.7 (*"It was therefore a rude shock to our Company, when Mr Quinn, later turned around to inform us that not only was the application to the MPR made in the name of his Company but that P&ID had actually executed a formal Agreement (behind our back)"* {H9/256/4}.
[134] {H3/423}.

P&ID. However, in the Tita Kuru Arbitration which followed, the tribunal (comprising Judith Gill KC (presiding), Lord Neuberger and Vernon Flynn KC) held the Agreement to be unenforceable because it did not purport to release P&ID from liability for Tita Kuru's claims for misuse of the Project Alpha work product, and was therefore not supported by consideration.[135]

40. As explained in Section E below, the Tita Kuru Arbitration forced P&ID to make some key concessions about the (ir)relevance of the Project Alpha designs to the GSPA Project.

iv. The GSPA Project

41. The GSPA Project concerned a gas processing plant in Calabar. Mr Bunten explains the fundamentals of a gas processing project in his first report, which the Court is invited to read.[136] In short, the GSPA envisaged associated gas from offshore oil fields (which would otherwise be flared by oil companies) being piped to a gas processing facility, processed to remove the natural gas liquids ("**NGLs**"), and the resulting lean gas being supplied to the government for power generation. P&ID would be free to sell the remaining NGLs at commercial rates.

42. The GSPA proposal was intended to be part of the MPR's Associated Gas Development Project ("**AGDP**"), an initiative to provide short-term solutions to the wasteful practice of gas flaring, and to supply additional energy to Nigeria's power grid. It was introduced in the wake of the government's Gas Master Plan ("**GMP**"), which was a longer-term project to promote the use of gas in Nigeria.[137]

43. The MPR awarded a number of contracts under the AGDP, but none came to fruition. P&ID has made much of these other contracts, although it is unclear where the point goes. FRN need not prove that each of the other AGDP contracts was tainted by bribery or corruption. Its case is that P&ID's contract was so tainted. FRN does not seek (or need) to prove that the other contracts were tainted. At its highest, therefore, the argument seems to be that other AGDP contracts were awarded to companies equally as ill-suited to performing them as P&ID. At best that might suggest that the GSPA was awarded through a legitimate (if substandard) process rather than as a result of bribes. But such an inference cannot survive the contemporaneous evidence that there was no such process, and that P&ID did

[135] Tita Kuru Award at paragraphs 608-614 {K/28/133-134}.
[136] Bunten 1 at paragraphs 10-24 {F1/1/8-14}.
[137] {H10/169}.

in fact pay bribes in order to obtain the contract.

44. The GSPA proposal differed from Project Alpha in important respects, not least because it contained two trains instead of one, and it did not involve a polypropylene plant, designed to convert the NGLs into a commercially viable product.[138] The experts agree that, as a result, *"the design of Project Alpha was of very little relevance to the design of the GSPA"*.[139] There is a debate between the experts about the exact moment at which it became obvious that this was so, but this does not ultimately matter. They are agreed that it was on any view clear by April 2009, at the latest, that the Project Alpha drawings were unusable, such that P&ID would have to start from scratch.[140] As explained below, P&ID advanced the opposite case until a late stage of this litigation.

45. Around the time that P&ID began to discuss (internally) the possibility of using Tita Kuru's designs to win a contract for a gas processing plant at Calabar, in February 2008 (see paragraph 38 above), they noted that the government was holding a roadshow for gas infrastructure investors.[141] The roadshow, which is referred to in Mr Quinn's witness statement, was held in Abuja on 15 May 2008.[142] P&ID's internal documents suggest that its representatives attended.[143] The day before, on 14 May 2008, it is recorded that around US$700,000 was withdrawn from P&ID-related accounts with the labels *"Dublin Expenses"* and *"PR"* on the day of and the day before the roadshow.[144] Dr Lukman attended the roadshow.[145] FRN avers that some or all of these massive movements of funds were paid to Nigerian officials, including Dr Lukman, who attended the roadshow. P&ID has sought to explain away some but not all of this cash activity in its Defence, yet (i) it has failed to give disclosure of the ultimate destination of these funds, and (ii) it has conspicuously provided no explanation for the NGN 10 million (approximately US$84,000) of *"Dublin expenses"* withdrawn by Mr Quinn, who attended the event, the day before the roadshow.[146]

46. Mr Quinn purports to have been granted an audience with President Yar'Adua to discuss

---

[138] Bunten 1 at paragraphs 136-217 {F1/1/45-66}.
[139] Engineering Experts' Joint Memo at paragraph 5.1 at [38] {F1/3/6}.
[140] Engineering Experts' Joint Memo at paragraph 6.1 at [44] {F1/3/6}.
[141] See a description of the roadshow in e.g. the Gas Minister's letter to President Yar'Adua dated 28 March 2008 {H1/261/2-4}.
[142] {H1/388}; Quinn 1 at paragraph 36 {G/9}.
[143] See e.g. Mr Yusuf email to Mr Cahill dated 7 May 2008 {H1/278} (*"I will keep on reminding our contact to see what [data] we can get before the Roadshow"*); Mr Yusuf email to Mr Smyth and Mr Hitchcock dated 28 April 2008 {H1/274}.
[144] Bribery Statement of Facts at paragraph 101(1) {A5/2/37}, referring to P&ID spreadsheet entitled *"Dublin Exps 2008.xlsx"* {H6/157}; P&ID spreadsheet entitled *"Omnipol"* {H3/492.1}; P&ID spreadsheet entitled *"May – Jun Exs"* {H2/277.1}.
[145] See the roadshow programme at {H1/290.1/3}.
[146] Spreadsheet entitled *"Dublin Exps 2008"* {H6/157}.

the GSPA Project in *"late 2008"*.[147] He also states he had conversations with the Permanent Secretary to the Government and Dr Lukman, who was the President's Special Adviser on energy, around this period.[148]

47. From this time three P&ID-related companies, ICIL Ireland, ICIL Nigeria and P&ID Nigeria, made a series of massive round-numbered cash withdrawals which ended abruptly in mid-2010, shortly after the GSPA was signed.[149] The bank statements of those three companies show that approximately US$10,725,843, was withdrawn over this period, with notable spikes in 2008, when P&ID first presented its proposals to various Nigerian officials, and Q1 2010, when the GSPA was signed.

48. FRN's case is that it is to be inferred, based on the timing of the withdrawals, the coincidence of the 'spikes' at key moments, and the remaining evidence of bribery and corruption, that some or all of these cash withdrawals were used to fund bribes paid in connection with the GSPA. As explained below, the inference is now further supported by links between specific cash withdrawals and interactions with government officials that FRN has been able to draw from a painstaking review of the disclosure documents.

49. The first documentary record of P&ID's approach to the government regarding the GSPA is its letter to the President dated 7 August 2008. It said, in material part:[150]

> *"Our proposal is to build and operate, entirely from our own financial resources, a gas treatment and separation plant along with a polymer grade propylene manufacturing facility to be located in the Calabar area …*
>
> *We have already purchased and hold the licences for the Natural Gas Processing Plant (Randall Gas Technologies, Houston) and for a Propylene De-Hydrogenation train, for the production of Polymer Grade Propylene (Lummus Technology Group, New Jersey) … In addition, we have already completed the Detailed Engineering for both the Natural Gas Processing Plant and the Polymer Grade Propylene Plant …*
>
> *As already stated we are willing to fund, from our own resources, the entire US$700,000,000 for the gas processing facilities on land …"* [emphasis added]

50. This letter was the beginning of P&ID's lie that it was a legitimate outfit ready and able to

[147] Quinn 1 at paragraph 58 {G/9/15}. There is no documentary record of this meeting from either FRN or P&ID.
[148] Quinn 1 at paragraphs 55-56 {G/9/15}.
[149] Bribery Statement of Facts at paragraphs 102-111 {A5/2/38-41}.
[150] P&ID letter to President Yar'Adua dated 7 August 2008 {H1/326}.

perform a gas processing contract on the scale of the GSPA, and that it had the finance in place to do so. Mr Cahill has admitted that the letter made untruthful statements, but says that they were necessary in order to open doors within the government.[151] That does not, however, square with the fact that P&ID continued to tell the same lies for many years after the door was opened and the contract was signed, including in Mr Quinn's evidence in the arbitration. Mr Quinn's letter to the President was preceded by a *"Dublin Expenses"* withdrawal on 1 August 2008 of NGN 4,000,000 (approx. US$33,000).[152] This was around the time that, according to Mr Quinn, he was in discussions with Dr Lukman, who was then the Special Adviser on Energy Matters, about the project.[153]

51. In October 2008, P&ID gave a presentation to the MPR concerning the proposed gas processing project in Calabar.[154] The presentation used drawings taken from the Project Alpha designs. These belonged to Tita Kuru, not P&ID. The drawings were doctored so as to remove the name of the technology licensor, Lummus.[155] Tita Kuru had paid US$9.5 million for licences for the Lummus technology.[156] P&ID had not paid for them, and had no entitlement to use them or the technical designs associated with them, which is presumably why it scrubbed Lummus' name from the designs. The presentation ultimately made its way to Mr Tijani, who was asked to review it.[157]

52. Dr Lukman was appointed as Minister of Petroleum on 18 December 2008,[158] although P&ID had already liaised with him about the Calabar proposal before then in his capacity as the President's Special Adviser on Energy, and had seen him at the gas investors' roadshow (paragraphs 45-46 above).

53. According to Mr Tijani, in or around February 2009, Dr Lukman told him about a specific investor that he had *"in mind"* for the AGDP, and re-sent him a copy of P&ID's October 2008 presentation.[159]

54. In an (undated) letter from late February 2009,[160] Mr Tijani invited P&ID to provide further information about its proposal, including P&ID's investment plan, the proposed timeline,

---

[151] Tita Kuru hearing transcript, day 3 at pp.206: 14 – 209:14 {K/22/53}.
[152] Spreadsheet entitled *"Dublin Exps 2008"* {H6/157}.
[153] Quinn 1 at paragraph 56 {G/9/15}.
[154] The presentation is at {H1/384}. The cover email dated 10 October 2008 is at {H1/383}.
[155] Bunten 1 at paragraph 161 {F1/1/51}.
[156] Tita Kuru Award at paragraph 108 {K/28/27} and {H1/162}.
[157] Tijani 1 at paragraph 18 {E/19/4}.
[158] Cranston Judgment at [13] {C/12/4}.
[159] Tijani 1 at paragraphs 17-18 {E/19/4}.
[160] See email from Mr Hitchcock to Mr Cahill dated 23 February 2009 {H1/455} and {H1/456}.

experience of other gas processing projects, and *"evidence of financial capability to execute [the] project within twelve (12) months"*.[161]

55. P&ID responded the following day, 24 February 2009, stating that a site had been allocated for the proposed plant, and that:[162]

> *"Licensing Agreements have already been entered into with both CB&I Lummas [sic] Technologies and CB&I Randall Gas Technologies for the process technologies …*
>
> *The Project is being funded by South Atlantic Petroleum (SAPETRO) which is 100% owned by General TY Danjumar (Rtdd) [sic]. To date in excess of $40 Mio has been invested in the Process Licences and complete detailed engineering. As a result we are in a position to proceed immediately upon receipt of mandate. Confirmations can be made available that the entire funding is in place".*

56. This was a continuation of the lie told by P&ID to the President in August 2008. In fact, as P&ID now admits, it had not produced any designs for the proposed project in Calabar, had not spent US$40 million, or indeed any money, on licences and engineering work, and did not have any funding in place (whether from SAPETRO or any other person).

57. The following day there was a meeting between officials from the MPR, DPR and NNPC, including Mr Tijani, to discuss several proposals for AGDP projects that would provide gas to power plants within a timeframe of 12-15 months, including P&ID's proposal.[163] The meeting note records that *"P&ID believes that this phase can be completed in 18-24 months of issuance of mandate … Project funding will be by South Atlantic Petroleum"*. The note describes P&ID's proposal as *"attractive"* but observes that the volume of gas required to feed it could be problematic. Similar comments are found in tabular format in a spreadsheet produced the following day, which described P&ID's proposal as being for a *"major gas processing and gathering facility"*.[164] A further version was presented in a PowerPoint presentation, said to be for the attention of Dr Lukman,[165] on 2 March 2009. The presentation said that P&ID's proposal could *"severely compromise the wider GMP investor programme"*, and that the Minister may wish to consider P&ID as a co-investor in a GMP programme rather than for a standalone project.[166]

---

[161] Letter from Ministry of Petroleum Resources to P&ID {H1/425}.
[162] {H1/457}.
[163] Meeting note dated 25 February 2009 {H1/463}.
[164] Spreadsheet titled *"Selection_cpf"* {H1/470}.
[165] Email from Mr David Ige (NNPC) dated 2 March 2009 {H1/475}.
[166] Presentation dated February 2009 'Review of proposals for Gas Gathering Projects' {H1/476}.

58. The next day, on 3 March 2009, Felix Adejori, a P&ID employee,[167] sent an email to Mr Hitchcock saying *"I have been trying to call you on phone, even while I was at NNPC premises, but I couldn't get you … I went to NNPC as directed,[168] I could not see Engr. Taofiq Tijani, but I spoke with home on phone, and he said that you should call him on 08036591282".*[169] P&ID was thus in touch with Mr Tijani through undocumented channels from at least March 2009.

59. Mr Tijani was the chairman of the technical committee assigned to P&ID's proposal, and was, alongside Ms Taiga, P&ID's main point of contact at the Ministry.[170] In his witness statement given before his death, he said that he *"overlooked"* the clear shortcomings in the proposal. The reason why Mr Tijani nonetheless pushed through the proposal is that he had received large bribes from P&ID, as described below.

60. On 23 March 2009, P&ID wrote a letter to the MPR identifying three *"Engineering Contracts"* with Lummus, Kran Developments and ABB Ltd, which were said to account for *"over US$29 million of the over US$40 million expended to date"*, with the balance being made up of initial feasibility studies, smaller engineering studies and P&ID's own *"internal"* Project Management Costs. This was false: P&ID had not incurred any of this expenditure, nor had any of it been incurred on work that was usable for the GSPA Project. These were monies that Tita Kuru had spent on Project Alpha.

61. P&ID met the MPR's technical team for further discussions on 1 April 2009.[171] P&ID's records refer to withdrawals of NGN 150,000 (US$1,000) and NGN 50,000 (US$300) for *"P&ID – Neil/Papa – Marketing"* on the day of this meeting.[172] It is to be inferred that these were bribes intended for officials attending the meeting, or otherwise encountered by P&ID at the offices of the MPR.

62. Mr Tijani explained that, on the day of the meeting, Mr Quinn and Mr Hitchcock came to his office to introduce themselves. About an hour later, Mr Tijani was summoned to Dr Lukman's office while Mr Quinn and Mr Hitchcock were still there. Mr Tijani describes the meeting as a *"very unusual one"* because he had never attended a meeting with the Minister

---

[167] Mr Felix Adejori was an engineer employed by P&ID: see e.g. {H2/2/4}.
[168] Mr Tijani was an employee of the NNPC, not the MPR. The reference to *"NNPC"* is likely to be to the fact that the MPR's offices were based in NNPC Towers.
[169] Email from Mr Adejori to Mr Hitchcock dated 5 March 2009 {H1/486}.
[170] Indeed, Mr Quinn devoted entire sections of his witness statement to Mr Tijani: Quinn 1 at paragraphs 63, 85-86, 100 {G/9}. That Mr Tijani was the engineer assigned to P&ID's project can be seen from e.g. the manuscript note *"TJ"* on {H10/170/1}.
[171] P&ID spreadsheet entitled *"Dublin Exps 2009.xlxs"* {H6/158}; P&ID spreadsheet entitled *"Neil Figures Apr"* {H2/13.2/1}.
[172] P&ID spreadsheet entitled *"P&ID EXPENDITURE 2009 & 2010.xls"* {H4/116}.

with investors in attendance: *"this was a first"*.

63. After the meeting, Mr Quinn and Mr Cahill invited Mr Tijani to dinner at the Chopsticks restaurant. As described in further detail below, Mr Tijani was given a cash bribe of US$50,000 at the end of the evening.[173]

64. Around this time, Mr Hitchcock reached out to a technology licensor, AET, about designs and full engineering services for an LPG recovery unit.[174] The email was ostensibly sent in connection with Project Alpha and said *"we are engaged, as Project Managers, by West African clients"*. On any view, as Mr Bunten explains, it appears that P&ID did not understand what AET was or did.[175] AET promptly replied explaining that *"AET is a technology vendor"* and that, accordingly, it was unable to answer most of Mr Hitchcock's questions or act as its engineering contractor.[176] There were a few further *ad hoc* communications with AET but they came to nothing of substance.[177]

65. On 25 May 2009, P&ID sent the MPR a draft Memorandum of Understanding ("**MOU**").[178]

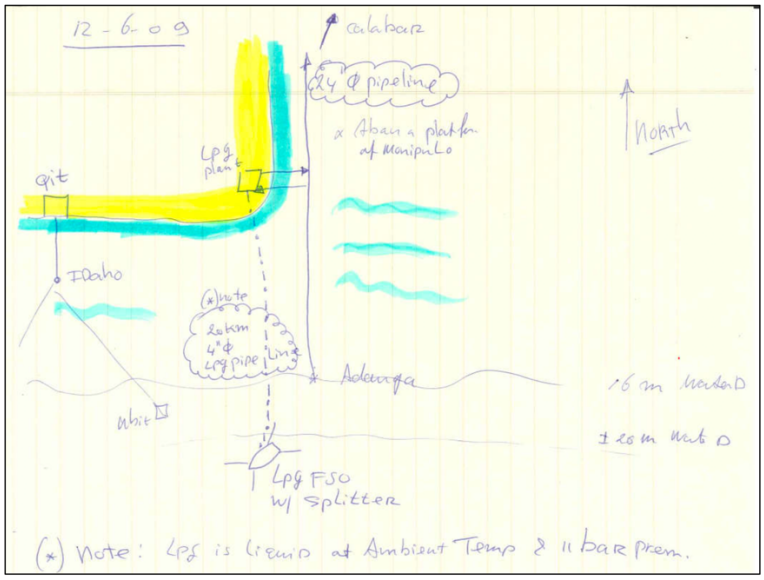
66. A meeting between P&ID and the MPR was scheduled for 9 June 2009.[179] Neither party has produced a note of the meeting, but P&ID followed up in a letter two days later enclosing its 7 August 2008 letter to the President (see paragraph 49 above), a letter of support from Mr Liyel Imoke (which had in fact been drafted by P&ID),[180] and P&ID's earlier letter purporting to break down the US$40 million spent on the project to date (see paragraph 60 above). It is common ground that P&ID would have known by April 2009 at the very latest that the Project Alpha designs were of no use or relevance to the GSPA project.[181]

67. On 13 June 2009, Mr Trevor Akindele, an individual with whom P&ID had been liaising about the project (and who had been leaking to it commercially sensitive information from Addax with the instruction to *"please use discreetly as this is strictly confidential"*),[182] sent to Mr Quinn and Mr Hitchcock a hand-drawn sketch of the concept for the GSPA, which is

---

[173] Tijani 1 at paragraphs 19-24 {E/19/4}.
[174] Email from Mr Hitchcock to AET dated 20 April 2009 {H2/9}.
[175] Bunten 1 at paragraph 331 {F1/1/97-98}.
[176] Email from AET to Mr Hitchcock dated 21 April 2009 {H2/10}.
[177] See e.g. the holding email of 1 March 2010 at {H3/282}.
[178] Letter from P&ID to MPR dated 25 May 2009 {H2/63}. The actual draft MOU is missing from P&ID's disclosure: only the cover letter has been provided. Previous drafts internal to P&ID appear at e.g. {H2/60}.
[179] MPR memo dated 4 June 2009 {H2/93}. The table refers to a meeting scheduled for 9 May 2009. This is presumably an error, since the memo is dated 4 June 2009.
[180] The various drafts are described in detail at FRN Privileged Documents Statement of Facts at paragraphs 62 {A5/1/60-61}.
[181] Engineering Experts' Joint Memorandum at paragraph 6.1 at [44] {F1/3/6}.
[182] {H2/111}.

reproduced below. Mr Bunten has confirmed that this is the only design basis for the GSPA project he has seen by the time P&ID entered into the MOU: *"[P&ID] was literally starting from a hand-drawn sketch"*.[183]



68. Beyond this hand-drawn sketch, preparations for the proposed contract in 2009 seem to have consisted of two risibly inadequate steps:

    a. P&ID made a preliminary approach to AET, a technology licensing company. However, as explained, P&ID misunderstood their role and haphazardly asked AET if it would act as a full EPC contractor for the project, which was a non-starter. The discussions ultimately fizzled out (paragraph 64 above).

    b. P&ID held provisional discussions with Aker, an engineering firm, for the design of a floating offshore facility, but did not follow up. No design work was ever carried out.[184]

69. By this point, and following the deterioration of relations with General Danjuma, P&ID had wound itself down to a skeletal operation: its RFI Response confirms that it had only a single employee, Mr Hitchcock, from mid-2009,[185] with the vast majority of staff having left by the beginning of 2009.[186] This was the 'team' that was supposed to get the GSPA, a half billion

[183] Bunten 1 at paragraph 220 {F1/1/67}.
[184] Bunten 1 at paragraph 254 {F1/1/77}, referring to {H2/222}.
[185] Schedule to P&ID's RFI Response dated 6 July 2022 {A2/15.1/1}.
[186] See a P&ID memo 21 November 2008 {H1/408} which states (at p.4) that *"A run down of P&ID project staff is underway with only one reimbursable expatriate remaining on the team"*. See also the memo from Mr Hitchcock to Mr Quinn dated 21 April 2009 explaining that he had no option but to lay off the remaining four members of local staff by April 2009 {H2/13}.

dollar gas processing project, off the ground. By July 2009, P&ID was delaying the payment of Mr Hitchcock's, its sole employee's, salary.[187] On 14 August 2009, Mr Hitchcock sent an email to Mr Cahill stating:[188]

> *"Brendan, I am aware that funds are tight, but things here [i.e. with P&ID] are desperate as we have the princely sum of NGN 86,000 [approx. US$570] to get us through the next 2-weeks. I attach the cash requirements for the end of August … in the sum of US$61,280, none of which can be cut back if I am to maintain the schedule for the Calabar Project."*

v. Entry into the MOU and negotiation of the GSPA

70. P&ID entered into the MOU with the MPR on 22 July 2009.[189] It was signed by Mr Quinn and witnessed by Mr Kuchazi on behalf of P&ID, and signed by Dr Lukman and witnessed by Ms Taiga on behalf of the MPR. P&ID's internal records indicate a cash withdrawal of *"100,000"* (US$600), labelled *"Papa – Dublin Exps. – Kuchazi – Gas"* two weeks before the MOU was signed, a withdrawal of NGN 100,000 (US$600) labelled *"Papa - Dublin expenses"* two days before it was signed, and a withdrawal of NGN 100,000 (US$600) labelled *"Adam – Dublin expenses"* the day it was signed.[190]

71. The MOU contained a recital stating:[191]

> *"j) P&ID has undertaken all necessary studies, including the identification of suitable associated and non-associated gas fields and is ready to commence a fast track development campaign to produce gas as stated herein."* [emphasis added]

72. This was false. P&ID had not undertaken *"all necessary studies"* for the project, and had not identified any suitable gas fields. This lie was carried through to the GSPA, as explained below.

73. General Danjuma became aware that P&ID had signed an MOU for a gas processing plant in Calabar by mid-July 2009. His representative, Mr Funsho Kupolokun, attended Dr Lukman's home at *"around 12 midnight"* to protest that P&ID's proposal was based on designs which belonged to Tita Kuru. Mr Kupolokun accordingly asked Dr Lukman to transfer the MOU into the name of Tita Kuru. Dr Lukman refused on the basis that (i) the contract had

---

[187] {H2/201}.
[188] Email from Mr Hitchcock to Mr Cahill dated 14 August 2009 {H2/300}.
[189] {H2/238}.
[190] P&ID spreadsheet entitled *"P&ID expenditure 2009 & 2010"* {H4/116} and P&ID spreadsheet entitled *"Dublin Exps 2009"* {H1/423}.
[191] P&ID was well aware of these two recitals. They were cited, for example, in a memo of unclear provenance sent by Mr Murray to Mr Cahill on 27 August 2009 {H2/356}.

been awarded following an *"elaborate tendering"* exercise, and (ii) the MOU had already been signed-off by the Federal Executive Council ("**FEC**"), which is a council of senior Ministers.[192] Both of these statements were false, as Dr Lukman must have known. There had been no tender process (let alone an elaborate one), and the MOU had not been signed-off by the FEC: it had not even been referred to it.[193] The only motivation that Dr Lukman can have had for telling such lies is that he had been corrupted by P&ID. It is significant that Dr Lukman produced no note of this meeting for the government (or even any acknowledgement that it took place).

74. By this point P&ID was attempting to fend off the General by insisting that *"None of the engineering or licensing for Project Alpha will be used in the Calabar Project as the design is completely different"*.[194] To this end P&ID produced an internal timeline stating that, in November 2008, Mr Quinn had *"developed and refined"* the concept of a Calabar plant to include two production trains, which would enable the delivery of lean gas within a *"very short time frame"*. As such, from December 2008 it was:[195]

> *"… clear that because the two projects are totally dissimilar the Engineering work carried out for Project Alpha will not be applicable in any way to the Calabar Project. Similarly the technology licensed for Project Alpha would be of no use for the Calabar Project."* [emphasis added]

75. Mr Quinn stated the opposite in his evidence for the arbitration, and in his repeated representations to the government, as described below.

76. Mr Hitchcock was concerned by the attempts of Mr Cahill and Mr Quinn to distinguish Project Alpha from the Calabar Project. He said in an email dated 4 August 2009:[196]

> *"Brendan, We need to be very careful in the response to this [i.e. the response to allegations by Tita Kuru]. In all the presentations to the Minister for Energy (Gas), subsequently to his team, and recently to the Minister for Petroleum Resources and finally the Gas Committee, the presentation centred on a time of the essence phased Implementation approach to ensure that gas for power generation was provided at the earliest possible juncture. The audio visual presentation and the hardcopy (which*

[192] {H2/218}.
[193] As confirmed by the FEC in its letter of 19 September 2019 {H9/251}.
[194] P&ID draft memo to Tita Kuru dated 30 July 2009 {H2/245}. See similarly Mr Cahill's email to Mr Hitchcock dated 2 August 2009 where he refers to a mediation with Tita Kuru and states that the evidence *"shows that Calabar is … a separate project"* {H2/246}.
[195] Internal P&ID memo dated 26 August 2009 {H2/349}.
[196] Mr Hitchcock email to Mr Cahill dated 4 August 2009 {H2/253}.

Mick widely distributed) used the Project Alpha Site General Arrangement Drawing …" [emphasis added]

77. P&ID said something similar in an internal memo produced around the same time:[197]

> *"**Fact:** All of the letters, discussions and meetings with the Ministry, NNPC and the President have centred around the Alpha engineering and General Danjuma as the financier up to today furthermore our request is still for gas from Addax, however none of the above is known or available to Tita Kuru except the letter to the President."*

78. On 11 August 2009, in a letter delivered by hand to Mr Kuchazi, Mr Tijani asked P&ID to attend the first meeting of the Joint Operating Committee ("**JOC**") envisaged under the MOU on 18 August 2009.[198] Mr Hitchcock followed up after the meeting by sending Mr Tijani a proposed *"Project Implementation Schedule"*.[199] For the reasons given below and in Mr Bunten's reports, this schedule was unachievable, as P&ID must have known, given that it had done no preparatory work for the project at all. 'Dublin expense' withdrawals of NGN 22 million (approx. US$150,000) and NGN 100,000 were recorded on the same day as the JOC meeting, i.e. on 18 August 2009.[200]

79. The negotiation of the terms of the GSPA began around August 2009. Mr Hitchcock emailed Mr Tijani on 26 August 2009 stating *"I will meet with the Head of Legal tomorrow [i.e. Grace Taiga] as agreed to discuss the format of the Gas Agreement"*. He said that Mr Tijani should drop into the meeting if he wished to discuss anything.[201] Ms Taiga and Mr Tijani were therefore directly involved in the negotiation of the GSPA from an early stage. P&ID's internal records show cash withdrawals of: NGN 2.5 million (approx. US$16,600) labelled *"Cash via Yinka (Staff)"* on the same day as the meeting to discuss the terms of the GSPA;[202] and NGN 50 million (approx. US$333,000) the day before under the reference *"Jim – Dublin Expenses"*.[203] It is to be inferred that this cash was brought along to the meeting to pay bribes to Ms Taiga and/or Mr Tijani.

80. Mr Hitchcock sent a first draft of the GSPA to Mr Cahill two days later, on 28 August 2009. He said that he had drafted it on a *"government 'lock-in' basis"*, which was disadvantageous to

---

[197] {H2/344}.
[198] Letter from Mr Tijani to P&ID dated 11 August 2009 {H2/288}.
[199] Email from Mr Hitchcock to Mr Tijani dated 19 August 2009 {H2/317}.
[200] Spreadsheet entitled "*Dublin Exps 2009*" {H1/423} rows 143-144.
[201] Email from Mr Hitchcock to Mr Tijani dated 26 August 2009 {H2/353}.
[202] P&ID spreadsheet entitled *"P&ID EXPENDIUTURE 2009 & 2010.xls"* {H4/116}.
[203] P&ID spreadsheet entitled *"Dublin Exps 2009"* {H1/423}.

the government but in his view justified, given what P&ID was able to offer.[204] Mr Hitchcock's draft included the same representation as was in the MOU that *"P&ID has undertaken all necessary studies, including the identification of suitable associated gas fields and is ready to commence a fast track development campaign to produce gas as stated herein"*.[205]

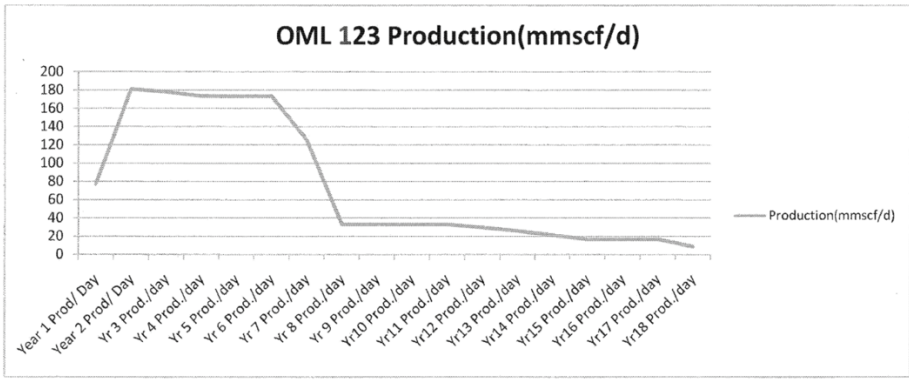
81. P&ID's draft contract and a letter drafted by P&ID, but to be sent in the name of Ms Taiga to the JOC, were delivered to Ms Taiga on 1 September 2009.[206] Two days later P&ID attended a JOC meeting. There is no minute of the meeting, but it seems likely from the documents that Mr Quinn, Mr Hitchcock and Mr Kuchazi attended for P&ID.[207] P&ID's internal spreadsheet records that on the same day they were allocated NGN 1 million (approx. US$6,600) of cash labelled *"Dublin expenses"*.[208] This cash was for bribes to officials at the meeting.

82. On 14 and 15 October 2009 Mr Quinn, Mr Hitchcock and Mr Kuchazi met with Addax, the operator of OML 123, and Mobil, the operator of OML 67. Addax informed them that it would be able to supply only a maximum of around 100 MMSCuF/D out of the 150 MMSCuF/D required for Phase I of the GSPA, since it required the remaining flared gas for its own operations. Mobil said that no gas would be available because it was needed for another project to which it was already committed.[209]

83. The fact that Addax would not be able to supply the necessary volumes of gas was consistent with a study commissioned by P&ID from AB Jones, which it received in late September 2009.[210] That study showed that OML 123 was never a feasible option for supply of the gas required for Phase I, since the gas output would plummet just a few years into the project (which was due to run for a minimum of 20 years):[211]

---

[204] Email from Mr Hitchcock to Mr Tijani dated 28 August 2009 {H2/362}.
[205] Draft GSPA dated 27 August 2009 {H2/363}.
[206] Email from Mr Murray to Mr Cahill and Mr Hitchcock dated 1 September 2009 {H2/372} and attachments {H2/373} and {H2/374}.
[207] See the letter from P&ID the day before requesting security passes for Mr Quinn and Mr Kuchazi for the following day {H2/385}; email dated 4 September 2009 {H2/389} referring to Mr Hitchcock's attendance.
[208] P&ID spreadsheet entitled *"2009 returns.xls"* at {H10/109}. *"Papa"* being a reference to Mr Quinn.
[209] P&ID memos of meetings on 14 and 15 October 2009 {H2/478}.
[210] {H2/447}, {H2/448}.
[211] Graph taken from {H2/448/11}. Mr Bunten explains why AB Jones' estimate that around 170 MMSCuF/D of gas would be available for the early years of the project was unreliable at Bunten 1 at paragraphs 283-289. Mr Hitchcock himself described the AB Jones report as *"amateurish"* {H5/221/1}.



84. To be clear, OML 123 was the only gas field connected to Calabar via the Adanga pipeline. The use of that pipeline was the premise of P&ID's promise to implement Phase I of the project within the tight timeframe specified by the GSPA. Neither party contemplated that P&ID would or could undertake construct an alternative pipeline from the Calabar facilities to some other oil field: such an exercise would have been massively expensive and time-consuming, and well beyond the resources of P&ID.[212]

85. In any event, as Mr Bunten explains in his second report, there were no other suitable sources of associated gas in the area.[213] This was the fundamental problem with the contract. Yet the terms of the Agreement, drafted on a *"government lock-in basis"*, purported to place the risk of failure on FRN.

86. As of October 2009, therefore, P&ID knew that OMLs 67 and 123, individually or in combination, could not supply the quantity of gas needed for the project even during the early years.[214] As Mr Cahill said in an email 18 months later:[215]

> *"The OML 123 production Graph shows an extremely steep fall-off in Gas Production from 180 mmscufds after year 6 to 40 mmscufds 2 years later and falling to virtually nil over the next 10 years.*[216] *On the face of it economic gas production at OML 123 effectively ceases after 2 years. Therefore even if we get all the AG (under our proposed new approach) we are short of gas after 2 years."* [emphasis added]

87. This remained P&ID's knowledge and belief up to the date of the arbitration. For example,

---

[212] The most that P&ID was willing to commit to was its obligation to construct an additional 70km pipeline for Phase II of the project, which would link OML 67, or any other oil field within a 70km radius, to the end of the Adanga pipeline at OML 123: GSPA clause 8(g) {H3/140/10}.
[213] Bunten 2 at paragraphs 83-139{F1/4/28-47}.
[214] The GSPA required a minimum supply of 150 MMSCuF/D for Phase I, and a total supply of 400 MMSCuF/D once Phase II was operational (see paragraph 99 below).
[215] Mr Cahill's email to Mr Hitchcock dated 28 March 2011 {H4/308}.
[216] Mr Cahill was referring to the gas volume chart produced by AB Jones reproduced above.

in September 2010, Mr Cahill told two associates, Mr Lawlor and Mr McElligott, that Addax could guarantee no more than 100 MMSCuF/D, rather than the 150 MMSCuF/D required by the GSPA.[217]

88. On 10 November 2009, Dr Lukman invited two representatives of P&ID to attend a meeting at the MPR on 24 November. The letter said *"Your organization is expected to send two high level nominees as very important and crucial decisions will be taken"*.[218] On 23 November, according to P&ID's internal records, Mr Quinn (*"Papa"*) took cash totalling US$10,000 for *"Dublin expenses"*.[219] These were bribes to be brought to the meeting where *"crucial decisions"* were to be made.

89. On 18 November 2009, Ms Taiga sent a final draft of the GSPA to P&ID.[220] One week later, on 25 November 2009:

    a. Mr Quinn recorded a NGN 200,000 (approx. US$1,300) cash transaction in the company's internal records under an entry labelled *"Gas Project – Papa – Dublin expenses"*.[221]

    b. On the same day, i.e. 25 November 2009, Mr Kuchazi withdrew NGN 200,000 (approx.US$1,300) cash from his account, and NGN 100,000 (approx. US$600) of cash was deposited in the account of the secretary of Ms Taiga, Ms Aderemi.[222] It is to be inferred that the NGN 200,000 cash withdrawal by Mr Kuchazi corresponded with the record on the same day of the same amount under the description *"Gas Project – Papa – Dublin expenses"*,[223] and that NGN 100,000 of the withdrawal was used to fund a bribe intended for Ms Aderemi and/or Ms Taiga. The withdrawal can also be cross-checked to P&ID's annual 'Dublin Expenses' spreadsheet, which shows withdrawals of NGN 200,000 (US$1,300) on the same day broken down as *"Papa – Kuchazi – Dublin Expenses"* (NGN 50,000) (US$300), *"Papa – Dublin Expenses"* (NGN 100,000) (US$600) and *"Neil – Dublin Expenses"* (NGN 50,000) (US$300).[224] This suggests that cash was given to three separate recipients, of which Ms Aderemi was one.

---

[217] Mr Cahill email to Mr Lawlor and Mr McElligott dated 3 September 2010 {H4/3}.
[218] MPR letter to P&ID dated 10 November 2009 {H3/1}.
[219] P&ID spreadsheet entitled *"2009 returns.xls"* at {H10/109}. The entries are split into two equal allocations of US$5,000. The withdrawals are also recorded on P&ID's spreadsheet entitled *"Dublin Exps 2009"* {H1/423}.
[220] Mr Hitchcock email to Mr Cahill dated 18 November 2009 {H3/31} and draft agreement and cover letter dated 18 November 2009 at {H3/32}.
[221] P&ID spreadsheet entitled *"2009 returns.xls"* at {H10/109}.
[222] See the corresponding entries in the bank statements at {M/34.1/77} and {M/98/3}.
[223] {H10/109}.
[224] P&ID's spreadsheet entitled *"Dublin Exps 2009"* {H1/423}, rows 234-236.

90. On 8 December 2009, ICIL issued a letter of comfort to the MPR, stating that *"ICIL has entered into a contractual arrangement with P&ID whereby ICIL will provide the finance for the installation of a further pipeline of up to 70 kilometre in length and of sufficient size to facilitate the delivery of the remaining 250 MMSCuFD of Wet Gas"*.[225] The reason for the letter of comfort was that the GSPA provided that the initial 150 MMSCuf/D of gas for Phase I would be supplied via the government's Adanga pipeline, which was connected to OML 123, but that P&ID would be responsible for constructing an additional pipeline of up to 70km to transport the remaining 250 MMSCuf/D of gas required for Phase II. The representations in the letter of comfort were false: As far as FRN can tell from the disclosure documents, ICIL had not entered into any contractual arrangement with P&ID; nor, in any event, did ICIL have the funds to finance the construction of a 70km offshore pipeline, which P&ID estimated would cost around US$90 million.[226]

91. On 7 and 8 December 2009, two withdrawals of NGN 50,000 (approx. US$300) and 200,000 (approx. US$1,300) were recorded under the description *"Papa – Dublin Expenses"*.[227] Another P&ID spreadsheet shows that these were cash sums taken out of a safe.[228]

92. On 17 December 2009, Mr Hitchcock met Mr Tijani at the MPR.[229] On the same day Mr Tijani sent an email to Mr Hitchcock attaching the CVs of two associates. He said *"I will appreciate our assistance for employment of any of the two ladies"*.[230] Seen in the context of the bribes paid to Mr Tijani, described in Section D below, it is to be inferred that he saw this as part of the *quid pro quo* for approving the GSPA without proper scrutiny.

93. Mr Bunten and Mr George explain that, by this stage, they would have expected any competent contractor to have completed certain concrete steps to prepare for performance of the contract, such as carrying out studies on and identifying suitable gas sources (as P&ID represented it had already done in the MOU), identifying an EPC contractor,[231] identifying an operations & maintenance provider,[232] preparing due diligence reports for financiers,[233] and obtaining the necessary licence from the DPR.[234] Yet P&ID had done next to nothing.

---

[225] P&ID letter to MPR dated 8 December 2009 {H3/106}.
[226] See e.g. P&ID's draft Information Memorandum dated 13 June 2010 {H3/375}.
[227] P&ID spreadsheet entitled *"P&ID EXPENDITURE 2009 & 2010.xls"* {H4/116}.
[228] P&ID spreadsheet entitled *"CASHPAYOUT ZG 1 Dec to Dec 8.xls"* {H3/72.2}.
[229] Mr Hitchcock WhatsApp to Mr Cahill dated 17 December 2009 {H3/105}.
[230] Mr Tijani email to Mr Hitchcock dated 17 December 2009 {H3/100}.
[231] George 1 at paragraphs 186-199 {F2/1/67-70}.
[232] George 1 at paragraphs 206-209 {F2/1/73}.
[233] George 1 at paragraphs 215-230 {F2/1/76-81}.
[234] George 1 at paragraph 125 {F2/1/48}, Bunten 1 at paragraphs 238-254 {F1/1/72-77}.

For this reason alone, the fast track project envisaged by the GSPA was bound to fail.

vi. Entry into the GSPA

94. On 18 December 2009, Ms Taiga wrote to Dr Lukman identifying three alleged *"concessions"* made by P&ID in the negotiation of the GSPA and stating:[235]

> *"Subject to your comments to the contrary, I advise that HMPR signs these Draft Agreements to ensure a leap forward for Short Term Gas operations in the country as directed by Mr. President."*

95. P&ID had made no meaningful concessions in negotiating the GSPA. Instead, it had achieved what it considered to be onerous terms for the government (which Mr Hitchcock described as a *"government lock-in"*) (paragraph 80 above).

96. On Saturday 19 December, Mr Cahill said in an SMS message to Mr Hitchcock: *"Neil contract brought to min by Grace. He studied in detail and approved for signing Monday with others. He also confied [sic] to Mohammed"*.[236] The reference to *"min"* in this message is presumably to the Minister, i.e. Dr Lukman, and the reference to *"Mohammed"* is to Mr Kuchazi. Ms Taiga had thus brought P&ID's draft of the contract to Dr Lukman for him to study, and Dr Lukman had confirmed to Mr Kuchazi, seemingly in person, that he was content to sign it. In fact, the GSPA was not signed on the Monday, although it was executed shortly thereafter as described below.

97. P&ID's internal records show a cascade of cash payments around this time:

    a. P&ID's internal spreadsheet records *"Papa"* (i.e. Mr Quinn) as having taken out cash of NGN 900,000 (approx. US$6,000) on 18 December 2009 for *"Dublin expenses/Christmas expenses"*.[237]

    b. Another P&ID spreadsheet records outward *"ICIL Dublin"* expenditure, for which no description or explanation is given (unlike the other payments on the spreadsheet), of US$130,000 on 17 December and US$90,000 on 18 December.[238]

    c. On 23 December there was a torrent of cash withdrawals described as *"Dublin expenses"*, totalling some US$558,000.[239] One of the withdrawals (of NGN 200,000) (US$1,300) is labelled *"Minister – Dublin Expenses"*. On a different spreadsheet, a

[235] Ms Taiga letter to Dr Lukman dated 18 December 2009 {H3/108/2}.
[236] Mr Cahill SMS dated 19 December 2009 {H3/109}.
[237] P&ID spreadsheet entitled *"2009 returns.xls"* at {H10/109}.
[238] P&ID spreadsheet entitled *"Neil Figures Jan 10.xls"* at {H3/146}.
[239] P&ID spreadsheet entitled *"2009 returns"* {H10/109}. Based on the exchange rate cited in the spreadsheet of US$1 = NGN 152.

withdrawal of NGN 300,000 (US$2,000) is recorded under the description *"Alh. Isa – Jim – Dublin exps."* on the same day.[240]

d. It is to be inferred, based on their timing, the use of the phrase *"Dublin Expenses"* and the reference to a *"Minister"*, that these cash withdrawals were used to fund cash bribes paid to Ms Taiga, Mr Tijani, Dr Lukman (and possibly others) in connection with the forthcoming signing of the GSPA.

e. On 28 December, Ms Taiga emailed Mr Cahill's assistant, Mr Smyth, saying:[241]

"Compliments of the season once again. Thank you for speaking to me earlier on today. I discussed the fastest measures to send this money with my daughters and my daughter has informed me that Western Union transfers can be done over the telephone or even online. This means you can transfer the money to me without using physical cash. I hope this is an option we can explore. Please can you call me to discuss tomorrow please." [emphasis added]

f. Mr Smyth replied the following day explaining that he was unable to use Western Union, and asked Ms Taiga to provide her daughter's HSBC bank account information instead. Ms Taiga did so on the same day.[242] Having already made payments for Ms Taiga's benefit throughout 2008 and 2009,[243] a payment of US$4,969.50 to Ms Vera Taiga was made on 29 December 2009, the payment instruction for which was signed by Mr Cahill.[244] These were all bribes paid to Ms Taiga by or on behalf of P&ID in connection with the entry and execution of the GSPA.

g. On 14 January 2010 (just after the GSPA was executed), P&ID's internal spreadsheets record a NGN 350,000 (approx. US$2,300) payment labelled *"Dublin Expenses – Mic – P&ID"*, and a further NGN 500,000 (approx. US$3,300) payment labelled *"Dublin Expenses Kuchazi"*.[245]

98. The GSPA was signed on 11 January 2010. A copy appears at {H3/140}. The contract was signed by Dr Lukman and witnessed by Ms Taiga on behalf of FRN, and by Mr Quinn and witnessed by Mr Kuchazi on behalf of P&ID. Its main provisions were as follows:

---

[240] P&ID spreadsheet entitled *"P&ID EXPENDITURE 2009 & 2010.xls"* {H4/116}.
[241] Ms Taiga email to Ken Smyth dated 28 December 2009 {H3/113}.
[242] Email chain between Ms Taiga and Mr Smyth dated 29 December 2009 {H3/116}. As described in Section D below, further earlier payments had been made to Ms Taiga in connection with the GSPA, including US$1,372 on 12 May 2008, £3,500 on 28 October 2008, US$6,995.91 on 1 December 2008, US $5,614.10 on 19 January 2009 and US$3,751.72 on 12 February 2009.
[243] Bribery Statement of Facts at paragraph 31 {A5/2/13-17}.
[244] {H3/120} and {H9/217}.
[245] P&ID spreadsheet entitled *"NOVEMBER DAILY CASH CONTROL"* {H3/163.3/1}.

a. Recital (h) represented that *"P&ID possesses the requisite finance, technology and competence for the fast track development of the Project"*. This was false. P&ID had no finance in place and had not obtained any technology licences, as is now common ground. Nor was it competent to implement the GSPA, let along on a fast track basis.

b. Recital (i) represented that *"P&ID has undertaken all necessary studies, including the identification of suitable associated gas fields and is ready to commence a fast track development of the project in accordance with the terms of this Agreement"*. Again, this was false: no suitable gas fields had been identified and the necessary studies had not been undertaken.[246] Mr Cahill says that the suitable gas fields (i.e. OMLs 67 and 123) were *"common ground"*.[247] That is a truism in the sense that they were recorded as the suitable sources in the contract. Yet that common ground was based on P&ID's misrepresentation that it had identified them, through the necessary studies, to be suitable sources, and the failure of Ms Taiga or Mr Tijani to scrutinise this.

c. P&ID was required to construct the Gas Processing Facilities, as defined in the GSPA, on the site allocated to them by Cross River State Government (clause 3(a)). P&ID was required to provide *"all funding necessary"* for the timely construction, implementation and efficient operation of the Facilities (clause 8(d)).

d. FRN was required to deliver to the site boundary a total of 400 MMSCuF/D of Wet Gas[248], across two phases from OMLs 123 and 67, or such other locations as the government may decide from time to time to comply with the ongoing volume and quality requirements under the GSPA (clauses 3(c) and 4(a)). As described above, the basis on which these two specific fields were mentioned was that OML 123 was connected to the Adanga pipeline, and OML 67 was within a 70km radius of the end of that pipeline (P&ID having committed to build a further pipeline of up to 70km for Phase II of the project).

e. FRN was to ensure that all necessary pipelines and infrastructure were installed, and arrangements were put in place with any agencies or third parties, to secure the delivery of the Wet Gas in accordance with the GSPA (clause 6(b)).

---

[246] FRN's case is that P&ID is contractually estopped from departing from its representation in recital (i): Reply at paragraph 13(9)(i). In any event, P&ID's new case that it was unable to produce detailed engineering designs because of a lack of Wet Gas data case underlines the fact that the evidence given by Mr Quinn to the Tribunal was untrue.
[247] Cahill 6 at paragraph 13.1 {D/26/4}.
[248] Associated gas is often known as 'Wet Gas' when it contains heavier hydrocarbons, i.e., components with three of more carbon atoms, such as propane (C3), butane (C4), and pentane (C5) (Bunten 1 at paragraph 12 {F1/1/8}).

f. Clause 8(g) required P&ID, if necessary, to construct an additional 70km of pipeline to source the 250 MMSCuf/D of Wet Gas required for Phase II of the project, on the basis that the initial requirement of 150 MMSCuf/D for Phase I would be sourced from OML 123 through the Adanga pipeline. However, P&ID knew by this stage that OML 123 was not a viable source of Wet Gas, even for Phase I (paragraphs 82-86 above).

g. P&ID was required to process the Wet Gas to be supplied by FRN, and to transfer approximately 85% of it back to the government free of charge, to be used for the purpose of power generation (clause 3(d)). P&ID was entitled to retain the remaining NGLs and sell them at commercial rates (clause 8(c)).

h. The GSPA was governed by Nigerian law and any disputes were to be referred to arbitration in accordance with the Nigerian Arbitration and Conciliation Act. The venue of any such arbitration was to be in London (clause 20).

99. The timeline for performance of the GSPA was set out in Appendix A:

a. *"Phase I"*: FRN was to deliver 150 MMSCuF/D of Wet Gas to the site during or before the last quarter of 2011, and P&ID was to begin processing the Wet Gas during the last quarter of 2011.

b. *"Phase II"*: FRN was to deliver the remaining 250 MMSCuF/D of Wet Gas on or before the third quarter of 2012, and P&ID was to begin processing that additional gas within the same timeframe.

c. The processing was thus to begin less than 24 months after the GSPA had been executed. For the reasons given by FRN's experts, Mr Bunten and Mr George, this was hopelessly unrealistic. P&ID had done no design work for the Facilities, and had not secured any finance. That is, of course, why Mr Quinn submitted perjured evidence representing that P&ID had completed almost all of these steps.

d. P&ID now contends that it was unable to take any steps pending the confirmation of a committed source of gas and its technical specifications. This is wrong for the reasons given by Mr Bunten and Mr George in their reply expert reports, addressed below. In any event it does not reflect what P&ID was saying at the time. P&ID represented, both in correspondence prior to the GSPA and in the recitals to the contract, that it had already carried out the necessary studies to confirm a suitable gas source, that it had already obtained finance, and that it had already completed the vast

majority of the engineering designs. That was also its case before the Tribunal. That is inconsistent with its case now that it was impossible to do any of these things because the government had failed to confirm the gas source.

100. The GSPA appended a schedule of works, at Appendix B, which set out the steps required to implement the project.[249] Clause 3(b) required P&ID to construct and implement the two processing streams *"in accordance with the schedule of works forming Appendix B hereto"*. Like the deadlines in Appendix A, this schedule of works was thoroughly unrealistic. Mr Lawlor subsequently described it as *"a very ambitious timetable and contrary to what we discussed"*.[250] Even by March 2010, P&ID was already suggesting in emails that the project would be implemented at least a year late.[251]

101. The GSPA was entered into without following the proper procurement procedures under Nigerian law.[252] In particular, Ms Taiga (the senior lawyer responsible for executing the GSPA) failed to notify the contract to the Bureau of Public Procurement, to conduct a competitive tender process, to notify or obtain the consent of the FEC, to notify the contract to the Infrastructure Regulatory Commission, and to register the contract with the National Office for Technology Acquisition and Promotion. Each such agency has formally confirmed that it was not told of the GSPA. FRN has served hearsay notices in that respect.[253] FRN relies on the failure to follow the correct procedure as evidence that the GSPA was concluded as a result of bribery rather than a legitimate bidding process.[254] There is a dispute between the Nigerian law experts as to whether these requirements applied to the contract, which will need to be addressed in cross-examination.

102. Around the time the GSPA was in near-final form, P&ID had held discussions with a potential funder, Arcadia, which came to nothing. Arcadia did, however, provide comments on a late draft of the GSPA. They observed that:

    a. It was extremely high-level. They anticipated that *"[b]oth a Gas Processing Contract and construction contract will be more detailed"* and would *"follow in due course"*. P&ID answered simply *"[n]ot necessary, everything is up to us"*.[255]

---

[249] {H3/181}.
[250] {H4/4/10}.
[251] Emails with AET at {H3/282}, referring to a commencement of Phase 1 activities by *"December 2012"*, which is 12 months after the deadline in Appendix B.
[252] SoC at paragraphs 18-19 {A1/1/11-12}.
[253] See the letters from the respective agencies at {H9/218}, {H9/251}, {H9/226} and {H9/195}.
[254] Reply at paragraph 9(a) {A1/3/13}.
[255] Note from Arcadia with P&ID markup dated 18 November 2009 at {H3/28}.

b. *"The contract is a very brief document for such a major transaction"*.[256]

103. P&ID was able to secure what in its view was such a one-sided contract, which provided that *"everything is up to us"*, because it had bribed representatives of FRN involved in the process, as described in Section D below.

vii. Events following entry into the GSPA

104. As described below, following the execution of the GSPA:

a. Mr Cahill refused to invest P&ID's money in the GSPA project, meaning that it was and remained immediately impossible to perform the contract (even if there had been a suitable gas source, which there was not).

b. A number of outside agencies, including the NNPC and NAPIMS (the state-owned company responsible for managing FRN's oil and gas assets), were informed of the GSPA as a *fait accompli*. They expressed concerns about the GSPA but did their best to make it work in reliance upon Mr Quinn's representations that P&ID had already procured detailed engineering designs and finance for the project, and the *imprimatur* given by Ms Taiga and Mr Tijani.

c. Ms Taiga and Mr Tijani remained on the scene and continued to receive bribes.

d. P&ID procured a steady stream of confidential documents from FRN officials relating to the contract. P&ID says it does not know why most of these documents were provided to it, and it cannot say who was responsible for the leaks. The Court will need to reach a view on the credibility of that explanation. FRN addresses P&ID's attempts to obtain confidential documents across the party lines, and its implications for the enforceability of the Awards, in Section F below.[257]

105. Two days after the execution of the GSPA, Mr Quinn wrote to Dr Lukman stating that P&ID was *"anxious to commence work at once"*, and that *"for this reason we wish to put in place all necessary modalities as soon as possible, with both Addax and Exxon Mobile, in order to ensure the timely delivery of the currently flared Wet Gas for the Project"*.[258] This made no sense, since P&ID already knew that neither Addax nor Mobil were able to supply the necessary quantities of gas

[256] Mr Cahill email to Neil Murray dated {H3/68/1}.
[257] The FRN Privileged Documents obtained by P&ID during this specific period (i.e. prior to the commencement of the arbitration) are listed at Section A of FRN Privileged Documents Statement of Facts {A5/1/2-53}.
[258] Mr Quinn letter to Dr Lukman dated 12 January 2010 {H3/150}.

(paragraphs 82-86 above).

106. The NNPC, DPR and NAPIMS were informed about the GSPA by Ms Taiga in mid-January 2010.[259] None of these bodies had been sent a copy of the GSPA in draft, or appear to have been aware of its terms, prior to this (hence the need to send them a copy).[260] They relied on the representations in the GSPA, and the MPR's approval of P&ID's proposal, in assuming that P&ID was a legitimate outfit that was ready and able to perform. For example, in an internal memo from around this time the DPR said:[261]

> *"P&ID has shown to have the finances, technology and competence to fast-track the development of the project to meet short [term] supply requirement and has been considered capable of implementing and executing the project … The immediate need is to source 400 mmsscfd of wet gas by government. Company [P&ID] has identified Addax OML 123 for 150 mmscfd. The balance may come from Mobil OML 67 or any other fields within the range of 70km.*" [emphasis added]

107. None of this was true. It reflected lies told by Mr Quinn, which had received the *imprimatur* of Ms Taiga and Mr Tijani. In fact, it appears that P&ID drafted this memo on behalf of an official in the DPR, Mr Okparaojiako,[262] who had ostensibly been duped into believing the seals of approval given by Ms Taiga and Mr Tijani.

108. The NNPC expressed concerns about the GSPA's terms after it saw a copy. It pointed out to Ms Taiga that *"the … agreement does not include a termination provision"*, without which *"the contract will be an open-ended arrangement with grave consequences to the owner/employer"*.[263] But it was too late. The GSPA had already been signed.

109. P&ID's own documents forecast that it would need to spend millions of dollars on preparatory and engineering work as soon as the GSPA was signed. For example, as of August 2009, P&ID projected that it would spend US$18.6 million by Q1 2010, and US$35.8 million by Q2 2010, to meet the contractual deadlines:[264]

---

[259] Ms Taiga letter to the NNPC dated 15 January 2010 {H3/164}; Ms Taiga letter to NAPIMS dated 15 January 2010 {H3/165}.

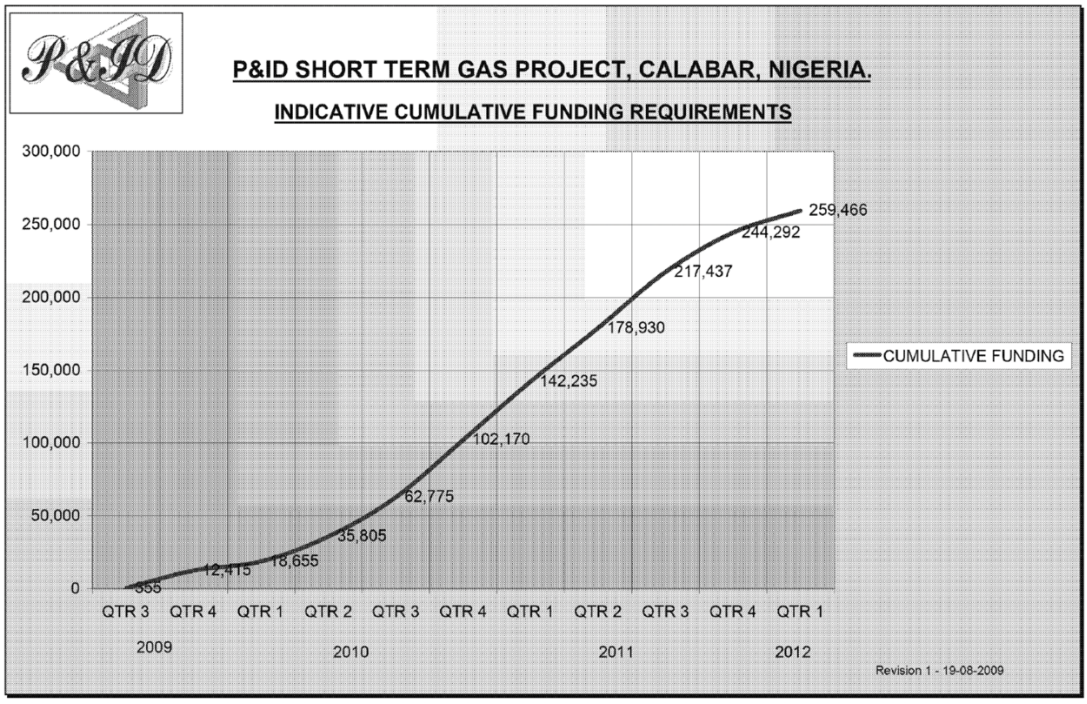
[260] See e.g. the internal NAPIMS memo dated 3 June 2010 at {H3/362}, which confirms (at p.2) that P&ID had had no interaction with NAPIMS as at that date. See similarly {H9/242/3-5}. Around the same time, the NNPC requested the names and contact addresses of all persons with which the MPR had signed AGDP agreements, suggesting that they had not been aware of the agreements, including P&ID's agreement, at the time: NNPC letter to Mr Tijani dated 10 June 2010 {H3/373}.

[261] DPR internal memo dated 5 March 2010 {H3/291}.

[262] FRN Privileged Documents Statement of Facts at paragraph 63 {A5/1/61-63}.

[263] NNPC letter to MPR Legal Director (Ms Taiga) dated 9 June 2010 {H3/368}.

[264] P&ID chart entitled *"Indicative Cumulative Funding Requirements"* dated 19 August 2009 {H2/313}. See similarly at {H2/312} in tabular form, which specified that the initial funding would be spent on *"Licences, Engineering, Surveys & Studies"*.



110. Upon signing the GSPA, however, Mr Cahill immediately shut down the necessary expenditure on the project by P&ID, reflecting the fact that he knew, based on P&ID's conversations with Addax and Mobil in October 2009, alongside the AB Jones data supplied in September 2009, that the GSPA was unlikely to be a viable project because there was no suitable source of gas:

a. On 18 January 2010, Mr Hitchcock told Mr Cahill that P&ID would require around US$1.5 million of funding for just the first month to carry out the necessary work on the project.[265] Mr Cahill emailed Neil Murray several days later stating:[266]

"*Attached request from N. Hitchcock for US$1.5 mio. I have discussed with Neil and propose later to send US$23k to P&ID. The funding for the project will have to come from Arcadia.*" [emphasis added]

b. On 3 February, Mr Hitchcock made a further attempt to persuade Mr Cahill to release funds. He pointed out that the ground clearance works needed to be carried out during the dry season, *"otherwise we will potentially loose [sic] a year"*. The estimated cost was US$3,245,000.[267] However, the funds were again not forthcoming from Mr Cahill, and none of the proposed works were carried out.

[265] Mr Hitchcock email to Mr Cahill dated 18 January 2010 {H3/178} and its attachment at {H3/179}.
[266] Mr Cahill email to Mr Murray dated 21 January 2010 {H3/191}.
[267] Mr Hitchcock memo to Mr Cahill dated 3 February 2010 {H3/222}.

c. By 9 February, less than one month after the GSPA had been signed, Mr Hitchcock had got the message: he asked for a mere US$26,000 of funding for items such as salaries, diesel, an office float and travel costs.[268] He did not request any funds to be spent on the project.

d. On 16 February, P&ID received a letter from Cross Rivers State confirming that approval had been granted to allocate a parcel of land. The letter said: *"Accordingly, you are required to pay the following fees and charges … NGN 21,015,138 [approx. US$140,000]"*. Upon payment of the fees, a Certificate of Occupancy would be issued.[269] Mr Hitchcock forwarded the land allocation to Mr Cahill, stating *"I trust that the fees can be made available to me to enable a timely payment"*.[270] Mr Cahill sent an email to Mr Murray's email address (although addressed to Jim (Nolan)), saying *"We need to talk about this"*.[271] The fees were never paid. It is to be inferred that Mr Cahill decided not to pay them, just one month after concluding the GSPA.

e. The following day, P&ID received a grant of outline planning permission from Cross Rivers State. The letter said that the permission would lapse within 12 weeks unless P&ID provided the necessary paperwork including detailed site analysis plans, an EIA and detailed drawings of the proposed gas facilities.[272] These documents were never submitted (indeed, P&ID never even attempted to prepare them). Again, this must have been a deliberate decision by Mr Cahill.

f. By late 2010, less than a year after the GSPA had been signed, P&ID's operations had been all but shut down. Mr Hitchcock sent an SMS message to Mr Cahill asking whether P&ID would ever be *"re-started"*:[273]

"*Brendan, thanks for your text. What is the likelihood of funds being available to re-start P&ID, together with an honest and achievable time-frame if you still feel funds are going to be available under the prevailing current circumstances. I would be really grateful for full honesty as I need to make decisions, particularly as to where I am going to live …*"

g. In February 2011, Mr Hitchcock suggested to Mr Cahill that *"in view of the rapidly*

[268] Mr Hitchcock email to Mr Cahill dated 9 February 2010 {H3/240} and its attachment at {H3/241}. Similarly, on 15 April 2010, Mr Hitchcock asked for just US$33,883.33 {H3/316}.
[269] Cross Rivers State letter to P&ID dated 16 February 2010 {H3/256}.
[270] Mr Hitchcock email to Mr Cahill dated 19 February 2010 {H3/271}.
[271] Mr Cahill email to Mr Murray dated 25 February 2010 {H3/279}.
[272] Cross Rivers State letter to P&ID dated 17 February 2010 {H3/262}.
[273] Mr Hitchcock SMS message to Mr Cahill dated 28 October 2010 {H4/66}.

deteriating [sic] situation here I see no option but to liquidate some P&ID assets. With your approval I propose to sell the Honda Civic (5-years old now) …".[274] P&ID was not a company on the verge of construction of a US$500 million gas processing plant. It was selling second-hand cars to keep the lights on.

h. By April 2011, Mr Hitchcock (who was P&ID's sole employee)[275] had left its office.[276]

i. This series of decisions by Mr Cahill, first not to fund any of the work needed to develop the project in accordance with the contractual timeline, and subsequently to shut down P&ID's office altogether, shows that P&ID had no intention to perform the GSPA, certainly not within the agreed timeframes. Rather, it seems that Mr Cahill's plan, having obtained valuable contractual obligations on the part of FRN, was to achieve a payout through some form of settlement,[277] or arbitration, possibly with a payout from a third-party funder in the meantime.

j. The decisions by Mr Cahill not to spend money on the project also demonstrates the chasm between Mr Quinn's evidence, which depicted P&ID as a company on the precipice of performing the GSPA, and the less flattering reality.

111. Between the execution of the GSPA and the arbitration, meetings were held between various stakeholders including P&ID, the MPR, the NNPC, NAPIMS and Addax, purportedly to work on implementation of the contract. As described above, the NNPC and NAPIMS had not been shown a copy of the GSPA before it was signed. Having been presented with the contract as a *fait accompli*, they did their best to make it work, but P&ID pulled the wool over their eyes about its readiness to perform. It repeatedly told them that it had all of its finance in place, that it had reached an advanced stage of the engineering designs and that it had been allocated a Site in Calabar. Thus in April 2010, Mr Quinn wrote to the new Minister of Petroleum, Ms Alison-Madueke, saying:[278]

"… we look forward to progressing the above project in an expeditious manner, to the nation's benefit, under your stewardship …We are pleased to report that significant progress has already been achieved and in particular to confirm the following: 1. All the project finances are in place to complete the

[274] Mr Hitchcock WhatsApp message to Mr Cahill dated 9 February 2011 {H4/175}.
[275] Schedule to P&ID's RFI Response dated 6 July 2022{A2/15.1/1}.
[276] {A2/15.1/1}.
[277] Whether in kind (i.e. gaining further rights or opportunities that could be successfully monetised) or direct financial compensation.
[278] Mr Quinn letter to Ms Alison-Madueke dated April 2010 {H3/309}.

project. 2. The engineering is also in place to fast track the building of the GPF, including the related infrastructure. 3. The site for the GPF in Calabar has been allocated by the Cross Rivers State."

112. This was false. P&ID had no finance and no engineering designs. Nor had it paid the fees to secure the land allocated to it by Cross Rivers State (or submitted the necessary planning permission documents). Nor had it *"commenced action on the agreement"*. On the contrary, Mr Cahill had made the immediate decision not to spend P&ID's money on even attempting to implement the project (paragraph 110 above).

113. A letter was sent in materially similar terms to the Group Managing Director of the NNPC, Mr Oniwon, on 14 May 2010. It said:[279]

> "*We are pleased to confirm that significant progress has already been achieved and in particular to confirm the following: 1. All necessary project finances are in place for implementation and completion of the project. 2. Ninety per cent of the engineering designs are completed for construction of the Gas Processing Facility (GPF), together with all related infrastructure. 3. A 50 hectare site for the GPF at Calabar has been allocated to P&ID by the Cross Rivers State Government. 4. Addax have confirmed their readiness, to DPR, for the supply of the presently flared 150 mmSCuFD of associated wet gas for Phase I of the development within the timeframe stipulated in Appendix A of the Definitive Agreement*." [emphasis added]

114. This letter was referred to in Mr Quinn's witness statement and relied upon by Mr Andrew before Lord Hoffmann, Sir Anthony Evans and Chief Bayo Ojo as accurately evidencing the true state of affairs and that P&ID was therefore ready to perform, as explained below.

115. On 20 June 2010, Mr Quinn sent a further letter to the Petroleum Minister, Ms Alison-Madueke, expressing concern about press articles stating that Addax was intending to allocate its 100 MMSCuFD to another project, and stating:[280]

> "*Since the execution of the Agreement of 11th January 2010 very substantial progress has already been achieved including completion of the bulk of the detailed engineering, obtaining the Plant site from the Government of Cross River State and, most importantly, all financing arrangements for the project have been implemented.*"

116. In fact, no progress had been made because Mr Cahill had refused to fund expenditure on

[279] Mr Quinn letter to Mr Oniwon dated 14 May 2010 {H3/330}.
[280] Mr Quinn letter to Ms Alison-Madueke dated 20 June 2010 {H3/378}. Addax subsequently denied the press reports: see note of stakeholders' meeting dated 10 August 2010 {H3/441}.

the project. Nor had any financing been *"implemented"*.

117. Nonetheless, Mr Quinn doubled down on his lies in a further letter to the Minister one month later, where he repeated his mantra that *"very substantial progress"* had been achieved since the execution of the GSPA on 11 January *"including completion of the bulk of the detailed engineering"*. The letter says *"already in excess of US$40 million has been expended on the Project as follows …"*, before listing various heads of expenditure that had been incurred by Tita Kuru (not P&ID) on Project Alpha (not the GSPA).[281] These included, the expenditure of US$16,090,000 on technology licences, which belonged to Tita Kuru and were not transferrable to the GSPA project, and US$12,000,000 on a *"Complete Detailed Engineering Package"*, which again belonged to Tita Kuru and was not serviceable for the GSPA.

118. A meeting was held between P&ID, the MPR (including Mr Tijani) and the NNPC on 8 July 2010.[282] Mr Cahill was concerned that the issue of financing might come up. His concern arose from the fact that P&ID had persistently told the government that finance was already in place, when in fact it was not. He sent a memo to Mr Hitchcock the day before the meeting stating:[283]

> "*It is entirely possible that the issue of finance will not be raised as it is not generally seen as a significant issue for the P&ID project. In such circumstance obviously we would not mention or refer to the issue in any way.*"

119. Mr Cahill went on in the memo to explain the excuse that he could use if anybody asked him about finance, namely that financiers do not provide written confirmations of their offers for fear of exposure to liability.[284]

120. P&ID continued to pay bribes during this period, as described in detail in the Bribery Statement of Facts and Section D below. For example, there was a payment of £5,000 to Ms Vera Taiga on 29 March 2010, which was labelled as being for Ms Grace Taiga and *"Gas Contract"* on P&ID's internal records.[285] The sheer scale of the *"PR"*, *"Marketing"* and *"Dublin Expenses"* payments that P&ID made at the time can be seen from its spreadsheets which attempted to keep track of the bribes that were being paid.[286] There are also a number of

---

[281] Mr Quinn letter to Ms Alison Madueke dated 21 July 2010 {H3/414}.
[282] See the NNPC's letter to the MPR dated 29 June 2010 {H3/392}. The letter refers to a meeting on 5 July 2010 but it appears to have taken place several days later.
[283] Mr Cahill memo dated 7 July 2010 {H3/397}.
[284] Ibid.
[285] {H9/217}.
[286] See, for example, P&ID's spreadsheet entitled *"P&ID Expenditures from Dublin and Cyprus"* {H4/327}.

coincidental cash withdrawals and deposits in this period which blatantly represent bribes. For example, on 19 July 2010, Mr Kuchazi withdrew NGN 100,000 (approx. US$600) from his bank account and Ms Aderemi, the secretary to Ms Taiga, deposited exactly the same amount on the same day into her account.[287]

121. By December 2010, Mr Cahill began to openly accept what he had known all along: that there was an insufficient volume of associated gas available from Addax (OML 123) and Mobil (OML 67) to operate even Phase I of the project, let alone the increased requirement at Phase II. This was acknowledged in a memo drafted by P&ID on 30 December 2010, where it was recorded that Addax *"can only generate 100 MMSCuFD from this source"*.[288] P&ID therefore purported to turn its attention to potential sources of non-associated gas (i.e. gas not associated with existing oil operations).[289] This was a nonsensical idea, and would have radically departed from the terms of the GSPA, as Mr Bunten explains in his technical evidence,[290] and as P&ID appears to agree.[291]

122. Mr Tijani retired from the MPR in January 2011.[292] He nonetheless continued to be involved with Mr Quinn and Mr Cahill, and to receive bribes from them on behalf of P&ID through the medium of a project known as the Bonga Audit used as a conduit for such payments to him, as described below.

123. By mid-2011, a consultant engaged by P&ID on a casual basis, Mr Cooke, had reached the view that, while there might be a viable gas project in Calabar, *"I am not at all sure there is a realistic prospect of a viable LPG extraction scheme"* (which was the project envisaged by the GSPA).[293] A similar view was expressed by Mr Hitchcock, who said *"The possibility of 150 MMSCuFD for a period of 10 years was never a starter"*.[294] This had been clear to P&ID since October 2009 (paragraphs 82-86 above).

124. Around the same time, an ex-Addax employee engaged by P&ID on a casual consultancy basis re-confirmed that the associated gas output of OML 123 after 2012 would be just 40 MMSCuF/D (compared to the 150 MMSCuF/D required for Phase I of the GSPA

[287] Bank statements at {M/34.1/79} and {M/98/5}.
[288] P&ID internal memo dated 30 December 2010 at paragraph 1 {H4/128}.
[289] Ibid at paragraph 2; P&ID memo dated 10 July 2011 {H4/498}; P&ID letter to President dated 10 February 2012 {H5/50}.
[290] Bunten 1 at paragraphs 322-326 {F1/1/95-96}. P&ID appears to agree that this would not have been a viable arrangement under the GSPA.
[291] See their arbitration Statement of Claim at paragraph 72 {H5/462/14} (*"This would have been of no benefit to P&ID, as under the Definitive Agreement its remuneration consistent entirely of the NGLs to be found only within Associated Gas"*).
[292] Tijani 1 at paragraph 9 {E/19/3}.
[293] Mr Cooke email to Mr Cahill dated 22 June 2011 {H4/448}.
[294] Mr Hitchcock email to Mr Cahill dated 22 October 2012 {H5/221}.

project).[295] He said *"I'm a but [sic] nervous about this project"*.[296] Similarly, Mr Cahill was saying by late July 2011 *"it seems the [Associated Gas] option is simply out and we are better concentrating on the [Non-Associated Gas] only"* [emphasis added].[297] By this point, therefore, the GSPA project was dead in the water for reasons that had been known to P&ID all along, namely that there was an insufficient volume of gas to be supplied to the site. The discussions began to focus on the possibility of embarking on a different project, involving non-associated gas, which would involve different economics and an entirely different set of commercial terms. Despite this, Mr Quinn continued to represent to the government that, since the GSPA had been signed, P&ID had completed the *"bulk of the detailed engineering"* for the project, had acquired a plot of land and *"most importantly, that financing arrangements for the project had been implemented"*.[298]

125. Little of significance happened for six months.

126. On 27 June 2012, P&ID wrote to the NNPC complaining of its *"shock and dismay at the abrupt and unilateral decision by Addax to totally repudiate their undertaking to cooperate with and support [our] project"*.[299] This was a contrived letter. Addax did not have sufficient quantities of gas to service the GSPA project, as P&ID had known since 2009. There had been no sudden change of position by Addax.

127. One month later, Mr Quinn gave an ultimatum to the MPR: either enter into a new agreement for a different project using non-associated gas, with the stripped gas being sold at a cost to government, or P&ID would *"consider all of its contractual options"*.[300] Mr Cahill's assistant sent P&ID's lawyer, Mr Andrew, a pack of documents shortly thereafter,[301] and by 13 August 2012, Mr Andrew had drafted a Notice of Arbitration.[302] Mr Andrew knew Mr Cahill and Mr Quinn as a result of their prior involvement in the IPCO litigation from 2011, having been introduced by Mr Burke.[303]

[295] Mr MacGillivray email to 'krist@eircom.net' dated 26 June 2011 {H4/457}.
[296] Mr MacGillivray email to 'krist@eircom.net' dated 29 June 2011 {H4/466}.
[297] Mr Cahill email to Mr Hitchcock dated 20 July 2011 {H5/18}.
[298] P&ID letter to the Minister of Petroleum dated 10 May 2012 {H5/101}.
[299] P&ID letter to the NNPC dated 27 June 2012 {H5/118}.
[300] P&ID letter to the MPR dated 27 July 2012 {H5/136}.
[301] Mr Smyth email to Mr Andrew dated 9 August 2012 {H5/158}.
[302] Mr Andrew email to Mr Cahill dated 13 August 2012 {H5/166}.
[303] Andrew 5 at paragraph 10 {D/6/3}.

viii. Commencement of the arbitration

128. P&ID served its Notice of Arbitration on 22 August 2012.[304]

129. The Notice referred to a dispute *"concerning the failure of the Government of Nigeria to make available to P&ID the quantity of wet gas stipulated in clause 3(c) and Appendix A of the Agreement for Phase 1 of the Project"*. It contended that P&ID's losses were at least US$1,991,816,709. At this stage, P&ID said that it still intended to perform Phase II.

130. The day after the arbitration was commenced Mr Michael Quinn's son, Mr Adam Quinn, signed a certificate granting Ms Taiga permission to use his Toyota saloon car.[305] The certificate described Ms Taiga as *"our Legal Adviser"*. This was revealing. Ms Taiga had been FRN's legal adviser, and had been responsible for negotiating the terms of the GSPA on its behalf. P&ID clearly considered Ms Taiga to be 'on their side'.

131. Shortly after the commencement of the arbitration, the steady stream of FRN's confidential and privileged documents relating to the arbitration began to flow in earnest towards P&ID. For example, an early piece of advice provided by an Assistant Legal Adviser at the MPR, Mr Malumfashi, to the effect that the parties' dispute was not ripe for referral to arbitration,[306] came into the hands of P&ID within a week of its creation. The document was saved under the file name *"Ex Rem"*.[307] It is to be inferred that *"Rem"* is a reference to Ms Aderemi, the then-secretary of Mr Dikko, also known as *"Remmy"*.[308] The cover email, from Mr Murray to Mr Cahill, says *"Please forward to Mick. Also, confirm it reads ok so that I can remove from here"*.[309] P&ID has not given disclosure of how this document came into its possession and maintains that it does not know how it was obtained.[310] This is P&ID's case in respect of the vast majority of FRN Privileged Documents which have been found in its possession. The Court will reach a view on the credibility of these explanations (or lack thereof).

132. P&ID appointed Sir Anthony Evans as its arbitrator in mid-September.[311]

133. On 10 October, an early meeting was held between the MPR and P&ID to discuss a

[304] P&ID Notice of Arbitration {G/1}.
[305] Letter dated 23 August 2012 {H5/176}.
[306] Mr Malumfashi advice dated 11 September 2012 {H5/182}.
[307] {I/49}.
[308] See paragraph 465 below.
[309] Mr Murray email to Mr Cahill dated 19 September 2012 {I/48}.
[310] P&ID RFI Response dated 17 May 2022 and Annexes {A2/11}, {A2/12}, and {A2/13}.
[311] P&ID letter dated 19 September 2012 {H5/185}.

resolution of the claim. The meeting was attended by the MPR's then-Legal Adviser, Mr Dikko, Ms Belgore, and the Permanent Secretary of the MPR, Mr Goni M Sheikh.[312] The day previously, a *"Dublin Expenses"* withdrawal of NGN 100,000 (approx. US$600) is recorded on P&ID's internal documents.[313]

134. On 2 November 2012, Mr Dikko, the then-Legal Adviser at the MPR, wrote to the Attorney General, Mr Mohammed Bello Adoke SAN, advising him to appoint Mr Isiyaku SAN as FRN's counsel and Mr Ameh as its arbitrator.[314] Mr Adoke overturned these choices and appointed Mr Shasore as FRN's counsel and Chief Bayo Ojo as its arbitrator.[315] Both were formally appointed on 30 November 2012.[316]

135. Mr Shasore conducted the litigation through a firm named Twenty Marina Solicitors, rather than his main firm Ajumogobia & Okeke.[317] He was mainly assisted by three junior lawyers, Ms Vincent, Ms Kekere-Ekun and Ms Hakeem-Bakare.[318]

136. Mr Burke appears to have become involved in the case from about July 2012, and by mid-December 2012 was being sent files of documents relating to the P&ID matter.[319] From then on, he received a large number of confidential and privileged documents belonging to FRN.[320] He does not deny that he received these documents or that they were confidential and privileged. Rather, his evidence to this Court is that, being a criminal barrister, he was *"not well acquainted with the international commercial arbitration disclosure process"*.[321]

137. Mr Andrew says that he and Mr Burke *"acted as the counsel team for the arbitration"*.[322] However, Mr Burke had no written retainer with P&ID (or any law firm); received payments bypassing his Chambers for his 'work' on the case; and was not, as far as FRN is aware, qualified at the time to conduct direct access work.[323] Mr Burke received at least US$1.175m for his 'work',[324] although he does not know how this was calculated.[325] He says that he expects to

---

312 Note of meeting dated 10 October 2012 {H5/211}.
313 P&ID spreadsheet entitled "*Dublin Exps 2012*" {H6/160}.
314 Mr Dikko letter to Mr Adoke dated 2 November 2012 {H5/224}.
315 Mr Yola letter to Mr Dikko dated 5 November 2012 {H5/226}.
316 MPR letter to P&ID dated 30 November 2012 {H5/236}.
317 See e.g. FRN Amended and Consolidated Hearsay Notice, Statement 13 {D/21/9}.
318 See e.g. email from Mr Shasore to Ms Anderson dated 6 March 2013 {H5/353}.
319 Mr Smyth email to Mr Burke dated 11 December 2012 {H5/243}.
320 See e.g. Mr Burke email to Mr Andrew dated 2 February 2013 {I/74}.
321 Burke 1 at paragraph 15(a) {D/1/5}; Andrew 5 at paragraph 10 {D/6/3}.
322 Andrew 5 at paragraph 18 {D/6/5}.
323 Cherryman 2 at paragraphs 6-7 {E/27/2}. It would, in any event, be contrary to the direct access rules for clear written retainers not to have been in place.
324 Cherryman 2 at paragraphs 7(a) {E/27/2} and {M/5.01}.
325 Cherryman 2 at paragraph 7(c) {E/27/4}.

receive 10-12% of the proceeds of the Awards, which would amount to more than US$825 million.[326] He has not explained how this is consistent with professional rules on conflicts of interest, having acted as the *"counsel team"* for P&ID, or the statutory rules on success fees for lawyers in this jurisdiction.

138. On 14 January 2013, P&ID asserted to the Petroleum Minister, Ms Alison-Madueke, that FRN was in repudiatory breach of the GSPA, having failed to secure a suitable supply of wet gas.[327] On 20 March 2013, P&ID purported to accept the repudiatory breach.[328]

139. P&ID outwardly appointed Harcus Sinclair as its legal representative in the arbitration. Mr Andrew says that this was because he was in discussions through his own firm, Lismore, to fund (and therefore take a stake in) the arbitration. He was allegedly *"cautious about [his] own law firm going on the record"* in such circumstances.[329] This was not, however, a genuine arrangement. By his own admission, and as can be seen from the contemporaneous documents,[330] Mr Andrew ran the arbitration throughout, including at the time when he was in discussions to take a stake in the claim.[331] Mr Andrew now owns, through his company Lismore, 75% of P&ID's shares,[332] meaning that he holds an astronomical stake in the outcome of the Awards and this litigation.

140. In March 2013, a London-based consultancy, Genesis, produced a report for P&ID providing a *"high level sense check on both technical and cost aspects"* of the GSPA project.[333] It was not based on any detailed designs or data for the project (since there were none) and was presumably commissioned with an eye on the arbitration commenced six months previously. Mr Hitchcock said of the report, which was subsequently relied upon in the arbitration, *"I think [it] is fine, but 'padded' is an understatement"*.[334]

141. On 5 March, Mr Hitchcock contacted Mr Tijani, who had retired from the MPR, with an offer to provide valuable work on a project known as the Bonga Audit. Mr Tijani forwarded the email to a business associate, explaining that it had been received from *"one of the guys that*

[326] Cherryman 2 at paragraph 9 {E/27/4}. Lismore's letter dated 25 January 2019 records that Mr Burke has an entitlement to 10% of Lismore's stake {H9/159}.
[327] P&ID letter to MPR dated 14 January 2013 {H5/289}.
[328] P&ID letter dated 20 March 2013 {H5/365}.
[329] Andrew 5 at paragraph 20 {D/6/5}.
[330] See e.g. the email from Mr Hickman, of Harcus Sinclair, to Mr Andrew dated 13 March 2013 {H5/361}.
[331] See Andrew 5 at paragraph 22 {D/6/6}.
[332] Andrew 5 at paragraph 29 {D/6/7}.
[333] Genesis report dated March 2013 {H5/341} at paragraph 1.1. A further, final, version of the report was issued in June 2013 at {H5/453}.
[334] Mr Hitchcock email to Mr Cahill dated 8 May 2013 {H5/402}.

I assisted over the years when I was technical adviser to the Petroleum Minister".[335] Several bribes, representing payments promised to him prior to the entry of the GSPA and intended to procure Mr Tijani's continued silence and co-operation, were paid to Mr Tijani on behalf of P&ID under the guise of the Bonga Audit project.[336] Moreover, within two weeks of being sent the offer of work, Mr Tijani appears to have sent his entire (confidential) file concerning the GSPA project to P&ID by post. Mr Hitchcock said in an email to Mr Smyth:[337]

> "*Can you please let Mick know that TJ is sending a complete copy of his P&iD [sic] file via DHL with latest arrival Wednesday next.*"

142. Mr Tijani subsequently offered his assistance in the IPCO litigation against FRN.[338]

143. On 20 March 2013, Mr Cahill emailed Mr Hitchcock about his remuneration. He said:[339]

> *"I proposed a separate deal for you in the arbitration being 5% of our net proceeds up to a maximum of US$5 mio. This was based on our initial expectations. Since then the prospects have improved considerably and I now propose doubling the maximum amount payable to you by US$10 mio."* [emphasis added]

144. There was no legitimate reason why Mr Cahill should have considered that P&ID's prospects had *"improved considerably"* at this time. No pleadings or evidence had been served. The only reasonable inference is that he perceived that P&ID's prospects had improved because it had already begun to compromise FRN's legal team, and to obtain privileged and confidential documents about FRN's litigation strategy.

ix. The jurisdiction and liability stages

145. FRN describes the key events of the arbitration in this section of its opening submissions. It deals first with the jurisdiction and liability stages of the arbitration, which were conducted by Mr Shasore under the instruction of the MPR and NNPC. The quantum stage, which was conducted by Chief Ayorinde under the instruction of the MoJ, is addressed separately below.

146. P&ID served its Statement of Claim on 28 June 2013.[340] It alleged that P&ID had lawfully terminated the GSPA following FRN's failure to secure a suitable Wet Gas source and to

[335] Mr Tijani email to Mr Rafiu dated 6 March 2013 {H5/350}.
[336] As to which, see Section D below and Bribery Statement of Facts at paragraphs 37-43 {A5/2/19-21}.
[337] Mr Hitchcock email to Mr Smyth dated 21 March 2013 {H5/368}.
[338] Mr Hitchcock email to Mr Cahill dated 12 August 2014 {H6/9}.
[339] Mr Cahill email to Mr Hitchcock dated 20 March 2013 {H5/369}.
[340] {H5/462}.

supply Wet Gas to the site (paragraph 88). P&ID claimed damages of approximately US$6 billion, representing its *"expected profits"* from the project.

147. The Statement of Claim contained pleas, in particular, that:

> *"Subsequent to the signing of the Definitive Agreement P&ID incurred significant costs in its attempts to implement the Project"* (paragraph 15)
>
> *"[Following the execution of the MOU] P&ID commenced making all arrangements necessary to expedite the immediate implementation of the Project"* (paragraph 40)
>
> *"ICIL had entered into a contractual arrangements [sic] with P&ID whereby ICIL would provide the finance for the installation of a further pipeline of up to 70km …"* (paragraph 45.3)
>
> *"On 14 May 2010, P&ID wrote to NNPC to update it on what had been achieved in respect of, among other things, project financing, completion of engineering designs and the allocation of land"* (paragraph 61)[341]
>
> *"… the site for the on-shore plant at Calabar had been selected and secured from the Government of Cross River State for the construction of the GPFs and gas storage facilities"* (paragraph 68)
>
> *"… in about May 2011, P&ID was informed by Addax that the volume of Wet Gas available from OML 123 would reduce from 100 MMSCuFD to less than 45 MMSCuFD by 2016"* (paragraph 75)[342]

148. None of these statements were true (or, to the extent that they were true, they cross-referred to letters which themselves contained untrue statements, such as the 14 May 2010 letter to the NNPC).

149. FRN missed its deadline for filing a Defence, and failed to attend the first scheduled CMC.[343] This was in part attributable to an apparent lack of engagement of Ms Belgore on behalf of the MPR.[344] As described below, it has since come to light that Ms Belgore was in the pocket of P&ID.

150. P&ID continued to receive FRN Privileged Documents across party lines. For example (and

---

[341] The terms of the 14 May 2010 letter are set out at paragraph 113 above. It stated, amongst other things, that *"all necessary project finances are in place"* and *"ninety percent of the engineering designs are completed"* {H3/330}.
[342] In fact, P&ID had known this based on its own study, commissioned from AB Jones, in September 2009 (see paragraphs 82-86 above).
[343] See e.g. the email chain at {H6/31}.
[344] See, for example, the email chain at {H6/25}.

as set out more fully in the FRN Privileged Documents Statement of Facts):[345]

a. On 2 August 2013, Mr Murray sent to Mr Smyth a PDF file entitled *"Defence notes"*, which contained a request for documents from Mr Shasore which might assist FRN to establish a defence of frustration. Mr Murray's cover email asked Mr Smyth to confirm receipt *"as I want to delete here"*.[346] The requests had been sent to Ms Belgore just two days earlier.[347] Mr Cahill then forwarded the document to Mr Andrew and Mr Burke stating *"The attached indicates the likely lines of defence"*.[348]

b. A few days later, Mr Cahill sent Mr Andrew and Mr Burke a further privileged document stating *"Please find attached briefing document which appears very encouraging"*.[349]

c. In a later email, Mr Cahill referred to some intelligence about FRN's arbitration strategy from *"our friend"* at the Ministry.[350]

d. P&ID was therefore enjoying real-time access to FRN's privileged and confidential communications from at least one insider at the Ministry (*"our friend"*), and was circulating those communications to its own legal team including Mr Andrew and Mr Burke.

151. On 13 August, the NNPC engaged its own lawyer, Mr Alegeh, to provide an opinion on P&ID's claim, which he duly did.[351] The Minister of Petroleum Resources, Ms Alison-Madueke, petitioned the Attorney General that Mr Alegeh replace Mr Shasore as FRN's counsel.[352] This (privileged) letter came into P&ID's hands by 11 September and was forwarded to its legal team. It prompted Mr Burke into immediate action: having received the email with the heading *"Urgent"*, he asked Mr Andrew to *"call me"* within 4 minutes of receipt.[353]

152. The Attorney General subsequently decided that Mr Alegeh should act as co-counsel with Mr Shasore, and the two men were invited to meet at the NNPC's offices on 30 October 2013.[354]

---

345 {A5/1}.
346 Mr Murray email to Mr Smyth dated 2 August 2013 {H5/488}, attaching *"Defence notes.pdf"* {H5/489}.
347 Ms Lateefat Hakeem-Bakare email to Ms Belgore dated 31 July 2013 {H5/485}.
348 Mr Cahill email to Mr Andrew and Mr Burke dated 2 August 2013 {H5/491}.
349 Mr Cahill email to Mr Andrew and Mr Burke dated 7 August 2013 {H5/507}.
350 Mr Cahill email to Mr Andrew and Mr Burke dated 15 August 2013 {H6/23}.
351 NNPC letter to Mr Alegeh dated 13 August 2013 {H6/16}; Mr Alegeh opinion dated 14 August 2013 {H6/20}.
352 NNPC letter to MoJ dated 29 August 2013 {H6/45}.
353 Mr Burke email to Mr Andrew dated 11 September 2013 {H6/72}.
354 Attorney General letter to Minister of Petroleum Resources dated 13 September 2013 {H6/76}; Ms Adelore letter to Mr Shasore dated 25 October 2013 {H6/126}.

Mr Alegeh was formally instructed in that capacity on 25 October.[355] The (privileged) documents containing this information came into the hands of P&ID within 24 hours, and were immediately passed on to Mr Andrew and Mr Burke.[356] Mr Alegeh was sent a pack of documents to review,[357] and was added to the arbitration email chain,[358] but otherwise did no work on the case.

153. On 3 October 2013, FRN served a Notice of Preliminary Objection, contending that the GSPA was void and the Tribunal therefore lacked jurisdiction.[359]

154. The following day, Ms Adelore wrote to Mr Shasore observing that P&ID did not appear to be licensed by the DPR, and that it must not have carried out any due diligence because, had it done so, it would have known that *"the gas required will not be available before signing the Agreement with the Respondent"*.[360] Yet these points never featured in FRN's litigation strategy (for example, FRN never sought disclosure of P&ID's licensing arrangements or its ability to perform) or its arguments on liability. That is one (of many) indicia that FRN's legal team was compromised: these were obvious points to run.

155. Mr Hitchcock and Mr Cahill were falling out over money by this stage. Mr Hitchcock sent a threatening email saying *"I just hope no 'hostile witnesses' are produced [in the arbitration]"*.[361] Mr Cahill responded purporting to provide reassurance that the claim would be settled by the end of the year (i.e. within three months).[362]

156. P&ID has not waived privilege over documents surrounding the drafting of Mr Quinn's witness statement. However, the statement appears to have been under preparation from early January 2014, when Mr Andrew sent an email to Mr Cahill and Mr Burke asking whether a certain document had been given to P&ID *"'officially' by the Ministry or 'unofficially'"*.[363] The next day, Mr Andrew followed up saying:[364]

> *"Dear Brendan and Ken, I am just putting together a definitive bundle of documents to be appended to Mick's witness statement. I have identified 12 documents which we would not obviously have had – either letters to which we were not copied on the face of the letter, or minutes of meetings which were*

[355] NNPC letter to Mr Alegeh dated 25 October 2013 {H6/127}.
[356] Mr Andrew email to Mr Cahill dated 26 October 2013 {H6/132}.
[357] Letter from Twenty Marina Solicitors to Mr Alegeh dated 4 November 2013 {H6/150}.
[358] Email from Lord Hoffmann to Ms Hakeem-Bakare dated 22 November 2013 {H6/181}.
[359] {H6/100}.
[360] Ms Adelore letter to Mr Shasore dated 4 October 2013 {H6/104}.
[361] Mr Hitchcock email to Mr Cahill dated 13 October 2013 {H6/112/2}.
[362] Ibid {H6/112/1}.
[363] Mr Andrew email to Mr Cahill and Mr Burke dated 5 January 2014 {H6/200}.
[364] Mr Andrew email to Mr Cahill and Mr Burke dated 6 January 2014 {H6/205}.

not "P&ID" minutes. Could you possibly have a look through these 12 documents to see whether we are comfortable saying that these were provided to us "officially" by MOPR (or some other organ of government). Where there is any doubt we may wish to keep them out of Mick's witness statement …"

157. Mr Andrew was asking this question because he was aware that P&ID had corrupted Nigerian public officials and had been enjoying an inside track into FRN's confidential documents for some time, and wished to make sure that this did not become obvious to FRN or the Tribunal.

158. Mr Cahill's assistant, Mr Smyth, responded to Mr Andrew's query with a schedule specifying the documents which had been obtained 'officially' and 'unofficially'. The unofficial documents were marked *"Do not use"*.[365] Mr Andrew acknowledged receipt and said that he would only refer to the four documents which had been received 'officially'.[366] This was an extraordinary exchange. All the more so because it was conducted through Mr Andrew and Mr Burke.

159. Mr Quinn's witness statement (P&ID's only factual evidence in the arbitration) was served on 17 February 2014.[367] The statement was purportedly made on the basis of Mr Quinn's direct knowledge and discussions with his colleagues, in particular Mr Cahill and Mr Hitchcock (paragraph 3). Its purpose was set out at paragraph 6:

"In this witness statement I wish to explain how the GSPA came about, and why P&ID was ultimately prevented from implementing it."

160. As described in Section E below, Mr Quinn's evidence was a tissue of lies. It sought to give the impression that P&ID was about to perform the GSPA, but had been thwarted by the government's and Addax's refusal to supply the necessary gas. To that end, Mr Quinn's evidence repeated many of the lies that P&ID had told before and after the GSPA was executed. It was also intended to give the impression that the GSPA had been obtained through legitimate means, instead of because of a campaign of bribery.

161. One month later, Mr Hitchcock described aspects of Mr Quinn's statement as *"undefendable"* in a WhatsApp message to Mr Cahill.[368]

---

[365] See memo dated 7 January 2014 {H6/222}.
[366] Mr Andrew email to Mr Smyth dated 7 January 2014 {H6/223}.
[367] Quinn 1 {G/9} and {H6/261}.
[368] Mr Hitchcock WhatsApp message to Mr Cahill dated 21 November 2014 (18:38) {L/1/40}.

162. On 9 May 2014, P&ID served a skeleton argument on FRN's jurisdiction challenge. Even at this stage they relied heavily upon Mr Quinn's account of how the GSPA came to be awarded. They said that the statement was *"highly relevant to the Preliminary Objection, containing as [it does] an account of the dealings between P&ID and the Ministry before and after the execution of the disputed GSPA"*.[369]

163. Mr Shasore informed the Tribunal on 9 May 2014 that he would be unable to attend the preliminary issue hearing due to a lack of instructions,[370] failing to serve responsive expert evidence or a skeleton argument in relation to the jurisdiction challenge. This state of affairs appears to have stemmed from a fees dispute between Mr Shasore, the MPR and the NNPC, which the MPR's lawyers were not inclined to address with any urgency and which Mr Shasore used to justify his non-attendance.[371] Lord Hoffmann responded that the Tribunal would decide the jurisdictional issues on the papers.[372]

164. P&ID entered into a *"Settlement Brokerage Agreement"* with Mr Adebayo in July 2014, by which it appointed him to facilitate the settlement negotiations. Mr Adebayo was to be remunerated on a sliding scale, and was entitled to 50% of any proceeds above US$1 billion.[373]

165. The Tribunal handed down its Part Final Award on the preliminary issues on 9 July 2014.[374] It dismissed each of FRN's threshold objections to the claim. The arbitration therefore proceeded to the liability stage. Following FRN's loss on the jurisdictional issues, Mr Shasore and Ms Adelore began giving gloomy advice that FRN had no defence, and urging the government to settle.[375] This advice was promptly leaked to P&ID.[376]

166. Mr Shasore prepared a draft six-page Defence to the claim and circulated it on 10 September 2014.[377] However, just two days prior to the filing deadline, Ms Belgore intervened and sent a message from her email address to Mr Shasore stating:[378]

---

369 P&ID's skeleton argument on jurisdiction dated 9 May 2014 at paragraph 4 {G/13}.
370 Twenty Marina email to Tribunal dated 9 May 2014 {H6/328}.
371 See e.g. Mr Shasore's letter to the Attorney General dated 12 May 2014 {H6/333}.
372 Lord Hoffmann email to the parties dated 11 May 2014 {H6/332}.
373 Settlement Brokerage Agreement at {H9/65}. As described at paragraph 447 below, there were various iterations of the agreement between P&ID and Mr Adebayo but the true position is that his role as an intermediary and agent of P&ID remained unchanged in substance throughout the arbitration (and after it).
374 {H6/353}.
375 Mr Shasore letter to Attorney General dated 17 July 2014 {H6/359}; Attorney General letter to President dated 11 August 2014 {H6/376}; Ms Adelore memo dated 15 August 2014 {H6/393}.
376 See e.g. {H6/360} and {H6/361}.
377 Mr Shasore email to Mr Oguine dated 10 September 2014 {H6/443}.
378 Ms Belgore email to Mr Shasore dated 17 September 2014 {H6/453}.

"Regarding the September 19th date for filing of Defence in this matter you are NOT TO FILE ANY DEFENCE on behalf of the Ministry as planned. This is because Government has directed that settlement with P&ID out of the Tribunal be initiated forthwith. You are to notify or convey this intention of government to P&ID and then the Tribunal and inform them that a report of settlement will be filed thereafter."

167. This was a nonsensical instruction, since the pursuit of settlement discussions was not mutually exclusive with FRN serving its Defence by the deadline laid down by the Tribunal. As described below, Ms Belgore was in the pocket of P&ID. As a result of Ms Belgore's instruction, FRN missed the deadline for serving a Defence. P&ID relied on this fact to seek to extract a larger settlement payment from FRN.[379]

168. P&ID continued to obtain a flow of FRN Privileged Documents at this time. Of particular importance, on 26 October 2014, Mr Ukiri, one of Mr Shasore's co-partners at Twenty Marina Solicitors, leaked to Mr Adebayo a privileged letter emanating from Mr Shasore's office just 48 hours earlier, which was then passed on to Mr Cahill.[380] The subject line of Mr Ukiri's email is *"see attached as discussed"*, indicating that the document had been requested by Mr Adebayo or some other representative of P&ID. Mr Shasore then made a payment to Mr Ukiri of US$300,000 a few weeks later, on 14 November 2014.[381] There can be no honest explanation for this leak and the subsequent payment, with Mr Ukiri having told the EFCC that he *"[did] not know any details of the case"* and *"played no role in the handling of the case"*.[382] The only reasonable inference is that Mr Ukiri leaked this (and possibly other) FRN Privileged Documents to P&ID because he had been paid the US$300,000 to act as conduit between P&ID and Mr Shasore.[383]

169. November and December 2014 was a key period in the arbitration:

    a. It seems that P&ID was almost certain that a settlement would be forthcoming: on 17 October 2014 its Board issued a resolution authorising Mr Cahill to sign the anticipated settlement agreement.[384]

    b. On 11-12 November, Ms Adelore made a series of cash deposits totalling US$45,000

[379] 21 November 2014 meeting report at {H7/55/1} (*"MPR had also not filed a defence within time or at all and it was likely that, if the settlement discussions were unsuccessful, the Arbitral Tribunal would issue a peremptory order on 29th November, 2014 giving judgment in default of defence to P&ID for their claim of $5.9billion"*).
[380] Mr Ukiri email to Mr Adebayo dated 26 October 2014 {H6/494}.
[381] See Mr Shasore's bank statement at {M/72/1}.
[382] {J/72.1/3}.
[383] SoC at paragraph 72C {A1/1/53}.
[384] {H7/104}.

into her account.[385] Based on the payments recorded in her banking documents, Ms Adelore's salary was only around US$2,000 a month.

c. On 12 November, Ms Adelore instructed Mr Shasore to pursue a settlement with P&ID. The negotiating team was to be her, Mr Oguine and Mr Shasore.[386] Until then, Ms Adelore had been suggesting a team with a much wider membership from a range of government agencies.[387] The change of tack was conspicuous.

d. On 13 November, Mr Shasore, upon Ms Adelore's instruction, asked the Tribunal to *"suspend"* the arbitration on account of FRN's intention to settle the case.[388]

e. On 14 November, Mr Shasore, Ms Adelore and Mr Oguine met in Nigeria to discuss the proposed settlement.[389]

f. On or around 18 November, Ms Adelore received US$100,000 of cash from Mr Shasore, as shown in her banking documents. She has admitted this to the EFCC.[390]

g. Mr Oguine received the same sum in cash, i.e. US$100,000, from Mr Shasore at around the same time.[391]

h. On 20 and 21 November, Mr Shasore, Ms Adelore and Mr Oguine travelled to London (alone) to attend a settlement meeting with P&ID. The attendees on behalf of P&ID were Mr Cahill, Mr Andrew and Mr Adebayo. At the meeting, P&ID made a settlement offer of US$1.5 billion.[392] FRN submits that this was not a genuine meeting: its purpose was to decide upon a figure which Mr Shasore, Ms Adelore and Mr Oguine could 'sell' to their superiors, and to divide the anticipated spoils.

i. On 28 November, Mr Shasore made a payment of US$150,000 to his co-counsel, Mr Alegeh. The payment was not for work Mr Alegeh had done on the case: he had not done any, save for his initial advice to the NNPC, for which he had already been paid. Once the payment was made, Mr Alegeh was abruptly removed from the Tribunal's mailing list and had no further involvement in the case. FRN avers that this was a payment by Mr Shasore, acting in concert with P&ID, intended to keep Mr Alegeh

[385] Bribery Statement of Facts at paragraphs 59-60 {A5/2/23-24}.
[386] Ms Adelore letter to Mr Shasore dated 12 November 2014 {H7/20/1}.
[387] See {H6/458} and {H6/478}.
[388] Twenty Marina Solicitors letter to Tribunal dated 13 November 2014 {H7/25}.
[389] See Mr Shasore email to Ms Adelore dated 15 November 2014 {H7/35}.
[390] Bribery Statement of Facts at paragraphs 62 {A5/2/24-25}.
[391] Bribery Statement of Facts at paragraphs 72 {A5/2/27}.
[392] 21 November 2014 meeting report at {H7/55}.

out of the attempts of Mr Shasore, Ms Adelore and Mr Oguine to agree a corrupt settlement with P&ID.[393] The full story, with the document references, is set out at paragraphs 86-88 of the Bribery Statement of Facts.[394]

j. Also on 28 November, Mr Shasore, Ms Adelore and Mr Oguine met to discuss P&ID's settlement offer of US$1.5 billion.[395] Ms Adelore sent a report of their combined recommendation, to seek settlement at US$1 billion, to Mr Shasore saying *"Please let's have your endorsement and don't forget what to include as agreed at Post Negotiation Meeting [i.e. the 28 November meeting]".*[396]

k. On the same day, Ms Adelore received a cash deposit of US$3,700 into her bank account with the reference *"Cash Dep by Remi Aderemi"*. This was a reference to Ms Adelore's secretary, Ms Aderemi.[397]

l. The following day, on 29 November, the legally privileged settlement note prepared by Mr Shasore, Ms Adelore and Mr Oguine was leaked to P&ID via Mr Adebayo.[398] The metadata of the document indicates that it was leaked by someone from the MPR's Legal Unit (and therefore likely by Ms Adelore).

m. On 1 December, Ms Adelore recommended to the Permanent Secretary of the MPR that FRN should settle for US$1.1 billion.[399]

n. On 8 December, Ms Adelore deposited a total of US$200,000 of cash into her personal bank account.[400] To repeat: her monthly salary was no more than around US$2,000. The payment was divided into three cash deposits of US$70,000, US$70,000 and US$60,000.

o. Just three days previously, P&ID had paid Mr Adebayo US$70,000.[401] It is to be inferred that this was used to fund (or reimburse) one of the US$70,000 deposits made by Ms Adelore. There are also suspect transactions recorded on internal spreadsheets of US$75,000 and US$70,000 on the same day,[402] as well as a US$60,000 transfer on

[393] SoC 73A {A1/1/55}.
[394] {A5/2/29-31}.
[395] Memo dated 28 November 2014 {H7/61/10-11}.
[396] Ms Adelore email to Mr Shasore dated 28 November 2014 {H7/60}.
[397] Bribery Statement of Facts at paragraph 66 {A5/2/25} and paragraphs 76-80 {A5/2/27-28}.
[398] Mr Adebayo email to Mr Cahill dated 29 November 2014 {I/195} and attachment {I/196}.
[399] Ms Adelore memo to Permanent Secretary dated 1 December 2014 {H7/67}.
[400] Bribery Statement of Facts at paragraph 68 {A5/2/25-26}. The deposits can be seen at {M/35/43}.
[401] {H7/323} row 48; {H9/50} row 34; {H7/84.03/2}.
[402] Spreadsheet entitled *"Eastwise – Cayman"* {H10/131} (*"Bank"* tab); {H7/84.03/2}.

25 November.[403] Mr Cahill has not provided a full or proper explanation for any of these transactions.[404]

p. On 8, 9 and 29 December 2014 and 12 January 2015, Mr Shasore deposited a total of US$140,000 of cash into his personal bank account.[405] These deposits had nothing to do with Mr Shasore's fee for the arbitration, which was paid separately by the NNPC by an electronic bank transfer on 7 November 2014.[406]

q. On 11 December, Ms Belgore received an electronic payment of NGN 500,000 (approx. US$3,000) from Mr Adebayo, as can be seen from both individuals' bank statements. When this payment was discovered, Ms Belgore was suspended from her position and interviewed by the EFCC. She confessed to having been given the money by Mr Adebayo when he came to a meeting at the MPR's offices on behalf of P&ID in relation to the GSPA dispute. She said that the money was intended as a *"gift"* for *"everyone in the MPR Legal Unit"*, and that she had passed some of it on to other lawyers in the MPR in cash.[407]

r. On 18 December, Ms Taiga sent a WhatsApp message to Mr Cahill saying *"It's me Grace Taiga season's greetings! Papa released d good news of the commencement of settlement sometime ago nd* [sic] *was hoping to spend Christmas hols in London!"*.[408]

s. On 24 December, Mr Oguine wrote a memo seeking to persuade the NNPC to accede to his recommendation of a US$1.1 billion settlement. The memo said that there was *"no dispute"* that the MPR had breached the GSPA, and that the negotiation team had *"no doubt at all"* that the Tribunal would allow P&ID's claim. A US$1.1 billion settlement was described as a *"good outcome"*.[409] Ms Adelore sent a memo in almost identical wording to the MPR on 30 December.[410]

t. Mr Adebayo billed P&ID, through his company Trenko International Limited, US$100,000 for attending the 21 November London meeting.[411] This extraordinary

[403] Spreadsheet entitled *"Eastwise – Cayman"* {H10/131} (*"Bank"* tab).
[404] Cahill 6 at paragraphs 28 {D/26/9}; 33 {D/26/11}.
[405] {M/72/1-2}.
[406] {M/72/1}.
[407] Bribery Statement of Facts at paragraphs 84-85 {A5/2/29}, referring to the banking documents at {M/53} and {M/70/20}, and to Ms Belgore's EFCC interview of 30 June 2022 at {J/14}.
[408] Ms Taiga WhatsApp message to Mr Cahill dated 18 December 2014 {H7/85}.
[409] Mr Oguine memo dated 24 December 2014 {H7/87}.
[410] Ms Adelore memo dated 30 December 2014 {H7/88}.
[411] {H7/308.1}. The sum appears to have been paid on 1 July 2015 {M/71/1}, before being immediately withdrawn in cash over the following 48 hours.

sum was in addition to his entitlement to 50% of the proceeds of any settlement (see immediately below). He was not entitled to it under any contract with P&ID. The correct inference is that this was a disguised payment used to fund or reimburse bribes paid by Mr Adebayo to members of FRN's legal team. Similar sham payments were made to Mr Adebayo of US$50,000 and US$70,000 on 20 February 2013 and 5 December 2014 (i.e. three days before the deposit of US$70,000 by Ms Adelore).[412] These transactions with Mr Adebayo are addressed further below.

u. On 13 January 2015, Mr Adebayo attended a meeting with the 'government' to discuss settlement.[413] FRN has identified no formal record of this meeting: it is assumed that it took place between some or all of Mr Shasore, Ms Adelore, Mr Oguine and Mr Adebayo. Notably, Mr Shasore deposited US$50,000 of cash into his account the day before the meeting.[414]

170. In the event, neither Ms Adelore nor Mr Oguine succeeded in persuading their superiors to sign off on the proposed US$1.1 billion settlement. P&ID eventually lost patience and sought a peremptory Order from the Tribunal, requiring FRN to serve a Defence.[415]

171. Mr Michael Quinn died of cancer on 15 February 2015.[416]

172. FRN eventually served its six-page Defence on 27 February 2015.[417] The Defence missed the key points which could have been run, but which were not due to Mr Quinn's perjured evidence and P&ID's concealment and collusion: Section E below.

173. P&ID served a Reply on 6 March.[418] It relied, amongst other things, on *"the absence of any complaint by the Respondent, during the life of the GSPA, that the Claimant was late in performing any aspect of its obligations relating to the construction of the Gas Processing Facilities"* (paragraph 16). The reason, of course, was that Mr Quinn had repeatedly fed the government lies to the effect that P&ID had completed all of the necessary engineering work, had secured financing, and was ready to perform subject only to receiving a suitable supply of gas.

174. The Tribunal made its Procedural Order No.7 on 9 April 2015. A recital to the Order stated that P&ID had served the statement of Mr Quinn and its exhibits as *"the documents and other*

412 Bribery Statement of Facts at paragraph 20 {A5/2/8-9}.
413 Mr Burke WhatsApp message to Mr Cahill and Mr Andrew dated 11 September 2019 {L/27/97}.
414 {M/72/2}.
415 Mr Andrew email to the Tribunal dated 6 February 2015 {H7/119}.
416 {H7/125}.
417 {H7/130}.
418 {H7/134}.

evidence upon which the Claimant intends to rely in relation to liability in support of its Statement of Claim".[419] FRN was ordered to serve any evidence and documents upon which it wished to rely by 17 April.

175. The only factual witness evidence served by FRN, following many missed deadlines, was from Mr Oguine (who, as noted above, had received a US$100,000 payment from Mr Shasore). Mr Oguine told the EFCC that he was unable to find anybody else to give a statement,[420] although the contemporaneous documents show that he had approached Dr Ige at the NNPC, who said that he had first-hand knowledge of the contract.[421] Mr Oguine's nine-page statement was eventually served on 4 May 2015.[422] The Tribunal later criticised it as giving *"no relevant evidence".*[423]

176. Ms Adelore deposited a total of US$118,000 into her personal bank account through a series of deposits made on 2 April and 20 May 2015.[424] These deposits were preceded by multiple cash withdrawals by Mr Adebayo, through his assistant Mr Wole Shonibare (who has been implicated in obtaining privileged documents from FRN's legal team), including a massive withdrawal of US$174,900 in late March.[425] The deposits straddled a settlement meeting which took place in Ms Adelore's office on 29 April.[426] Mr Adebayo attended on behalf of P&ID. FRN was represented by Ms Adelore, Mr Oguine and two representatives of Mr Shasore.[427] P&ID followed up on the meeting with a full and final settlement offer of US$850 million. Ms Adelore desperately attempted to persuade her superiors at the MPR to accept it, based on the Ministry's *"weak"* defence to the claim.[428]

177. A telephone CMC took place on 6 May 2015.[429] The main issues discussed were bifurcation, witness evidence and hearing logistics. There is no transcript or note of the hearing, but it resulted in an order, Procedural Order No.9.[430] The Order provided that the proceedings should be bifurcated between liability and quantum, and that:

---

[419] {H7/148}.
[420] Mr Oguine EFCC interview of 13 September 2019 at p.6 {J/20/2-3}.
[421] Email chain between Mr Oguine and Dr Ige at {H7/177}. A memo from Ms Adelore to the Permanent Secretary of the MPR dated 30 April 2015 stated that *"Dr Ige has agreed to give evidence"* {H7/207/1}.
[422] {H7/217}.
[423] Liability Award at paragraph 35 {G/31/7}.
[424] Bribery Statement of Facts at paragraph 69 {A5/2/26}.
[425] See the bank statement at {M/71/1}.
[426] See e.g. {H7/191}, {H7/187}, {H7/188}.
[427] Note of 29 April 2015 meeting at {H7/198}.
[428] Ms Adelore memo dated 30 April 2015 {H7/207}.
[429] The CMC was fixed by Procedural Order No.8, which ordered that a procedural conference be arranged to consider bifurcation and *"any other matters the parties wish to raise"* {H7/170/5}.
[430] {H7/233}.

"The Respondent will serve by 6 pm BST on Friday 8 May 2015 a statement of any primary facts alleged in the evidence of Mr Michael Quinn which are challenged and of any other facts alleged to be relevant to the question of liability."

178. In his letter written to the Attorney General after the CMC, Mr Shasore described the key points arising out of the hearing, including as follows:[431]

> *"**Requests for production of documents** – Respondent will respond to the Witness Statement submitted to the Tribunal by the Claimant (in respect of Claimants version of the factual background in the arbitration) [i.e. Quinn 1] by Friday 8 May 2015 [i.e. within 48 hours]."*

179. This was a puzzling comment. It demonstrates that the issue of document production was on the agenda for the CMC. However, Mr Shasore did not take the obvious step of applying for document production from P&ID to seek to verify the contents of Mr Quinn's witness statement as to P&ID's readiness and ability to perform. Nor was he instructed to do so by Ms Adelore or Mr Oguine. Rather, he agreed to serve a schedule within 48 hours, and without the benefit of any disclosure, setting out which parts of Mr Quinn's statement were and were not disputed.

180. Mr Shasore served his schedule late on 12 May.[432] It identified just six banal facts in Mr Quinn's evidence with which FRN took issue. These facts were so peripheral that P&ID confirmed it was happy not to rely on them.[433] Importantly, a previous draft of the Statement of Disputed Facts, produced by Mr Shasore's associate Ms Hakeem-Bakare, comprised a fuller list of points with which FRN took issue, including Mr Quinn's assertion that P&ID had already incurred substantial expenditure on the GSPA project.[434] However, it appears that some or all of Mr Shasore, Mr Adelore and Mr Oguine had an (undocumented) discussion with Ms Hakeem-Bakare and asked her to strip the Statement back to the six inconsequential points which were included in the final draft. This in itself is compelling evidence that Mr Shasore, Mr Adelore and Mr Oguine were not acting in FRN's best interests at this point in the arbitration: it was an obvious point to take, as the junior associate on the team had spotted.

181. The claim progressed to a half-day hearing on liability. P&ID served its skeleton argument

---

[431] Mr Shasore letter to Mr Adoke dated 6 May 2015 {H7/228}.
[432] {H7/255}.
[433] P&ID's skeleton argument on liability at paragraph 26 {G/29}.
[434] Draft Statement of Disputed Facts dated 8 May 2015 at paragraph 4 {H7/246/2}. Mr Shasore confirms that he reviewed this draft before filing it in his written Q&A document dated 4 December 2020 at {H10/68/3}.

on 25 May 2015.[435] It contended, based on Mr Shasore's Statement of Disputed Facts, that *"no relevant facts [were] in dispute"* (paragraphs 25-26). It went on to recite a summary of Mr Quinn's evidence as to how the GSPA came about (paragraphs 39-40), and after it was executed (paragraph 73). Of particular relevance is P&ID's citation of its 14 May 2010 letter to the NNPC, which it refers to as a *"status report"*:[436]

> *"1. All necessary project finances are in place for implementation and completion of the project.*
>
> *2. Ninety per cent of the engineering designs are completed for construction of the Gas Processing Facility (GPF), together with all related infrastructure.*
>
> *3. A 50 hectare site for the GPF at Calabar has been allocated to P&ID by the Cross Rivers State Government.*
>
> *4. Addax have confirmed their readiness, to DPR, for the supply of the presently flared 150 mmSCuFD of associated wet gas for Phase 1 of the development within the timeframe stipulated in Appendix a of the Definitive Agreement (copy attached)."*

182. These were lies, as Mr Cahill (at least) must have known.

183. P&ID's skeleton argument concluded that *"[t]he Claimant has made out its case on liability on the undisputed facts set out in the Claimant's evidence and seeks an Award on liability alone, with all issues as to quantum to be determined at a later hearing". It sought an award not only that FRN had breached the GSPA, but also that "the Claimant is entitled to damages for breach of contract, to be determined by the Tribunal after suitable directions".*[437]

184. FRN served its own skeleton argument on 28 May 2015.[438] It made a series of legal points, consistent with its Statement of Defence, which were never going to succeed in circumstances where FRN had not taken any steps to challenge Mr Quinn's factual evidence, and had not served any relevant evidence of its own.

185. The liability hearing took place over half a day on 1 June 2015. The transcript is at {H7/293}.

186. At the hearing Mr Shasore said that he would like to cross-examine Mr Quinn. Mr Andrew interjected that there had *"been no application to cross-examine Mr Quinn".*[439] Lord Hoffmann agreed, saying that there was *"nothing to cross-examine on"* because Mr Shasore had not disputed any relevant part of Mr Quinn's statement: *"You have put in a statement saying you accept everything he says, except the points on which you object".*[440] There followed an extremely odd exchange in

---

[435] {G/25.1}.
[436] P&ID liability skeleton at paragraph 73.4 {G/25.1/19} referring to P&ID's letter of 14 May 2010 at {H3/330}.
[437] P&ID liability skeleton at paragraphs 110-111 {G/25.1/35-36}.
[438] {H7/286}.
[439] Liability transcript at p.13, lines 19-20 {G/28/4}.
[440] Liability transcript at p.14 lines 18-20{G/28/4}.

which Mr Shasore applied to cross-examine Mr Quinn; Mr Andrew reveals that Mr Quinn is dead; and Mr Shasore purports to express surprise at that fact. He said that he had *"expected to see him [Mr Quinn] and expected to cross-examine him"*.[441] As part of the discussion Mr Andrew submitted that, subject to the six facts identified by Mr Shasore pursuant to Procedural Order No.9, Mr Quinn's evidence formed the *"factual basis of the arbitration"*. The discussion concludes by Lord Hoffmann giving a ruling on an application by Mr Shasore to cross-examine P&ID's witnesses. He refused the application on the basis that Mr Shasore had not previously applied to cross-examine, and that the effect of the Statement of Disputed Facts procedure had been to *"remove any issue as to matters which were left unchallenged"*.[442] The whole passage is extraordinary. The Court is invited to read it at {H7/293/4-8}.

187. Following Mr Shasore's unsuccessful application to cross-examine Mr Quinn, there was an exchange on various legal points, including whether FRN was required to supply gas before P&ID had constructed the Gas Processing Facilities. Mr Andrew then submitted:[443]

> *"My Lord … may I mention very briefly that pages 224 – 225 of bundle 2/2 there is in fact a useful letter on the subject of what progress had been made as of May 2010 in the building of the GPFs [the Gas Processing Facilities]. It is just a letter from P&ID to NNPC which summarises the progress made so far … It is P&ID saying that all necessary project finances are in place. 90 percent of the engineering designs were completed, for construction of the GPFs together with all related infrastructure. A 50-hectare site at Calabar had been allocated by the Cross River State Government and Addax had confirmed their readiness to DPR for the supply of the present referred to 150 million scufs per day and associated wet gas."* [emphasis added]

188. Mr Andrew was therefore positively putting forward these assertions, each of which was false, as evidence to the Tribunal of progress made by P&ID on the GSPA project.

189. For the reasons developed in Section F below, the proper interpretation of Mr Shasore's conduct is that he was compromised such that he was not representing the best interests of FRN.

190. The Tribunal handed down its Liability Award on 17 July 2015.[444] It dismissed each of the defences put forward by Mr Shasore. As regards the status of Mr Quinn's evidence, the

---

[441] Liability transcript at p.19, lines 7-8 {G/28/5}.
[442] Liability transcript at p.29, lines 8-11 {G/28/8}.
[443] Liability transcript at pp.60-61, lines 13-25 and 1-3 {G/28/15}. This was a reference to the 14 May 2010 letter to the NNPC at {H3/330}, reproduced at paragraph 181 above.
[444] {G/31}.

Tribunal held:

a. That it had ordered FRN to identify any facts in Mr Quinn's statement that it wished to contest, and that Mr Shasore had done so through his schedule identifying six disputed facts (paragraphs 28-29).[445]

b. That it had refused Mr Shasore's application for cross-examination on the basis that there were no material facts in dispute, given the terms of Mr Shasore's schedule, and in any event the application had been made too late (paragraph 34).[446]

191. Accordingly, the Tribunal set out at paragraphs 37 and 38 *"an account of the events which formed the background to the GSPA"* and an *"account of events which followed the signature of the GSPA"*. These were *"taken from those parts of the witness statement of Mr Quinn which have not been contested by the Government"*.[447] They were cited in the Liability Award without qualification because the Tribunal had accepted them as truthful and proven.

192. The Tribunal's overall finding was that FRN had repudiated the GSPA by its failure to comply with its obligations to deliver any gas to the site and to make the requisite arrangements with third parties for that purpose (clauses 6(a) and 6(b) of the GSPA). Accordingly, P&ID was *"entitled to damages (in an amount to be assessed) for the Government's repudiation of the GSPA"*.[448] For the reasons given in Section E below, the Tribunal would have reached the opposite conclusion, i.e. that P&ID was not entitled to damages, had it not been presented with Mr Quinn's perjured evidence. Likewise, had it known of the bribery and corruption by P&ID more generally.

193. Ms Taiga received a series of payments from Mr Adebayo, which FRN avers were bribes on behalf of P&ID, on 14 July, 14 August and 14 September 2015.[449] P&ID has offered no explanation for these payments, and has declined to present Mr Adebayo to do so himself.

194. On 21 November 2015, a settlement meeting was held between FRN and P&ID. FRN was represented (only) by Ms Adelore, Mr Oguine and Mr Shasore. P&ID was represented by Mr Cahill, Mr Adebayo and Mr Andrew.[450] A follow-up meeting was held between those three individuals on 28 November.[451] On 3 December, Ms Adelore deposited US$20,000 of

[445] {G/31/6}.
[446] {G/31/7}.
[447] {G/31/7}.
[448] Liability Award at paragraph 80(1) {G/31/19}.
[449] Bribery Statement of Facts at paragraph 22(5)-(7) {A5/2/11}.
[450] Note of 21 November 2015 meeting {H7/437}.
[451] Ibid {H7/437/10}.

cash into her account.[452]

195. On 26 October 2015, Mr Shasore wrote to the MPR advising it to apply to set aside the Liability Award on various grounds.[453] The advice made its way into P&ID's hands, and was sent to Mr Burke by early November.[454] FRN applied to set aside the Liability Award in both the English and Nigerian High Courts.[455] The former failed because it was out of time;[456] the latter succeeded.[457] The Tribunal held in its Procedural Order No.12 that it was entitled to disregard the Nigerian High Court's Order because the seat of the arbitration was London.[458] The arbitration therefore proceeded to the quantum stage. P&ID relies on the fact of this challenge as evidence that Mr Shasore was acting in the interests of FRN, and therefore cannot have been corrupted. However, it is unrealistic to suggest that P&ID's arrangement with Mr Shasore was to 'throw in the towel' by taking no steps to defend FRN's interests. Such an approach would have been brazen to the point of idiocy: it would have revealed to outsiders, including the Tribunal, what was going on. While FRN does not (and cannot) know the precise arrangement between P&ID and Mr Shasore or with the other corrupted individuals, or how long those arrangement lasted, it could not sensibly have entailed them taking no steps at all in defence of FRN. The focus seems to have been the procurement of a settlement at around US$1.1 billion around November 2014 and compromising the liability hearing, hence the cascade of cash deposits in that period described at paragraph 169 above. Following the liability hearing, it is unsurprising that, going forwards, in light of the damage to FRN's position that had already been done, they would have been keen to disguise their misconduct through also taking some actions suggestive of seeking to defend FRN's interests.

196. Stephenson Harwood was engaged to advise the MPR in the wake of the Liability Award.[459] It suggested that the Ministry carry out an investigation *"into P&ID's history, its financial capabilities and general track record"* in light of *"its apparently small size and lack of significant track record"*.[460] The request was passed on to the EFCC, which commenced an investigation,

---

[452] {M/49/62}.
[453] Mr Shasore letter to the MPR dated 26 October 2015 {H7/424}. Ms Adelore replied, expressing her agreement with the advice, on 3 November {H7/429}.
[454] Mr Adebayo email to Mr Cahill and Mr Andrew dated 10 November 2015 {H7/431}; Mr Cahill email to Mr Burke dated 10 November 2015 {H7/433}.
[455] See the English Arbitration Claim Form dated 23 December 2015 at {H7/483} and Ms Adelore's accompanying witness statement at {H7/485}.
[456] Order of Philips J dated 10 February 2016 {H8/69}.
[457] Order of Mrs Justice Thomas (Nigerian High Court) dated 15 March 2016 {H8/156}.
[458] {H8/240}.
[459] See Twenty Marina Solicitors letter to MPR dated 22 December 2015 {H7/484}.
[460] Stephenson Harwood letter dated 1 February 2016 {H8/48/2}.

interviewed a number of individuals, including Ms Adelore, and gathered documents from the NNPC and the MPR.[461] It published the outcome of its investigation on 16 June 2016, where it said that the award of the contract had *"significantly hinged"* on the report of the technical committee and the go-ahead given by the MPR's legal adviser, Ms Taiga.[462] As Sir Ross Cranston found at paragraph 237,[463] the EFCC's reason for closing the investigation was that the contract had received the *imprimatur* of Ms Taiga and Mr Tijani and therefore had *"the cloak of legitimacy"*.

x. The quantum stage

197. The current Attorney General, Mr Malami, was appointed on 11 November 2015, following the election of President Buhari in May 2015.[464] The finding of Sir Ross Cranston that FRN could not reasonably have raised its fraud allegations sooner than it in fact did (in late 2019) begins from the date on which Mr Malami was appointed as the Attorney General: Cranston Judgment at [229-239] onwards.[465]

198. Mr Malami told the Tribunal that he was taking over conduct of the arbitration around six months later, on 24 June 2016.[466] When he took control, he disinstructed Mr Shasore and replaced him with alternative counsel, Chief Ayorinde in July 2016.[467] The Attorney General's office recorded in an internal memo that Mr Shasore had behaved obstructively: he had refused to attend a handover meeting or to entertain any correspondence with the MoJ. He insisted on taking his instructions solely from the MPR (i.e. from Ms Adelore).[468]

199. Both parties served expert evidence in relation to quantum. P&ID served two reports prepared by BRG.[469] FRN served a reply report prepared by Upstream Commercial Advisory ("**Upstream**") on 12 August 2016.[470] There are several notable features of the expert evidence:

---

[461] See e.g. the EFCC's letter to the MPR dated 24 February 2016 {H8/109}; letter from the NNPC to the EFCC dated 1 March 2016 {H8/119}; MPR letter to the EFCC dated 2 March 2016 {H8/122}.
[462] EFCC report dated 16 June 2016 {H8/332}.
[463] {C/12/37}.
[464] Cranston Judgment at [56] {C/12/10}.
[465] {C/12/36}.
[466] Attorney General letter to the Tribunal dated 24 June 2016 {H8/340}.
[467] Chief Ayorinde was sent an initial batch of documents to read on 15 July 2016 {H8/330}. Mr Shasore was informed that his services were no longer required in a letter of 27 June 2016 {H8/348/1}. Chief Ayorinde's instruction was confirmed to the Tribunal on 13 July 2016 {H8/368}.
[468] Internal memo dated 23 March 2017 {H8/507/1-2}. See similarly Mr Shasore's letter to Ms Adelore dated 8 June 2016, referring to the fact that it was *"unacceptable and unconscionable"* that he should be required to liaise with the office of the Attorney General {H8/318}.
[469] BRG 1 is at {G/33}. BRG 2 is at {G/43}.
[470] Upstream 1 {G/42}.

a. The only contemporaneous document relied upon by BRG for its assessment of loss was the presentation given by Mr Quinn to the MPR, which (mis)represented that P&ID was ready to perform based on the Project Alpha drawings.[471]

b. FRN's expert report prepared by Upstream criticised P&ID's quantum figures on the basis that they appeared to be highly provisional and therefore speculative.[472]

c. In its reply report, BRG responded to Upstream's criticism by relying on Mr Quinn's (perjured) evidence to the effect that P&ID had achieved a high level of preparedness: see immediately below.

200. The parties then exchanged submissions on quantum.[473] P&ID's reply quantum submissions confirmed that they relied upon the evidence of Mr Quinn to prove its loss.[474] P&ID also relied upon the witness statement of Mr Quinn to dispute that no investment had been made in the project.[475]

201. P&ID continued to receive confidential and privileged documents across party lines during the quantum stage of the arbitration: FRN Privileged Documents Statement of Facts at paragraphs 44-51.[476]

202. The Tribunal held a one and a half day hearing on 30 August 2016. The transcript is at {G/47}. The experts were cross-examined, followed by closing submissions. In the course of cross-examination P&ID's capital expenditure expert, Mr Wolf, confirmed that he had relied upon the factual material fed to him by P&ID without verifying it himself.[477] P&ID's quantum model expert, Mr Caldwell, expressly relied upon Mr Quinn's (false) evidence that the company had already expended US$40 million on the GSPA project:[478]

> *"20 A. I think it stated in Mr Quinn's witness statement that*
>
> *21 they had expended something in the order of $40 million*
>
> *22 in preparing for the scheme at some point.*
>
> *23 Q. $40 million?*

---

471 {H7/442/118}.
472 See e.g. the preamble to Upstream 1 at {G/42/6-9}.
473 See FRN's quantum submissions at {G/45} and P&ID's reply quantum submissions at {G/46}.
474 P&ID reply quantum submissions at paragraph 8 {G/46/3-4}.
475 P&ID reply quantum submissions at paragraph 23 fn 23 {G/46/6}.
476 {A5/1/41-50}.
477 {G/47/2-3}.
478 {G/47/20-21}.

24 A. Yes.

25 Q. That is what they expended?

L A. I believe so, if my memory serves me." [emphasis added]

203. In response to P&ID's submissions concerning the basis on which damages were to be calculated, Lord Hoffmann emphasised that there were only a limited number of contingencies about which arguments could be made, given the Tribunal's prior findings in the Liability Award:[479]

"15. THE CHAIRMAN: Speaking for myself, it seems to me that, on

16. the basis of our liability award, the only contingency

17. beyond actual failure of the plant itself that you have

18. to take into account would be a failure of supply of gas

19. which, even taking into account that the government

20. could obtain the gas from anywhere it chose, would

21. enable them to plead force majeure. In other words,

22. pretty well a total shutdown of the oil industry in

23. Nigeria." [emphasis added]

204. The Tribunal handed down its Final Award on 31 January 2017.[480] The substantive section of the Award begins by stating at paragraph 29:[481]

> *"Before considering the quantification of the Government's liability, it is necessary to be clear about the findings made by the Tribunal in its second Partial Final Award. The evidence for P&ID at that stage consisted of a statement by Mr Michael Quinn dated 10 February 2014 …"*

205. The Award goes on to quote extensively from Mr Quinn's false evidence, including that all of the project finance was in place, 90% of the engineering designs had already been completed and a plot of land had already been allocated.[482]

206. The Tribunal then refers to the Statement of Disputed Facts served by Mr Shasore pursuant

[479] {G/48/3}.
[480] {G/49}.
[481] {G/49/6}.
[482] {G/49/6}.

to Procedural Order No.9, noting that FRN had not disputed any of the parts of Mr Quinn's witness statement referred to in the Award at paragraphs 33-34.[483]

207. At paragraphs 44 and 48, the Tribunal said that it was necessary to consider whether P&ID would have performed its obligations under the contract:

> *"… if the evidence had showed that for some reason, even if the Government was ready and willing to perform the contract, P&ID would never have been able to acquire the site or build the plant, then it would not be able to recover more than nominal damages."*[484]

208. However, the Tribunal found that *"the evidence [i.e. Mr Quinn's statement and exhibits] shows a high degree of likelihood that if the Government had been willing to perform, P&ID would have acquired the site and built the plant"*.[485] In support of this, the Tribunal cites the passages of Mr Quinn's evidence where he represented that P&ID had already obtained finance, completed 90% of the engineering work etc., and noted that Mr Shasore had not contested any of this evidence under Procedural Order No.9: *"P&ID thus showed every sign of being willing, indeed anxious, to implement the project and there is no dispute over its ability to have done so"*.[486] Paragraph 53 of the Award cites Mr Quinn's false evidence that P&ID had spent US$29 million on technology licences and provided a complete engineering package.[487]

209. It is clear from these passages that the Tribunal considered that it had already accepted Mr Quinn's evidence as to P&ID's willingness and ability to perform at the liability stage (see Section F below). This led the Tribunal to reach the overall conclusion at paragraph 56 that:

> *"Consequently, the Tribunal finds on a balance of probability that P&ID would have performed its obligations under the GSPA and therefore did suffer loss. Furthermore, such loss flowed naturally from the Government's repudiation and was not too remote. The next step is the quantification of that loss."*[488]

210. Having set out the factual basis of its Final Award, i.e. that P&ID would have performed the GSPA, the Tribunal went on to dismiss each of FRN's objections to P&ID's quantum analysis and award it damages of US$6.597 billion, plus pre- and post-Award interest of 7%.[489]

---

[483] {G/49/8}.
[484] {G/49/13}.
[485] Paragraph 50 at {G/49/13}.
[486] Paragraph 51 at {G/49/14}.
[487] {G/49/15}.
[488] {G/49/15}.
[489] Paragraphs 110-112 at {G/49/33}.

211. Chief Bayo Ojo issued a Dissenting Award holding that P&ID's capital and operational expenditure figures were understated (paragraph 19), that damages should be reduced on account of the likelihood to disruptions in the Niger-Delta region (paragraphs 31-32), and that P&ID had failed to mitigate its loss by pursuing an alternative investment (paragraphs 15-16). Accordingly, he would have awarded P&ID damages of US$250 million.[490]

xi. Events following Final Award

212. The period following the Final Award can be described briefly since the Cranston Judgment addresses it in detail (in particular at paragraphs 68-76).[491] In short, Sir Ross Cranston found that at no point following the Final Award was there a trigger which ought to have put FRN on notice of the need to investigate fraud.

213. Around 27 October 2017, P&ID, Mr Cahill, Lismore and PHL entered into agreements, the combined effect of which was that Lismore acquired 100% of P&ID, before selling a 25% stake to a vulture fund, VR, in return for an immediate payment of US$22.5 million plus an additional US$22.5 million to fund enforcement of the Awards.[492]

214. Based on P&ID's internal documents it seems that Mr Cahill and Mr Quinn's family have already enjoyed the spoils of the sale to VR to the tune of several millions of dollars each. Mr Adebayo received US$750,000, and Mr Burke and Mr Andrew each received US$1.175 million (directly from VR).[493] Moreover, various individuals were earmarked for *"Commitments"* to be paid out of the US$22.5 million.[494] The exact numbers fluctuated between different versions of the document, but included payments of up to US$500,000 for Ms Taiga and up to US$3 million for Mr Kuchazi.[495] These were provisional payments accompanied, it is to be inferred, by the previous and continuing promises of much larger payments in the event that the Awards are enforced. Mr Cahill seeks to explain these 'commitments' away as being (at least in part) gifts to friends who had *"absolutely nothing to do with the GSPA"*.[496] That description certainly does not apply to Mr Kuchazi or Ms Taiga, who were closely involved in the GSPA. Nor does it apply to the other individuals in the list, all

[490] {G/50}.
[491] {C/12/11-12}.
[492] {H9/74}.
[493] P&ID spreadsheet entitled "Ken Reconciliation of VR Funds 11 April" {H9/105}. The payment to Mr Adebayo can be seen on the "Bank" tab and the direct payment from VR to Mr Burke and Mr Andrew can be seen on the "Payments" tab.
[494] P&ID 'Split 29 Oct.pdf' document {H9/76/1} and {H9/76/5}.
[495] {H9/208}. For other versions of the proposed commitments, see e.g. {H9/76/5} and {H9/73/1-2}.
[496] Cahill 3 at paragraph 50 {D/5/18}.

of whom were involved in the activities of the ICIL group at some point or another.

215. In Schedule 1 of their agreement with VR, Lismore and Mr Cahill gave warranties, including that P&ID had not used any corporate or other funds for any unlawful purposes, including in relation to government officials.[497] As described above, VR (through PHL) has since claimed against Lismore and Mr Cahill for breach of these warranties and for making fraudulent misrepresentation which it alleges were *"plainly false"*. PHL's pleaded claim is that Mr Andrew and Mr Cahill deliberately withheld from them details of unlawful payments to Nigerian officials and that, as a result of the *"true position"* having now been established, PHL's stake is potentially worthless.[498]

216. FRN's formal investigation into the circumstances surrounding the GSPA and Awards was commenced by the EFCC in June 2018.[499] The investigation yielded a series of discoveries of bribery and corruption from around September 2019 onwards. FRN made its application to set aside the Awards on grounds of fraud and corruption on 5 December 2019. Since then, as described above, FRN has been forced to play a game of cat and mouse with P&ID to obtain disclosure of documents hidden around the world, including in multiple offshore jurisdictions. P&ID has resisted disclosure at every opportunity. The reason on each occasion has become obvious: every pull of the thread has resulted in further, extraordinary revelations of wrongdoing.

217. In early 2020, Mr Cahill and VR received emails from a former employee of the ICIL group, Mr Bernard McNaughton, seeking payment of salary arrears. The emails indicated Mr McNaughton's willingness to testify about his involvement in criminal activity when he worked for Mr Cahill and Mr Quinn, including widespread corruption.[500] Mr Cahill ultimately agreed to pay Mr McNaughton some £100,000 on the understanding that, if he did so, Mr McNaughton would not release any incriminating evidence.[501] When Mr McNaughton was approached by FRN's solicitors for evidence, Mr Cahill suggested that a 'bonus' payment would be made to him in return for keeping silent. P&ID has since sought to sweep aside Mr McNaughton's allegations as those of a disgruntled former employee. Yet

---

[497] Shareholders Deed, Schedule 1 at paragraph 2.7 {H9/74/26}.
[498] PHL Request for Arbitration dated 12 May 2021 at paragraphs 5.13, 6.1 and 6.2, 7.4 and 4.6{Q1/28/13}, {Q1/28/18}, {Q1/28/22} and {Q1/28/8}.
[499] Cranston Judgment at [88-94] {C/12/14-15}.
[500] Mr McNaughton's emails dated 29 September 2014 {H6/474}, 20 January 2020 {H9/328} and 29 September 2020 {H10/19}.
[501] See e.g. Mr McNaughton email to Mr Cahill dated 2 April 2020 (*"On my part I will provide a legal undertaking not to disseminate any activities of ICIL group or any individual working for ICIL"*) {H9/411}. In the event, this outcome appears to have been achieved by linking the payment to Mr McNaughton to the successful settlement of P&ID's claim against FRN. The signed agreement is at {H9/491}.

many of the allegations are backed up by contemporaneous evidence. Moreover, the allegations are numerous and very specific: it is implausible that they were all fabricated. P&ID's attempts to suppress Mr McNaughton's evidence, and the consequences for these proceedings, are addressed in Section G below.

218. As described elsewhere in these submissions, Tita Kuru's arbitration forced P&ID to carry out a *volte face* in respect of its case on Mr Quinn's perjured evidence: Section E below.

219. Concerningly, P&ID has continued to solicit FRN Privileged Documents during the course of its English enforcement proceedings. For example, Mr Cahill received a copy of a privileged advice to the Governor of the Central Bank of Nigeria dated 30 August 2019, which he sent to Mr Smyth via WhatsApp on 7 September 2019.[502] In Mr Cahill's sixth witness statement dated 23 December 2022, he contended that this was, *"an unsolicited document received by me and which I found difficult to read on my iPhone. As was usual in such cases I asked Ken to make it something I could read. On reading it, it was clear that this might be a confidential document of the kind that Seamus had explained was not to be entertained. It is for this reason that I did not circulate it or forward it to anyone"*[503]. This is yet further false evidence, as documents obtained since Mr Cahill's witness statement prove. Namely, the WhatsApp thread disclosed on 6 January 2023 between Mr Smyth and Mr Andrew shows that this privileged advice was, contrary to Mr Cahill's evidence, subsequently shared with (at least) Mr Andrew[504], despite its obviously confidential nature, as Mr Cahill's own evidence acknowledges. None of Mr Cahill, Mr Andrew or Mr Smyth returned the document or notified FRN or the Central Bank of Nigeria that P&ID was in possession of the advice to the Governor of the Central Bank. No documents showing how or from whom the advice was first received by Mr Cahill have been disclosed by P&ID, and the suggestion that this was unsolicited is to be rejected. It is another instance of those acting for P&ID having illicitly obtained confidential and privileged documents. The continuing obtaining of privileged content by those acting for P&ID seriously calls into question not only the integrity of the Awards, but also these very proceedings.

C. LEGAL PRINCIPLES: SETTING ASIDE AWARDS AND RESISTING ENFORCEMENT

220. This section addresses the basic elements of an application to set aside an award pursuant

[502] {I/272}-{I/277}.
[503] Cahill 6 at paragraph 39 {D/26/12}.
[504] {L/26.1/17}.

to s.68 of the 1996 Act and, specifically, pursuant to s.68(2)(g). In particular, it addresses the law on setting aside, as a matter of both fraud and public policy, in circumstances of perjury, bribery and collusion. Insofar as the principles differ, it also addresses the law on resisting enforcement under s.66 of the 1996 Act.

i. Setting aside awards on grounds of fraud or public policy: general

221. Section 68(1) of the 1996 Act provides that an arbitral award may be set aside on the grounds of a *"serious irregularity affecting the tribunal, the proceedings or the award". Section 68(2) sets out an exhaustive list of "serious irregularities"* including, at s.68(2)(g) *"the award being obtained by fraud or the award or the way in which it was procured being contrary to public policy".*[505]

222. Section 68(2) makes clear that the alleged irregularity must have caused or will cause *"substantial injustice"* to the innocent party.

223. The principles applicable to a s.68(2)(g) challenge have been extensively addressed in the authorities.[506] The key elements are set out below.

ii. Serious irregularity

Fraud

224. For a finding of fraud to be made on a s.68(2)(g) challenge, there must have been *"reprehensible or unconscionable conduct".*[507] This can take many forms. In the analogous contexts of setting aside domestic and foreign judgments, an application may be founded on *"every variety of mala fides and mala praxis whereby one of the parties misleads and deceives the judicial tribunals".*[508] In *JSC VTB Bank v Skurikhin* [2014] EWHC 271 at [25] Simon J stated that *"fraud in this sense includes every kind of fraudulent conduct, mala praxis and well as mala fides".* In *Midtown Acquisitions LP v Essar Global Fund Ltd* [2017] EWHC 519 (Comm), [2017] 1 WLR 3083 at [56] Teare J stated that the *"fraud may be extrinsic, for example, consisting of the bribery of witnesses, or intrinsic, for example, consisting of the giving or procuring or perjured or forged evidence".*

---

[505] Two of the grounds of challenge under s.68(2)(g) (the award being obtained by fraud; and the award being procured contrary to public policy) are concerned with how the award was obtained or procured and thus focus on the arbitral process. The remaining ground (the award being contrary to public policy) appears to focus on the result of the process. This is consistent with the wording of s.68(1), which refers to a *"serious irregularity affecting the tribunal, the proceedings or the award"* [emphasis added].

[506] A summary of the key principles is helpfully given by Christopher Hancock QC (sitting as a Deputy High Court Judge) in *Stockman Interhold v Arricano Real Estate* [2017] EWHC 2909 (Comm), [2018] 1 Lloyd's LR 135 at [169].

[507] *Celtic Bioenergy Ltd v Knowles Ltd* [2017] EWHC 472 (TCC), [2017] 1 Lloyd's LR 495 at [67] per Jefford J; *Double K Oil Products 1996 Ltd v Neste Oil OYJ* [2009] EWHC 3380 (Comm), [2010] 1 Lloyd's Rep 141 at [33] per Blair J.

[508] *Jet Holdings Inc v Patel* [1990] 1 QB 335 at 347A per Staughton LJ.

225. As explained in Section D below, the dishonesty and/or reprehensible or unconscionable conduct contemplated by s.68(2)(g) includes a situation where the contract the subject of an arbitration, or indeed the very obligation forming the basis of the award, has been procured by bribery. *A fortiori* where bribes continue to be paid during the course of the arbitration itself or perjured evidence is given in order in either case to conceal the fact of the earlier bribery or the availability of a defence in the arbitration.

226. Fraud may also be established where a party has deliberately and dishonestly failed to disclose evidence in an arbitration, or has made submissions or called evidence which deliberately and dishonestly continues the concealment, where that material would have had an important influence on the award.[509] In the related context of setting aside judgments, it has been held that a dishonest concealment of material facts may amount to fraud: *RBS v Highland Financial Partners* [2013] EWCA Civ 328, [2013] 1 CLC 596 at [106] per Aikens LJ. In *Celtic Bioenergy*, Jefford J set aside an award on the basis that the respondent's representations to the tribunal, which had omitted references to relevant documents, were deliberately misleading and therefore fraudulent: the representations had created a *"wholly misleading impression"* ([73]-[75] and [98]). The lack of an Order for disclosure of the information was no excuse ([91]).

227. Fraud includes perjury. Where perjury is alleged, the Court must assess the nature, content and strength of the evidence and its influence on the result of the arbitration at the time when it should have been adduced.[510]

Proving fraud

228. As with any allegation of fraud, the accuser must *"demonstrate its case to a high standard of proof"*.[511] In reaching a finding of fraud, it is not enough for the Court *"to surmise that there had been fraud"*. Any such finding must be based on *"cogent evidence"*.[512] However, the Court is *"entitled, in the normal way, to reach a conclusion on all of the evidence available to it"*, including the drawing of inferences where appropriate: *Celtic Bioenergy* at [68] per Jefford J.

229. The authorities emphasise that there will rarely be a 'smoking gun' in fraud cases (although

[509] Knowles J in *Stati v Republic of Kazakhstan* [2017] EWHC 1348 (Comm), [2017] 2 Lloyd's Rep 201 at [11(4)], citing Flaux J (as he then was) in *Chantiers de l'Atlantique v Gaztransport* [2011] EWHC 3383 (Comm) at [58] and [311].
[510] *Thyssen Canada Ltd v Mariana Maritime SA* [2005] EWHC 219 (Comm), [2005] 1 Lloyd's Rep 640 at [61] per Cooke J.
[511] *Elektrim v Vivendi* [2007] EWHC 11 (Comm), [2007] 1 Lloyd's Rep 693 at [81] per Aikens J.
[512] However, there is only one civil standard of proof, i.e. that is proof that the fact in issue more probably occurred than not: *Otkritie v Urumov* [2014] EWHC 191 (Comm) at [88] per Eder J.

strikingly in this case there are many). Instead, fraud will often be established by inferences (addressed further below), to be drawn cumulatively from different strands of circumstantial evidence.[513] As Judge Mackie QC said in *Genesisuk.net Ltd v Allianz Insurance Ltd* [2014] EWHC 3676 (QB) (a case dealing with insurance fraud):

> *"It is not necessary to produce a seamless proof or 'smoking gun' as '… it is unlikely that there will be any documentary or other direct evidence of consent or connivance and that it is therefore necessary to consider what inferences, if any, can properly be drawn from the circumstantial evidence' … Inferences will be used to fill gaps, so long as there is some credible evidence; ambiguities are not fatal."*

230. Likewise, if parts of the canvass remain obscured or blank, this is not an insurmountable obstacle to a finding of fraud.[514]

231. The nature of circumstantial evidence means that its effect is cumulative. The Court must consider *"the weight which is to be given to the united force of all the circumstances put together"*.[515] The Court should stand back and consider the facts in the round rather than *"compartmentalising"* particular points or treating them in *"silos"*.[516]

232. Moreover, the Court is entitled to conclude that prior dishonesty of or other misconduct by a defendant in relation to evidence given increases the likelihood of that defendant having behaved dishonestly more generally: *Lakatamia Shipping* at [66], per Bryan J:

> *"Equally, in deciding whether a serious allegation is established on the balance of probabilities, regard may be had to the fact that a party has lied or otherwise engaged in misconduct in other respects …"*

233. Quite apart from evidence of previous wrongdoing being relevant to the honesty of a defendant, similar fact evidence is more generally admissible where the evidence of what happened on an earlier occasion may make the occurrence of what happened on the occasion in question more or less probable: *O'Brien v Chief Constable of South Wales* [2005] 2 AC 534 at [7].

Adverse inferences

234. Whether it is appropriate to draw an inference of fraud, and the extent of that inference, will

---

[513] See e.g. *Spearmint Blue Ltd v Revenue and Customs Commissioners* [2012] UKFTT 103 (TC) at [283]-[284] (*"As is generally the situation in such cases, there is no definitive and conclusive piece of evidence, no 'smoking gun' which clearly shows one or other of them to have been a knowing participant in the overall fraud. It is a matter of drawing inferences from the evidence as a whole... we have considered the overall picture emerging from the evidence before us. No one part of the picture is determinative but we find the overall picture wholly convincing"*); and similarly *IG Index Plc v Colley* [2013] EWHC 478 (QB) at [352].
[514] See Teare J in *The Brillante Virtuoso* [2019] EWHC 2599 (Comm), [2019] 2 Lloyd's Rep 485 at [457].
[515] *Belhaven & Stenton Peerage* (1875) 1 App Cas 278 at 279.
[516] *Lakatamia Shipping Co Ltd v Su* [2021] EWHC 1907 (Comm) at [65] per Bryan J.

depend on the facts of the particular case: *Mackenzie v Alcoa Manufacturing (GB) Ltd* [2019] EWCA Civ 2110, [2020] PIQR P6, Dingemans LJ at [50].[517] Two particular situations in which inferences may be drawn are especially relevant to the instant case: first, where a wrongdoer is responsible for gaps in the evidence; and second, where there is evidence that potentially relevant documents may have been lost or destroyed.

235. As to the first, if a wrongdoer has *"parted with relevant evidence"* or *"there are gaps in the evidence"* attributable to the wrongdoer, the Court may draw adverse inferences.[518]

236. As to the second, inferences may be drawn against a person where potentially relevant documents are (i) deliberately destroyed by him or on his behalf in anticipation of proceedings being commenced; (ii) destroyed after proceedings have been commenced, whether deliberately or otherwise;[519] or (iii) not disclosed, even if there is no evidence of destruction,[520] though this requires the Court first to be satisfied that there is *"at least a reason to believe that such a document does exist"*.[521]

"Contrary to public policy"

237. There is some overlap between the fraud and public policy limbs of s.68(2)(g).[522] Both require *"some form of reprehensible or unconscionable conduct"*.[523] In *Domb v Grunhut* [2022] EWHC 491 (Ch) at [73] Sir Gerald Barling stated that, for an award to be contrary to public policy, it must *"be affected by some serious turpitude or illegality which would render the court's enforcement of it unconscionable and unacceptable"*.

238. There is no exhaustive definition of conduct contrary to public policy. In *Cuflet Chartering v Carousel Shipping Co Ltd* [2001] 1 Lloyd's Rep 707 Moore-Bick J considered whether the fact that one party was said to have lulled the other into believing that no award would be made

---

517 See also Cockerill J in *Magdeev v Tsvetkov* [2020] EWHC 887 (Comm) at [150], whose approach was endorsed by the Court of Appeal in *Sotheby's v Mark Weiss Ltd* [2020] EWCA Civ 1570 at [107].
518 *Armorie v Delamirie* (1722) 1 Strange 505, 93 ER 664; *Gulati v MGN Ltd* [2017] QB 149 at [107]; *Blackledge v Person(s) Unknown* [2021] EWHC 1994 (QB) at [41] and *Dudley v Phillips* [2022] EWHC 930 (QB) at [25].
519 *Documentary Evidence* (14th Ed, 2021) at paragraph 11-24.
520 *Davy v Croxen* [2015] EWHC 2372 (Ch) at [47]-[48]; *Earles v Barclays Bank plc* [2009] EWHC 2500 (QB), [2010] Bus LR 566.
521 Adrian Beltrami QC (sitting as a Deputy High Court Judge) in *Aegean Baltic Bank SA v Renzlor Shipping Ltd* [2020] EWHC 2851 (Comm) at [32]-[34].
522 Christopher Hancock QC (sitting as a Deputy High Court Judge) concluded that *"similar comments apply"* to the public policy ground as to that of fraud: *Stockman Interhold* at [169].
523 *Profilati v PaineWebber* [2001] 1 Lloyd's Rep 715 at [17] per Moore-Bick J (as he then was). Indeed, many of the authorities on fraud challenges under s.68(2)(g) cite this passage, although it was given in respect of a public policy challenge. See similarly *Protech Projects v Al-Kharafi* [2005] 2 Lloyd's Rep 779 at [29] per Langley J; *Gater Assets Ltd v Nak Naftogaz Ukrainiy (No 2)* [2008] 1 Lloyd's Rep 479 at [40] per Tomlinson J where he equated the public policy test under s.68(2)(g) with that under s.103 of the 1996 Act.

while negotiations were pending amounted to conduct contrary to public policy. The Judge said:[524]

> *"Considerations of public policy can never be exhaustively defined, but they should be approached with extreme caution… It has to be shown that there is some element of illegality or that the enforcement of the award would be clearly injurious to the public good or, possibly, that enforcement would be wholly offensive to the ordinary reasonable and fully informed member of the public on whose behalf the powers of the state are exercised."*

239. Despite the overlap, the 'fraud' and 'contrary to public policy' limbs are not entirely synonymous. The latter is wider than the former. There may be cases where, while there has been no dishonesty (at least not in the criminal sense), improper conduct in the form of recklessness may be *"so egregious as to bring it within the second limb of section 68(2)(g)"*.[525] In *Protech*, Langley J acknowledged at [29] that misconduct of the parties towards each other might be such as to satisfy the public policy limb of s.68(2)(g), although less obviously so than misconduct directed towards the tribunal.

240. Misconduct towards another party would include one party abusing the rights of another as regards confidential and privileged documents. In *Hamilton v Al-Fayed (No.2)* [2001] EMLR 15 at [22], the Court of Appeal accepted that knowing receipt by one party of privileged documents belonging to the other party could be a ground for setting aside a domestic judgment. There is no reason why the position should be different in arbitration.

241. The public policy limb of s.68(2)(g) is in part directed at *"the award"* itself, not just at the manner in which it was procured. The effect is to prevent tainted awards, which would fail at the enforcement stage on a public policy challenge, from ever reaching that stage. Section 68(2)(g) thus addresses the <u>result</u> of the process – i.e. the fact of, or existence of, the award, or even the substance of the award – as well as the process by which it was obtained.[526]

<u>The relevant actor</u>

242. The fraud, acts or omissions may be committed by an arbitrating party or one of its privies or in circumstances where the party *"can fairly be blamed"*, but not by an unrelated third party: *Elektrim* at [79]-[80] and *Thyssen* at [14]. Members of the P&ID network of companies which

---

[524] See also *Cukurova Holding AS v Sonera Holding BV* [2014] UKPC 15, [2015] 2 All ER 1061 (an appeal to the Privy Council concerning enforcement of a New York Convention award in the BVI), at [32] per Lord Clarke.
[525] *Merkin and Flannery* (6th Ed) at paragraph 68.14.1.
[526] See *R v V* [2008] EWHC 1531 (Comm), [2009] Lloyd's Rep 97 (Steel J); *Merkin: Arbitration Law* at paragraphs 20.13 and 20.30.22.

paid bribes on its behalf are clearly P&ID's privies for this purpose. So too was Mr Adebayo, who also paid bribes on behalf of P&ID. His position is addressed at paragraphs 444-447 below.

243. In the analogous context of setting aside domestic judgments for fraud, in *Odyssey Re (London) Ltd (formerly Sphere Drake Insurance Plc) v OIC Run Off Ltd (formerly Orion Insurance Co Plc)* [2000] EWCA Civ 71, [2001] Lloyd's Rep IR 1, the Court of Appeal held that the knowledge of a certain Mr Sage could be imputed to Orion on the basis that he was *"part of a team which was helping to row it to victory"*. Nourse LJ, with whom Brooke LJ agreed, set out the relevant test:

> "*In my judgment the two most important considerations are, first, that he was the witness, above all others, on whose evidence the success of Orion's case had come to depend. He was its 'vital' witness. There is nothing fanciful, adopting the words of Eveleigh J, in treating Mr Sage as having been, for the purposes of the trial, Orion itself. Of equal importance is the consideration that he had acquired that status not simply because his evidence related to a transaction for which he had been personally responsible as part of Orion's directing mind and will at the time, but also because in the six months or so before the trial he had been a committed member of the team which took decisions as to how Orion's case was to be presented. The evidence established that Orion deliberately sought, as Mr Sumption put it, to make Mr Sage feel part of a team which was helping to row it to victory. Whatever the rights and wrongs of that may have been, Orion succeeded in identifying him with its own interests and thus with itself*" [emphasis added]

244. This analysis applies equally to Mr Quinn, as well as all the other individuals helping to *"row [P&ID] to victory"*, and whose financial interests were intimately bound up with those of the company, including Mr Adebayo.

iii. Substantial injustice

245. Section 68(2) requires the applicant to show that the irregularity *"has caused or will cause substantial injustice to the applicant"*. This test is intended to be applied by way of support for, not interference with, the arbitral process.[527] This was the expressly stated intent of the test in the DAC Report at paragraph 280.[528]

246. In order to demonstrate substantial injustice, the applicant must typically show that the arbitrators reached a conclusion which, *"but for the irregularity"*, they *"might well"* not have

[527] *The "Petro Ranger"* [2001] EWHC 418 (Comm), [2001] 2 Lloyd's Rep 348 at [351] per Cresswell J.
[528] Cited by Lords Hamblen and Burrows JJSC in *RAV Bahamas v Therapy Beach Club* [2021] UKPC 8, [2021] AC 907 at [30].

reached.[529] Although various formulations appear in the authorities, the substance of the test is settled. Thus: *"[t]he now accepted test is there is substantial injustice if the applicant can show that had there been an opportunity to address the point, the tribunal might well have reached a different view and produced a significantly different outcome"* [emphasis added].[530] Other recent formulations refer to the necessity of showing a *"reasonably arguable"* alternative.[531]

247. Substantial injustice can sometimes be inferred from the very nature of the irregularity. In *RAV Bahamas v Therapy Beach Club Inc*, the Privy Council said at [34]-[37]:

> *"There will be substantial injustice where it is established that, had the irregularity not occurred, the outcome of the arbitration might well have been different… It is not necessary to show that the outcome would 'necessarily or even probably be different' ... Some irregularities may be so serious that substantial justice is 'inherently likely' or 'likely in the very nature of things' to result … In such cases substantial injustice may be inferred from the nature of the irregularity and that inference may be so strong that 'it almost goes without saying' …"* [emphasis added]

248. The Privy Council did not suggest a closed list of types of case where substantial injustice could be inferred. The authorities indicate two particular areas of concern for the court when determining whether it is appropriate to infer substantial injustice:

    a. The risk that there has not been a fair hearing: The DAC report defines substantial injustice by reference to the occurrence of something *"so far removed from what could reasonably be expected of the arbitral process that we would expect the court to take action"*. In this respect the Court is concerned (when deciding to intervene) that justice is not only done, but also seen to be done.[532] In *Secretary of State for the Home Department v Raytheon Systems Ltd* [2014] EWHC 4375 (TCC) at [61], Akenhead J found that substantial injustice *"almost goes without saying"* where the arbitrators had failed to deal with a key issue :*"any right-minded party to arbitration would feel that justice had not been served"*. In *ASM Shipping Ltd of India v TTMI Ltd of England* [2005] EWHC 2238 (Comm), [2006] 2 All ER (Comm) 122 at [39], Morison J was willing to infer substantial injustice in

[529] *Vee Networks Ltd v Econet Wireless International Ltd* [2005] 1 All ER (Comm) 303 at [90] per Colman J.
[530] Merkin's *Arbitration Law* at paragraph 20.8, by reference to authorities including *Vee Networks* and, more recently *PBO v DONPRO* [2021] EWHC 1951 (Comm), [2022] 2 Lloyd's Rep 359 at [70] per Bryan J.
[531] See e.g. *Russell on Arbitration* (24th Ed) at paragraph 8-117, *Vee Networks* at [40] (Colman J). For an example of an application of the test in a s.68(2)(g) case, see *Stockman Interhold v Arricano Real Estate* [2017] EWHC 2909 (Comm), [2018] 1 Lloyd's LR 135 at [169] and [220].
[532] See e.g. *London Maritime Arbitration* (4th Ed) at paragraph 22.53; *Secretary of State for the Home Department v Raytheon Systems Ltd* [2015] EWHC 311 (TCC), [2015] 1 Lloyd's Rep 493 per Akenhead J at [20].

circumstances where there were justified doubts as to the tribunal's impartiality.[533]

b. The inherent difficulty in proving the causative effect of the wrongdoing: In *ASM Shipping* at [39], Morison J regarded it as contrary to principle to require an applicant to prove that unconscious bias on the part of the tribunal had been causative of the award: *"the problem with unconscious bias is that it is inherently difficult to prove and the statements made about it by the judges themselves cannot be tested. Nor can the court know whether the bias actually made any difference or not"* [emphasis added].

249. Moreover, where a respondent's own acts have made it impossible to make an informed assessment of causation, the Court *"should presume the strongest case against him"*: *Armorie v Delamirie* (1722) 1 Strange 505, 93 ER 66 (per Lord Pratt CJ).

250. These principles apply with particular force to a case where a party has compromised one or more members of the other party's legal team, and/or has gained access to a stream of privileged material relating to the conduct of the case. Such conduct by its very nature causes substantial injustice. As Nugee J (as he then was) held in *Glenn v Watson* [2018] EWHC 2016 (Ch) at [427], *"The essence of the law of bribery is that a principal is entitled to the single-minded loyalty of his agent, free from anything which gives rise to a realistic possibility of a conflict of interest."* The Court emphasised the strictness of the duty, citing *Imageview Management Ltd v Jack* [2009] EWCA Civ 63 at [6] per Jacob LJ: *"If you undertake to act for a man you must act 100%, body and soul, for him. You must act as if you were him. You must not allow your own interest to get in the way without telling him. An undisclosed but realistic possibility of a conflict of interest is a breach of your duty of good faith to your client"*. It would be invidious and unrealistic to require the innocent party to prove specific causal connections between the corruption and the steps taken by the guilty party in the arbitration. The very purpose of the corruption in such a case is to procure a result that might not otherwise have obtained: otherwise why corrupt the lawyer(s) and solicit the privileged material in the first place? This is a paradigm case of an irregularity which is *"so serious that substantial justice is inherently likely"*.

251. Further, in analysing whether the tribunal *"might well"* not have reached the conclusion that it did, the Court may look not only at whether the misconduct itself affected the process, but also at whether the tribunal's lack of knowledge of that misconduct did so. In *Hamilton v Al-Fayed (No.2)* [2001] EMLR 15, the facts of which are addressed at paragraph 480475

[533] Approved in *Norbrook Laboratories Ltd v A. Tank and Anor* [2006] EWHC 1055 (Comm), [2006] 2 Lloyd's Rep 485 at [145], and by Toulson J (as he was) in *Sumukan Ltd v The Commonwealth Secretariat* [2007] EWHC 188 (Comm), [2007] 1 Lloyd's Rep 370 at [72].

below, the Court of Appeal analysed not only (a) whether the stolen privileged material had given Mr Al-Fayed an advantage; but also (b) whether the Court's conclusion might have been different had it appreciated Mr Al-Fayed's misconduct at the time. By analogy, on an enquiry under s.68(2)(g), the Court may consider whether the tribunal's view of the wrongdoer – his credibility and honesty in particular and, also the veracity of his case as a whole – might have been different had it known of the misconduct.[534]

252. It follows that substantial injustice will be shown if, had the tribunal appreciated a party's wrongdoing, it *"might well"* have approached that party's submissions differently, or even barred a party from advancing a cause of action or adducing key evidence, or struck out a party's case as an abuse of process. The power of a tribunal to restrict a party's ability to advance its case where it has abused the process derives primarily from the obligation to ensure fairness as between the parties.[535]

253. There is extensive analysis in the authorities of challenges based on perjury. The Courts are alive to the fact that witnesses are not always entirely truthful, and that not every case of false evidence will lead to a conclusion of substantial injustice. In considering whether the tribunal's conclusion *"might well"* have been different, the Court will require the applicant to show that the perjury *"contributed in a substantial way to the obtaining of the award"* and that it *"had an important influence on the result"*.[536] However, if the honesty or credibility of the witness itself was in issue before the tribunal (which was not the situation in the present case), the Court will impose a stricter standard, requiring that the applicant demonstrate that the evidence now relied upon is *"so strong that it would reasonably be expected to be decisive at a hearing, and if unanswered must have that result"* (Waller LJ in *Westacre Investments Inc v Jugoimport-SPDR Holding Co Ltd* [2000] QB 288 at p.309F-G).[537]

---

[534] See likewise *Nomihold Securities Inc v Mobile Telesystems Finance SA* [2011] EWHC 2143 (Comm) at [84] and [86]; *Salekipour v Parmar* [2017] EWCA Civ 2141, [2018] QB 833 at [95]-[96]: the way the Judge would have approached and came to her decision would have "*entirely changed*" had she known of the (in that case) perversion of the course of justice ([95]-[96]); and *Bishop v Chhokar* [2017] EWCA Civ 2717 at [23]-[25] where Lewison LJ asked, if the Judge "*had known that Mr Chhokar had given dishonest evidence on one of the pleaded issues, his conclusion might well have been different*". See likewise *Tinkler v Esken Ltd (formerly Stobart Group Ltd)* [2022] EWHC 1375 (Ch) at [459].

[535] An obligation found in this case in both the law of the arbitration agreement (the Nigerian Arbitration and Conciliation Act, including Articles 14 and 15) and the *lex arbitri* (on the assumption that England is the seat – i.e. the Arbitration Act 1996, in particular ss.33 and 34). In *Union of India v Reliance Industries Ltd* [2022] EWHC 1407 (Comm), [2022] 2 Lloyd's Rep 201 at [59]-[61], Sir Ross Cranston upheld a London-seated tribunal's ruling that a defence was barred as a result of *Henderson v Henderson* abuse. See also, in the public international law context, *Libananco v Turkey* (2008) ICSID Case No. ARB/06/8 at [78]-[81], where the tribunal considered that abuse by a party could lead it to be excluded from the proceedings.

[536] *Stockman Interhold* per Christopher Hancock QC at [169(2) and (4)]. See also *Double K* per Blair J at [33], *Thyssen* per Cooke J at [65] and *Celtic Bioenergy* per Jefford J at [67], [70] and [108].

[537] Approved of since in, for example, *Stati* per Knowles J at [11(10)] and *Carpatsky Petroleum Corp v PJSC Ukrnafta* [2019] 1 Lloyd's Rep 296 per Carr J at [45] and [94].

254. Finally, the Court may consider the cumulative causative effect of multiple irregularities when determining whether they have caused a substantial injustice. In *UMS Holding Ltd v Great Station Properties SA* [2017] EWHC 2398 (Comm) [2018] 1 All ER (Comm) 856 at [129], Teare J stated:

> *"I accept that when a number of irregularities within section 68 have been established it may be possible for them, when considered together, to amount to a substantial injustice in the sense of an 'extreme case where the tribunal has gone so wrong in its conduct of the arbitration that justice calls out for it to be corrected' whereas, when considered in isolation, each irregularity might not amount to a substantial injustice."*

iv. Section 66: resisting enforcement

255. In addition to challenging the Awards under ss.67 and 68 of the 1996 Act, FRN resists P&ID's application to enforce the Final Award under s.66.

256. As to the Tribunal's lack of substantive jurisdiction (see s.66(3)), FRN relies on the same grounds as for its s.67 challenge. Should the Court agree with FRN's case on s.67, it must refuse P&ID leave to enforce the Final Award. P&ID does not dispute this.

257. As to the Court's discretion in otherwise refusing to enforce the Final Award (s.66(1) "*may*"), FRN relies on the same grounds as for its s.68 challenge and, to the extent necessary, for its s.67 challenge as well. The Court may refuse to enforce the Final Award (and should do so) on public policy grounds if circumstances constituting a successful challenge under s.68(2)(g) are found.[538]

v. Section 73: reasonable diligence

258. The position where a serious irregularity is, or should have been, discovered before an award is governed by s.73 of the 1996 Act:

> "***S.73 – Loss of right to object***

[538] The DAC Supplementary Report at [33] made clear that public policy grounds provide a basis for refusal of enforcement given the preservation of those common law grounds by s.81(1)I of the 1996 Act. The Court's power to refuse to enforce if it is not persuaded that enforcement would be appropriate is confirmed (whether pursuant to the common law as a result of s.81 or pursuant to a statutory discretion) in e.g. *West Tankers Inc v Allianz SpA [2012] EWCA Civ 27, [2012] 1 Lloyd's Rep 398* at [37]–[38] per Toulson LJ; *Y v S* [2015] 1 Lloyd's Rep 703 J at [10] per Eder J; *Sterling v Rand* [2019] EWHC 2560 (Ch), [2019] 2 Lloyd's Rep 577 at [66]-[68] per Clare Ambrose QC sitting as a Deputy High Court Judge. See also *London Steam Ship Owners Mutual Insurance Assoc Ltd v Kingdom of Spain, The Prestige (No 2)* [2014] 1 Lloyd's Rep 309 at [183]–[184].

(1) If a party to arbitral proceedings takes part, or continues to take part, in the proceedings without making, either forthwith or within such time as is allowed by the arbitration agreement or the tribunal or by any provision of this Part, any objection …

(a) that the tribunal lacks substantive jurisdiction … or

(d) that there has been any other irregularity affecting the tribunal or proceedings

he may not raise that objection later, before the tribunal or the court, unless he shows that, at the time he took part or continued to take part in the proceedings, he did not know and could not with reasonable diligence have discovered the grounds for the objection"

259. Section 73 only applies to the discovery of an irregularity before the award is published.[539] *Merkin and Flannery* notes (6th Ed, at [73.7]) that: *"… once an award is made, if it is a final award … then section 73(1) simply has no relevance to the conduct of the party from that moment onwards, and there is therefore no statutory waiver that operates at all…"* This is clear from the wording of s.73 itself, which refers to the appellant's knowledge at *"the time he took part or continued to take part in the proceedings"*.

260. It is important to recognise the limits of the s.73 issue at this final hearing:

a. As to the temporal scope of the issue, the relevant period is up until publication of each Award. Thus, for the Jurisdiction Award, the period to 9 July 2014, for the Liability Award, to 17 July 2015, and, for the Final Award, to 31 January 2017. The position regarding the period after the Final Award was published, on 31 January 2017, has already been finally determined by Sir Ross Cranston. He found there was no trigger to put FRN on notice of the fraud until the Autumn of 2019. He made the same determination in respect of the period from 11 November 2015 (upon the appointment of Mr Malami as Attorney-General) until publication of the Final Award, which overlaps with the period after the Liability Award.[540]

b. As to the substantive scope of the issue, P&ID relies on s.73 only in respect of FRN's case on Mr Quinn's perjured evidence.[541] Even that case is limited to the allegation that FRN *"knew that there were no reasonable grounds to dispute P&ID's willingness and ability to perform the GSPA"*.[542] FRN addresses P&ID's s.73 argument without prejudice to the

[539] The same distinction applies to domestic judgments, as made clear in the recent *Elu* ruling: see below.
[540] Cranston Judgment at [228] {C/12/36} where Sir Ross Cranston sets out P&ID's three periods, and [233] and [239] where he gives his conclusion in respect of the first period {C/12/37}.
[541] Defence at paragraphs 60 {A1/2/43}, 74 and 77 {A1/2/62-} and {A1/2/63}.
[542] Defence at paragraph 63 {A1/2/45}.

position that, given that pleading, there is no knowledge it could and should have possessed at the time such as to preclude it from running its perjury case now (i.e. that P&ID was not ready and willing to perform). P&ID rightly does not allege that FRN could and should have discovered the existence of the bribery or the concealment or perjury in this regard, nor the collusion with FRN's legal team, nor the leaking of FRN Privileged Documents.

c. Further, while s.73 is expressly stated to apply to ss.66(3), 67 and 68 of the 1996 Act (within each of those provisions), there is no such express provision in respect of the general discretion to refuse enforcement under s.66(1). It permits the Court to refuse enforcement on common law grounds by reason of the reservation of those grounds in s.81. Thus, any limitation on a party's right to challenge enforcement under s.66(1) should be considered on the common law approach, with the result that the statutory waiver provision in s.73 of the 1996 Act does not apply. The discussion below of the common law approach (as set out in *Takhar*) is therefore directly applicable to the s.66(1) issue. In any event, no point on s.73 or an equivalent waiver is taken by P&ID in respect of s.66(1). Even if P&ID did take that point, the same arguments as FRN makes in respect of s.73 as regards its set-aside application (in this section and further below in respect of the detailed grounds of challenge) would apply and the argument would not assist it.

261. Without prejudice to this limited scope, FRN considers the s.73 legal test below.

262. The purpose of s.73 is to prevent a party from *"keeping up his sleeve"* potential challenges that could have been deployed in the arbitration.[543] It does not impose an impossibly high standard. As Walker LJ held in *Sumukan Ltd v Commonwealth Secretariat* [2007] EWCA Civ 1148, [2007] 1 Lloyd's Rep 370 (which concerned a procedural challenge, not fraud), *"it would be wrong to construe section 73 so as to hold that [the appellant] could with reasonable diligence have discovered facts which it neither knew nor believed nor had grounds to suspect"*. The statutory bar therefore should not apply unless the relevant party is *"in full possession of all the facts"* ([36]-[38]).

263. Section 73 only applies to domestic awards such as the Awards in this case. However, broadly the same rule applies to foreign awards under the common law. In *Westacre Investments Inc v Jugoimport-SPDR Holding Co Ltd* [2000] QB 288, the Court of Appeal held that the same

[543] *Rustal Trading SA v Gill & Duffus SA* [2000] Lloyd's Rep 14 at p.20 (col.2) per Moore Bick LJ.

approach for domestic judgments should apply to the issue of admitting new evidence of fraud in respect of foreign awards.[544] A party may therefore only adduce new evidence where it could not *"with reasonable diligence"* have been produced at the arbitration (at pp.306D, 309D-310A, 316C-E). On the facts of that case corruption had been a *"central issue"* which was *"made, entertained and rejected"* in both the arbitration and subsequent Swiss appeal proceedings (at p.316F). Since there was *"nothing to suggest incompetence on the part of the arbitrators"* and *"no reason to suspect collusion or bad faith in the obtaining of the award"*, Westacre's attempt to adduce new evidence of bribery was refused (at p.317B).[545] *Westacre* was considered in *Alexander Brothers Ltd v Alston Transport SA* [2020] EWHC 1584 (Comm), [2021] 1 Lloyd's Rep 79. Cockerill J held that, where an allegation of fraud has been made and rejected on the facts by the arbitrators there is *"very nearly no scope"* for an English Court to re-open that finding ([105]).

264. The Court of Appeal's approach to *"reasonable diligence"* has been affirmed in a number of later cases concerning foreign awards. All of these cases concerned irregularities which were, or should have been, discovered during the arbitration (and therefore would have been caught by s.73 if the award had been a domestic one).[546] The *"reasonable diligence"* test has been applied particularly flexibly in cases concerning fraud. Thus in *HJ Heinz v EFL* [2010] 1 Lloyd's Rep 727, which concerned an attempt to resist enforcement of a foreign award on the ground that a series of contracts presented to the tribunal had been forged, Burton J held that the Court was required to assess *"whether the fresh evidence was not reasonably available to the party seeking to rely on it, at the time of the hearing of the arbitration"* ([25]). At [33] the Judge said:

> *"I do consider that, in a case of concealed fraud (concealed forgery) it may be, particularly where the source of the evidence is contained in the opposite camp, that, upon analysis of the facts an approach more favourable to the party defrauded in respect of what is due, or reasonable diligence, may be adopted."* [emphasis added]

265. He also said that the test is not *"whether a reasonable solicitor could have discovered the evidence"* but *"whether the reasonable solicitor should have discovered it"* ([31]) [emphasis added].

---

[544] As set out below, the principles applicable to challenging domestic judgments on grounds of fraud have recently been developed by the Supreme Court in *Takhar*.

[545] Waller LJ dissented in the result, holding that the majority had not attached in *"appropriate level of opprobrium"* to commercial corruption, and that it was *"important that the English court is not seen to be turning a blind eye to corruption on this scale"* at p.315A-C. This public policy consideration outweighed the public policy on finality of arbitral awards at p.315G-H.

[546] See e.g. *DDT Trucks of North America v DDT Holdings Ltd* [2007] 2 Lloyd's Rep 213 at [22]; *HJ Heinz v EFL* [2010] 1 Lloyd's Rep 727 at [25].

266. This issue was considered again in *Stati v Republic of Kazakhstan* [2017] 2 Lloyd's Rep 201. Kazakhstan said it had discovered the alleged fraud through a disclosure Order obtained in the US only after the award was published. The Court held that, in order to resist enforcement of an award on grounds of fraud discovered after the arbitral proceedings, the new evidence must not have been available at the arbitration,[547] and it must demonstrate at least *prima facie* evidence of fraud to overcome the *"extreme caution"* of the Court in setting aside awards on public policy grounds ([11(8)-(9)]).

267. The Court went on to cite *Heinz* for the principle that, where evidence of fraud is located in the *"opposite camp"*, a *"more favourable"* approach to reasonable diligence should be adopted ([73]). It followed that *"the claimants, if dishonest, are not to escape if the right stone was not turned over by [the appellant]"* [emphasis added]. The Court concluded that Kazakhstan had acted with reasonable diligence, despite a delay of approximately two years between the award and the application to resist enforcement. The Court found it particularly important that the evidence of fraud on which Kazakhstan sought to rely should have been disclosed by Stati during the arbitration ([74]-[79]).

268. It cannot, of course, reasonably be expected that the fraudsters would have revealed their own fraud to the Tribunal. As the Court of Appeal recognised in *Westacre*, the *"reasonable diligence"* test does not apply where there is *"reason to suspect collusion or bad faith in the obtaining of the award"* (at p.317B).

269. "*Reasonable diligence*" must moreover be interpreted in the light of the Supreme Court's decision in *Takhar v Gracefield Developments Ltd* [2019] UKSC 13, [2020] AC 450 (*"**Takhar**"*). Sir Ross Cranston addressed the impact of *Takhar* on arbitration in his judgment at [178]-[183], which the Court is asked to read {C/12/9}. The Judge said that:

    a. The effect of *Takhar* is that *"where a party seeks to set aside a judgment on grounds of fraud, it is not necessary to show that the evidence of fraud could [not] reasonably have been uncovered sooner"* ([178]).

    b. This is subject only to two possible exceptions: where fraud has already been argued at the trial, and where there has been a *"deliberate decision"* not to investigate fraud *"even if fraud had been suspected"* ([178]). These exceptions have been considered further in the case-law, as explained below.

[547] See similarly [69], where Knowles J asks whether the evidence could have been discovered *"before the award"* with reasonable diligence. As set out above, this is effectively codified in s.73 for domestic awards.

c. Had it been necessary to decide the issue, Sir Ross Cranston would have found that *Takhar* applies to arbitration awards as it does to judgments: the *"fraud unravels all"* principle is a *"fundamental principle of our law"*, and *"there seems to be no reason why the finality of arbitration awards should be afforded greater importance than the finality of judgments in circumstances of fraud"*. Moreover, were s.73 to oust the application of *Takhar*, that would create an arbitrary distinction between statutory challenges to awards, and common law challenges brought under the Court's surviving jurisdiction under s.81(1) of the 1996 Act ([183]).

270. Sir Ross Cranston was, with respect, correct to find that *Takhar* applies to arbitration awards as it does to judgments. In addition to the reasons that he gave, s.73, and the related doctrine of waiver by election, is concerned with preventing abuse of process.[548] Abuse of process was a core focus of the enquiry in *Takhar*, and critical to that enquiry was the question of whether a point at issue and the evidence deployed in support of it not only could have been raised in the earlier proceedings, but should have been: *Takhar* at [63]. The same approach is seen in s.73, which, in addition to adopting the Model Law test of actual knowledge of the earlier facts, added one of constructive knowledge – i.e. the preclusion under s.73 is triggered where the applicant could and should have discovered the facts in question (see Burton J in *Heinz*, at paragraph 265 above). The *Takhar* approach thus applies equally in the context of arbitration.

271. It would be wrong to say, should it be alleged, that applying *Takhar* in a case to which s.73 applies would involve re-writing the statute. On the contrary, *Takhar* is consistent with the purposes of s.73 (to prevent abuse of process) and s.68 of the 1996 Act (to promote the integrity of English arbitration). As Sir Ross Cranston said in his judgment, the integrity of both the arbitration system and the English Courts is threatened if a Court is asked to enforce an award based on fraud, *"certainly of the through-going character alleged in this case"* ([273][549]). In any event, applying *Takhar* does not mean disapplying s.73. It simply spells out the meaning of 'reasonable diligence' in the specific context of fraud cases (whereas s.73 applies to all types of challenges).

272. *Takhar* was recently considered by the Court of Appeal in *Park v CNG Industrial Capital Europe Ltd* [2022] 1 WLR 860, where the appellant successfully set aside a judgment obtained

[548] See e.g. *Province of Balochistan v Tethyan Copper Co Pty Ltd* [2021] EWHC 1884, [2021] 2 Lloyd's Rep 443 at [269]; and Eder J in *Nestor Maritime SA v Sea Anchor Shipping Co Ltd* [2012] EWHC 996 (Comm) [2012] 2 Lloyd's Rep 144, at [10] where he said that conduct which falls foul of s.73 *"can properly be characterised as an abuse of process"*.
[549] {C/12/43}

by fraud. In a comment which chimes with P&ID's conduct of the present proceedings, Andrews LJ held that it had been *"regrettable that, in the teeth of compelling evidence to the contrary"* the claimant *"has persisted in maintaining [its] lie all the way to the Court of Appeal"* ([46]). In allowing the set-aside application to proceed, she said that under *Takhar* the fraud need only be *"an"* (not *"the"*) operative cause of the judgment ([50]), that according to *Takhar "once a judgment is tainted by deceit it is fatally flawed"* ([51]), and that it was no answer that the fraudulent party could have obtained the judgment by running an alternative cause of action which would not have relied on the dishonest representation ([52]).

D. GSPA AND AWARDS PROCURED BY BRIBERY AND CORRUPTION

273. Mr Quinn's witness statement to the Tribunal purported to give a full and fair account on behalf of P&ID as to how the GSPA came to be entered into. Thus he said:

a. *"I am the Chairman of the Claimant, P&ID. I make this witness statement in support of P&ID's arbitration commenced by a Request for Arbitration dated 22 August 2012".*[550]

b. *"I am fully authorised to make this statement in support of P&ID's claims in the arbitration commenced against the Government. I make this statement on the basis of my own knowledge of the events I describe, whether that be from my direct participation in them or from discussing them contemporaneously with my colleagues, and in particular Neil Hitchcock, the Project Director of P&ID, and my business partner Brendan Cahill".*[551]

c. *"In this witness statement I wish to explain how the GSPA came about, and why P&ID was ultimately prevented from implementing it"* [emphasis added].[552]

d. Mr Quinn purported to give at paragraphs 4-6, 9-96 and 153 of his statement a full and fair account of the purportedly legitimate circumstances in which P&ID entered into the GSPA. He gave a detailed narrative of the alleged background, negotiation and approval processes for the GSPA, including citing Mr Tijani as having been involved in the examination of P&ID's proposal on behalf of the MPR.[553] He presented the award of the GSPA as the end product of an above-board process. Ms Taiga was referenced on a number of occasions,[554] with the explanation that she and Dr Mohammed Mushabu Ibrahim were appointed by the MPR to be members of the

[550] {H6/253/2} at paragraph 1.
[551] {H6/253/3} at paragraph 3.
[552] {H6/253/3} at paragraph 6.
[553] See, for example, Quinn 1 at paragraphs 63 {G/9/16}, 85 and 86 {G/9/21}.
[554] Quinn 1 at paragraphs 80 {G/9/20}, 85, 86 {G/9/21}, 88 {G/9/22} and 114 {G/9/27}.

JOC set up pursuant to the MOU to determine the commercial terms of the GSPA.[555] Mr Quinn's evidence did not divulge the existence of any close or personal relationship as between P&ID or its principals and Ms Taiga; instead the impression given to any ordinary reader was that her involvement (flagged as *"Legal Director"*)[556] was one of arm's length scrutiny by P&ID's counterparty in the awarding process.

e. Mr Quinn also said at paragraph 9 of his statement that *"I wish to refer to P&ID's Statement of Case of 28 June 2013, the contents of which I confirm to be true to the best of my knowledge, information and belief"*,[557] thereby endorsing the account of the entry of the GSPA contained therein, which likewise presented P&ID's entry of the GSPA as having been the outcome of a legitimate process.

274. Suffice to say, no mention that bribes had been paid or promised to any Nigerian public officials was included in Mr Quinn's narrative of how P&ID's entry into the GSPA came about, nor any mention of the close relationship (with or without bribes) that P&ID now alleges it had with, amongst others, Ms Taiga and Mr Tijani. Mr Quinn's evidence instead (a) concealed the fact that the GSPA, and/or its terms, were the result of bribery and corrupt arrangements with Nigerian officials; and (b) represented impliedly and falsely that P&ID had entered into the GSPA in wholly legitimate circumstances.

275. Throughout the arbitration P&ID concealed the bribery (including through Mr Quinn's perjured evidence) from FRN and the Tribunal. As a result, no defence relating to the existence of bribery (an obviously serious allegation) was raised by FRN or considered by the Tribunal. Even in these proceedings, P&ID adamantly maintains that it did <u>not</u> pay or agree to pay any bribes to any Nigerian officials to procure the GSPA or the arbitration agreement.[558] However, the evidence now available is overwhelmingly to the contrary.

276. P&ID's Mr Andrew contended in his evidence before Sir Ross Cranston that, *"It was…apparent from an early stage that the Nigerian Government simply had no real defence to the claim"*.[559] However, had the true facts of the bribes paid and promised in connection with the entry of the GSPA been known to FRN and the Tribunal, FRN would have had a strong defence to P&ID's claim in the arbitration, as to which the Nigerian law evidence is addressed further below (Nigerian law and English law in fact being materially identical as to what constitutes

[555] Quinn 1 at paragraphs 80-81 {G/9/20}.
[556] Quinn 1 at paragraph 80 {G/9/20}.
[557] {H6/253/3}.
[558] Defence at paragraphs 7.1 {A1/2/3} and 79.1 {A1/2/66}.
[559] Andrew 3 at paragraph 17 {E/18/5}.

bribery and the consequences of the same from a civil law perspective). The outcome of the arbitration would plainly have been different – let alone *"might well"* have been different. P&ID's claim would have failed.[560]

i. The legal principles concerning bribery

277. Bribery is recognised as a scourge both in England and Wales,[561] and internationally.[562] Lord Neuberger identified it in *FHR European Ventures LLP v Cedar Capital Partners LLC* [2015] AC 250 at [42] as *"an evil practice which threatens the foundations of any civilised society"* and noted *"concern about bribery and corruption generally has never been greater than it is now"*.

278. The matters comprising bribery in this case concerned Nigerian public officials. P&ID's claims in the arbitration were governed by Nigerian law. As a result, this Court has before it Nigerian law expert evidence on the principles applicable to bribery, as well as the civil law consequences of bribes having been paid, as a matter of Nigerian law. This evidence will be explored at trial, but key areas of agreement and disagreement are flagged below.

279. First, the experts agree that, from a criminal law perspective, the Nigerian Corrupt Practices and Other Related Offences Act 2000 (the "**CPORO Act**") criminalises the receipt and giving of bribes and gratification of public officers and other officials in Nigeria.[563] The key provisions are as follows:

    a. Section 8 of the CPORO Act provides that an offence of corruption is committed by *"any person"* (i.e., whether or not a government official) who corruptly *"asks for, receives or obtains any property or benefit of any kind for himself or for any other person"* or agrees or attempts to receive or obtain any property or benefit of any kind *"for himself or for any other person"* on account of any historic or future action or inaction, or favour or disfavour in the discharge of his official duties or in relation to any matter connected with the functions, affairs or business of a government department, or corporate body

[560] SoC at paragraphs 63A {A1/1/40} and 80(3) {A1/1/64}.
[561] From a civil law perspective, Slade J's definition of bribery in *Industries and General Mortgage Co Ltd v Lewis* [1949] 2 All ER 573 at 575 has been widely adopted: *"a bribe means the payment of a secret commission, which only means (i) that the person making the payment makes it to the agent of the other person with whom he is dealing; (ii) that he makes it to that person knowing that the person is acting as the agent ...; and (iii) that he fails to disclose to the other person with whom he is dealing that he has made the payment to the person whom he knows to be the other person's agent*".
[562] As the Tribunal identified in *World Duty Free Company v Kenya* (2006) ICSID Case No. ARB/00/7 at [157], "*In light of domestic laws and international conventions relating to corruption, and in light of the decisions taken in this matter by courts and arbitral tribunals, this Tribunal is convinced that bribery is contrary to international public policy of most, if not all, States, or to use another formula, to transnational public policy*".
[563] Nigerian Law Joint Memorandum at paragraph 2.2.1 {F4/3/35}.

or other organization or institution in which he is serving as an official.[564]

b. Section 9 of the CPORO Act provides for a similar offence committed by those who pay or promise bribes to officials (meaning *"property or benefit of any kind"*).[565]

c. Sections 8(2) and 9(2) of the CPORO Act contain rebuttable presumptions whereby, if any property or benefit of any kind, or promise thereof, is given to a public officer, or to some other person at the instance of the public officer, by someone personally or acting on behalf of another person holding or seeking to hold a contract, licence etc. from a government department, or likely to be concerned in any business transacted by the public officer or a government department, then the property, benefit or promise is presumed to have been given and received corruptly on account of a past or future act, omission, favour or disfavour to be done or shown by the public officer.[566]

d. Section 17 of the CPORO Act makes it an offence for bribes to be paid to or received by principals' agents.

e. Section 53 of the CPORO Act contains further rebuttable presumptions that apply to the offences under the Act. Section 53(1) provides that, *"where in any proceedings against any person for an offence under section 8 to 19 it is proved that any gratification has been accepted or agreed to be accepted, obtained or attempted to be obtained, solicited, given or agreed to be solicited or given, promised or offered, by or to the accused, the gratification shall be presumed to have been corruptly accepted to be obtained solicited, given, promised or offered as an inducement or a reward for or on account of the matters set out in the particulars of the offence"*.[567]

280. Second, the experts agree that, in addition, section 10(1) of the Code of Conduct Bureau and Tribunal Act 1991 (the "**Code of Conduct Act**") and paragraph 6(1) of the Code of Conduct in Part V of the Constitution of Federal Republic of Nigeria 1999 (the "**Code of Conduct annexed to the CFRN**") (which are in identical terms) provide that *"A public officer shall not ask for or accept property or benefits of any kind for himself or any other person on account of anything done or omitted to be done by him in the discharge of his duties"*.[568] Paragraph 10(2) of the Code of Conduct Act and 6(2) of the Code of Conduct annexed to the CFRN further provide that the receipt by a public officer of any gifts or benefits from commercial firms,

[564] Ojukwu 1 at paragraph 7.8 {F4/1/39}.
[565] Ojukwu 1 at paragraph 7.10 {F4/1/41}.
[566] Ojukwu 1 at paragraphs 7.9.3 {F4/1/40} and 7.10 {F4/1/41}.
[567] Ojukwu 1 at paragraph 7.9.5 {F4/1/41}.
[568] Bamodu 1 at paragraph 7.39 {F4/2/52}.

business enterprises or persons who have contracts with the government shall be presumed to have been received in contravention of subparagraph 1 unless the contrary is proved.

281. The experts disagree as to the relevance of paragraph 10(3) of the Code of Conduct Act and 6(3) of the Code of Conduct annexed to the CFRN, which provide that "*A public officer shall only accept personal gifts or benefits from relatives or personal friends to such extent and on such occasions as are recognised by custom*". Professor Bamodu contends that proving that a gift, benefit or donation was received in the circumstances provided for in paragraph 6(3) can be used to rebut the presumption in paragraph 6(2) and under the CPORO Act,[569] but himself accepts that, *"it is important to make a distinction between giving and receiving as a mark of expression/acceptance/appreciation of generosity on the one hand and giving corruptly with an aim to influence, circumvent or sabotage due processes on the other…"*.[570] Professor Ojukwu's position is that paragraph 6(3) is of limited relevance: evidence of custom is inadmissible as a defence to offences under the CPORO Act; and even insofar as the Code of Conduct is concerned, paragraph 6(3) does not prevent the application of the presumption in paragraph 6(2), nor does it permit the receipt or giving of any gift for the purpose of inducing or affecting the exercise of official duties.[571]

282. Third, the experts agree that section 23 of the CPORO Act imposes an obligation: (i) on any person from whom gratification has been solicited or obtained, or sought, in contravention of the Act, and (ii) on any public officer to whom any such gratification has been given, promised, or offered in contravention of the Act, to report the same.[572] Any person who fails, without reasonable excuse, to do so is also guilty of an offence.[573]

283. Fourth, pursuant to the agreed expert issues, the experts were also asked to opine on the issue: *"In what circumstances, if any, will a contract that has been induced or affected by bribery or tainted with illegality be unenforceable, void or voidable, and/or constitute a defence to a claim on that contract or for repudiatory breach of that contract."*

284. Professor Bamodu has failed properly to engage with this in this report. Rather than proffering a response, his evidence is that the issue remains undecided. Thus, he says that *"[a] validly formed contract with a lawful purpose and capable of lawful performance is ex facie legal and will be enforced by the Nigerian courts. The legal consequences in Nigerian law of such a contract having*

[569] Bamodu 1 at paragraph 7.43 {F4/2/53}.
[570] Bamodu 1 at paragraph 7.45 {F4/2/54}.
[571] Nigerian Law Joint Memorandum at paragraph 2.2.3 {F4/3/36}.
[572] Nigerian Law Joint Memorandum at paragraph 2.2.4 {F4/3/37}.
[573] Nigerian Law Joint Memorandum at paragraph 2.2.4 {F4/3/37}.

been affected in some way by bribery is not known to have been decided".[574]

285. In such circumstances, FRN's expert evidence, which properly engages with the issue, is to be preferred and accepted. In this respect Professor Ojukwu sets out that, whilst there is no legislation in Nigeria dealing with the civil consequences of a contract that has been entered into following bribery of an agent or a public official, and a paucity of case law directly on point, he: (i) has identified Nigerian cases which establish the existence of a strict principle that fiduciaries should not be in an unapproved position of conflict of interest or duty, and that where such a situation occurs to the knowledge of the counterparty, any contract entered into by the principal is voidable at the option of the principal;[575] and (ii) opines that, more specifically, a Nigerian Court would look to relevant English common law and doctrines of equity as reflecting principles equally applicable as a matter of Nigerian law.[576] In this regard, Professor Ojuwku was provided with an annex (Annexure V to his report) containing a series of propositions as to the content of the English common law and equity, which will be familiar to this Court. His opinion is that those propositions would be accepted by a Nigerian Court as reflecting principles equally applicable as a matter of Nigerian law. He is not aware of anything that would cause the content of Nigerian law to depart from or be distinguishable from applicable English common law and equity principles in this context.[577]

286. As set out in that Annexure V, the applicable English common law and equity principles, and therefore in turn the applicable principles of Nigerian civil law, include the following:

    a. Bribery can affect the enforceability of a contract in two main ways.[578] First, the contract may be voidable, and therefore open to rescission, as a result of the bribe. Secondly, the contract may be void because the effect of the bribe is that the agent who entered into the contract had no authority to do.[579]

    b. Insofar as rescission is concerned, a contract tainted by a bribe is voidable and may therefore be rescinded both at common law and in equity: *Logicrose Ltd v Southend United Football Club Ltd* [1988] 1 WLR 1256.

---

[574] Bamodu 1 at paragraph 10.37 {F4/2/85}.
[575] Ojukwu 1 at paragraphs 10.15-10.21 {F4/1/65-67}.
[576] Ojukwu 1 at paragraphs 10.13-10.14 {F4/1/65}.
[577] Ojukwu 1 at paragraph 10.14 {F4/1/64-65}.
[578] Grant and Mumford, *Civil Fraud* (1st Ed, 2018) at paragraph 7-45.
[579] Raphael, *Bribery: Law and Practice* (2016) at paragraph 12.87: *"Where the agent enters into a contract with P on behalf of its principal, and has received a bribe from P, P is on notice that the agent does not have the actual authority to enter into the contract. The contract would therefore be void ab initio"* {F8/13/208}.

c. In order to rescind the contract, it need not be shown that the payment has actually influenced the mind or decision-making of the agent/representative: *Logicrose* at p.1260 ("*It is immaterial whether the agent's mind has been affected or whether the principal has suffered any loss as a result*"). There is an irrebuttable presumption of influence,[580] so long as he or she was in a position to influence the principal "*in some way*".[581] In *Otkritie v Urumov* [2014] EWHC 191 Eder J said at [163]: "*The argument that these payments were not bribes because Mr Pinaev not Mr Kondratyuk was part of the decision-making body is, in my view, specious. As stated above, it is sufficient that the payment gives rise to an actual or potential conflict of interest*".

d. It need not be shown that the bribe was paid in connection with a specific transaction or transactions: *FM Capital Partners Ltd v Marino* [2018] EWHC 1768 (Comm) at [92] per Cockerill J.

e. Rescission of a contract on grounds of bribery may be invoked as a defence to a claim for breach of contract: *Occidental Worldwide Investment Corp v Skibs A/S Avanti (The Siboen and The Sibotre)* [1976] 1 Lloyd's Rep 293 at 337-338. Such a defence may be deployed for the first time in the course of a trial (e.g. by pleading that the contract was tainted by bribery and has therefore been rescinded): *Clough v London and North Western Railway Co* (1871) LR 7 Ex 26.

f. Even if it is too late to rescind the contract for whatever reason, the counterparty has a right to terminate the contract going forwards: see Millet J in *Logicrose* and *Tigris International NV v China Southern Airlines Co Ltd* [2014] EWCA Civ 1649 at [143] per Christopher Clarke LJ (*"At law bribery, whether at or after contract, amounts to a repudiatory breach by the bribing party which, on discovery, his counterparty may accept as bringing the contract to an end"*).[582]

ii. The evidence now uncovered

287. Unpicking the bribery in this case has been vastly complicated not only by the continued payment of bribes to those with incriminating information, but also by the other lengths that P&ID and those associated with it went, and have persisted in going, to conceal such wrongdoing. A number of points are worth highlighting at the outset.

---

[580] *Otkritie v Urumov* [2014] EWHC 191 (Comm) at [68(ii)].
[581] *The Law of Rescission* (2nd Ed, 2015) at paragraph 8-55.
[582] {F8/13/138}.

288. First, P&ID was part of a group of companies controlled by Mr Quinn and Mr Cahill. Mr McNaughton in various emails thus identified P&ID as part of the *"ICIL group of companies"*,[583] and described how *"[d]uring my time in Abuja I was witness [to] many illegal activities i.e. contract fixing/illegal payments"*.[584] The companies in the ICIL group operated at the direction and whim of their controllers, with cross-mingling of funds, and without regard to separate legal personalities of the companies involved. Thus, payments would frequently be made (or recorded as made) by one company in the ICIL group whilst in fact that payment was in connection with the operations of another company in the group. Consistent with this, an internal ICIL email from 20 September 2013 identified that, *"There is need henceforth for us in accounts office to have accurate information especially as to which company… expenses relate. It could be that most Dublin expenses that are found in ICIL account belong to other companies"*.[585] Likewise, the bank accounts of ICIL and ICIL Nigeria were used to withdraw cash for use relating to the different companies in the ICIL group: Mr Nolan has previously explained that ICIL was a *"holding vehicle to manage the administration and finances of the whole group in Nigeria"*.[586] This way of structuring the group and the payment of bribes has added to the opacity and helped to conceal the activities that went on. P&ID has sought at various points to incorrectly present payments (for example, for the benefit of Ms Taiga and Mr Kuchazi) made by Mr Cahill direct, and/or via ICIL and Mr Nolan since its change of ownership in 2017, as having nothing to do with it. This is entirely artificial and without merit. The reality is that Mr Cahill has continued to act on behalf of P&ID.[587] But moreover, not only does the disclosure evidence (at least) Mr Andrew and Mr Burke knowing and approving of payments made by Mr Cahill, ICIL and Mr Nolan in such period, including for the benefit of Ms Taiga and Mr Kuchazi,[588] but that Mr Andrew (a current director of P&ID) has in fact been extensively providing funding to both ICIL and Mr Cahill,[589] as well as paying the fees of various

[583] Mr McNaughton email to Mr Cahill dated 29 September 2020 {H10/19/1}.
[584] Mr McNaughton email to Mr Johnson of VR dated 20 January 2020 {H9/328/2}.
[585] {H6/86/1}.
[586] Nolan 1 at paragraph 15 {E/11/5}. In Cahill 1 at paragraph 87 it was similarly explained that *"ICIL Nigeria became our Nigerian vehicle for managing the finance and administration of our other Nigerian entities…Funding would come from ICIL Dublin and from other overseas entities….and then be distributed to whichever project and entity was in need of finance"* {E/17/26}.
[587] See, just for example, {L/31/148}, {H9/469/2}, {H9/492/1}, {H10/10} and {H10/18}.
[588] See, just for example, {L/31/30}, {L/28/218}, {H9/284}, {L/31/55-57}, {L/31/77-81}, {L/36.1/16}, {L/36.1/34}, {L/36.1/57}, {L/38/1}, {L/38/3}, {L/38/49}.
[589] See, just for example, Mr Smyth's WhatsApp message to Mr Andrew dated 11 October 2019 stating, *"Hi Seamus, did you manage to send the $50k to ICIL in Dublin"*, to which Mr Andrew replied *"Sorry will do it today"* {L/26.1/32-33}; Mr Smyth's WhatsApp message to Mr Andrew dated 25 August 2020 stating, *"Seamus, could you please send €20k to Industrial Consultants at the usual…"*, to which Mr Andrew replied, *"Ok – euros – will do"*, before agreeing to increase this to €30k on 3 September 2020 {L/26.1/69-71}; Mr Smyth's WhatsApp message to Mr Andrew dated 6 January 2021 stating, *"Hi Seamus, could you please do the usual two transfers: €25k to ICIL and €25k to Brendan…"*{L/26.1/106}, with Mr Smyth confirming receipt on 22 January 2021 {L/26.1/114}; Mr Smyth's WhatsApp to Mr Andrew dated 22 February

Nigerian lawyers.[590] Such payments have been made on behalf of and/or for the benefit of P&ID.

289. Second, those acting for P&ID, and the other ICIL group companies, have at all times been conscious of the need to try to avoid committing to paper incriminating content and of the need to minimise any documentary record revealing their wrongdoing. This has taken a number of forms including the following:

a. Mr McNaughton described how cash withdrawals to pay bribes were often disguised within ICIL group companies' internal documents and accounts by codewords.[591] That codewords, including *"PR"*, *"Dublin"* and *"Marketing"* expenses, and *"dash"*, were often used to hide illicit activities in the records of ICIL group companies is further confirmed by other documents in P&ID's disclosure.

b. In addition to being conscious of the need to conceal bribes in their financial records, those acting for P&ID, and the other ICIL group companies, were aware of the risk of their communications subsequently being uncovered. For example, in a WhatsApp message from Ms Taiga to Mr Cahill dated 17 October 2019, she said that *"…in the interest of a successful outcome on this matter, there is a strong requirement to be discreet and limit third party activities regarding our 'behind the scenes' liasons* [sic]. *In particular financial relations…".*[592] By a WhatsApp message from Mr Cahill to Ms Taiga sent on 11 December 2020, he said that *"…I spoke at length this morning with Isha and we are on the case but pls be conscious that we must assume that all communications are monitored or will be the subject of discovery orders".*[593] Accordingly, whilst there are occasional and significant slips, those involved were frequently careful to tailor their messages in light of the possible paper trail. This awareness of the need to avoid incriminating paper trails is a general feature of P&ID's conduct. For example, before sending communications about McNaughton on to Mr Burke and Mr Andrew, Mr Cahill instructed Mr Smyth to

2021 stating, *"Hi Seamus, could you please transfer €30k to ICIL as soon as possible…"*, to which Mr Andrew replied, "*Will do*" {L/26.1/127}; Mr Smyth's WhatsApp to Mr Andrew dated 6 April 2021 stating, "*Hi Seamus, could you please transfer: €30k to ICIL and €50k to Brendan…*" {L/26.1/139}; Mr Smyth's WhatsApp to Mr Andrew dated 17 May 2021 stating, "*Hi Seamus, could you please transfer: €15k to ICIL and €40k to Brendan…*" {L/26.1/150}; and Mr Smyth's WhatsApp to Mr Andrew dated 22 July 2021 stating, *"Hi Seamus, we have run out of funds for the office and need to pay some legal fees, rent and college fees as well as wages. Could you please transfer Euro 80k to ICIL and 20k to Brendan…"* {L/26.1/172}, with Mr Andrew confirming on 27 July 2021 the transfer of these funds {L/26.1/175}.

[590] See, just for example, {H9/435/2}.

[591] Mr McNaughton's email to Mr Cahill dated 29 September 2020 {H10/19/1} and Mr McNaughton's email to Mr Johnson dated 20 January 2020 {H9/328/1}.

[592] {L/30/4}.

[593] {L/30/224}.

"*check verbally first as they may not want it. Explain my position today*".[594] Mr Smyth promptly responded that he had *"spoke with Seamus about Bernie. He does not want me to send it to him. I told him of the contents and he is very concerned and will examine it in detail on Monday when he is in Dublin with me"*.[595] In other words, Mr Andrew wanted to avoid creating a further incriminating paper trial that might be disclosable.

290. Third, P&ID also used Nigerian representatives to act as middlemen to facilitate the payment of bribes on the ground and to add opacity. This will be explored further at trial, but thus far two particular such middlemen stand out: Mr Kuchazi and Mr Adebayo. By way of brief introduction:

a. **Mr Kuchazi** is a long-term associate and friend of Dr Lukman who witnessed the execution of the GSPA.[596] In his interview on 5 September 2019, Mr Kuchazi asserted to the EFCC that he signed the agreement in his capacity *"as [Mr Michael Quinn's] friend"*.[597] However, he has an agreement with P&ID, apparently entered into in around June 2009, to be paid 3% of its post-tax profits through one of his companies, Kore Holdings (which has been treated by P&ID as a share in proceeds of the arbitration, whether through a settlement or a final award).[598] No justification has been given as to why Mr Kuchazi was to receive such significant interests.

b. Mr Kuchazi's supposed role was to *"facilitate meetings"* and he distributed business cards in which he held himself out as P&ID's *"Commercial Director",*[599] but in his evidence for these proceedings, Mr Kuchazi denies ever being a director of P&ID and describes his activities for P&ID as being *"limited to delivering and receiving messages and letters on behalf of P&ID Nigeria"*.[600]

c. It is to be inferred from the massive amount of the compensation P&ID agreed to pay for the role performed by Mr Kuchazi, Mr Kuchazi's long-term association with Dr Lukman and associated position of influence, his lack of any meaningful role at P&ID, and the evidence of bribery to other Nigerian officials by and on behalf of P&ID, that the entitlement to a share of P&ID's profits and subsequent payments to

[594] {H10/32/1}, {L/20/398} and {L/22/330}.
[595] {H10/31/1}, {L/20/399} and {L/22/331}.
[596] Kuchazi 1 at paragraph 4 {E/10/2} and paragraph 14 {E/10/4}.
[597] Transcript of Mr Kuchazi's EFCC interview on 6 September 2019 at p.4 {J/32/2}.
[598] {H7/113.2}, {H2/151/1} and {H3/301/1}.
[599] Transcript of Mr Kuchazi's EFCC interview on 7 September 2019 at p.11 J/32/4}; Kuchazi 1 at paragraph 4 {E/10/2} paragraph 11{E/10/4}. A copy of the business card appears at {H10/156/25}.
[600] Kuchazi 1 at paragraph 10 {E/10/3}.

him were made in return for Mr Kuchazi acting on behalf of P&ID as the conduit for paying and concealing bribes to Nigerian officials, including Dr Lukman.

d. It is particularly noteworthy that the amount of remuneration that Mr Kuchazi would be due if the Final Award were enforced now would be over US$300 million, which is entirely out of proportion with his alleged task of "*delivering and receiving messages*", and goes well beyond compensation for the fact that "*there is no state pension in Nigeria*".[601] Indeed, in his interview with the EFCC, Mr Kuchazi said that he did not even know what technology P&ID intended to use for the GSPA. All he knew was that P&ID wished to assist the government by converting wet gas for power generation.[602] Mr Kuchazi says that this enormous remuneration package was arrived at *"not by lengthy negotiation, but rather it was a percentage figure that felt about fair"*.[603] P&ID's response is that its agreement with Mr Kuchazi was reached at "*an embryonic stage*" and it *"would not then have placed any concrete value upon it"*.[604] But this contradicts Mr Quinn's own evidence to the Tribunal that the *"anticipated profits"* of the project were US$5-6 billion.[605]

e. Whilst it is to be concluded that bribes were paid out of various of the significant cash withdrawals from ICIL group companies in the period from 2008 onwards,[606] the internal statements of ICIL group companies even identify certain sums as having expressly been for use as *"Papa- Dublin Exps.-Kuchazi- Gas", "Papa-Kuchazi-Dublin expenses" and "Dublin Expenses – Kuchazi"* (i.e., to be inferred as indicating such sums were plainly to be used as the payment of bribes by Mr Kuchazi).[607] That Mr Kuchazi was engaging with corrupted public officials on behalf of P&ID is also further demonstrated by P&ID's disclosure indicating that he was able to obtain and provide to P&ID confidential and privileged materials belonging to FRN.[608]

f. Further, despite Mr Kuchazi's entitlement being to 3% of its post-tax operating

---

[601] Kuchazi 1 at paragraph 19 {E/10/5}.
[602] Transcript of Mr Kuchazi's EFCC interview on 7 September 2019 at p.10 {J/32/3}.
[603] Kuchazi 1 at paragraph 9 {E/10/3}.
[604] Cahill 1 at paragraph 135 {E/17/37}.
[605] Quinn 1 at paragraph 4 {H6/253/3}.
[606] See Bribery Statement of Facts paragraphs 102-105 {A5/2/38-40}.
[607] Bribery Statement of Facts paragraph 14 {A5/2/6-7}. See for e.g. {H4/116/1} refers to NGN 100,000 as "*Papa-Dublin Exps.-Kuchazi- Gas"* on 7 July 2009; {H10/109/1} refers to NGN 1,000,000 as "*Papa/Kuchazi" - Dublin expenses"* on 3 September 2009; {H3/163.1/1} K173 records *"Dublin Expenses – Kuchazi"* of NGN 950,000 on 27 October 2009; {H10/109/1} refers to NGN 50,000 as *"Papa —Kuchazi - Dublin expenses"* on 25 November 2009; and {H3/163.3} refers to a NGN 500,000 payment labelled *"Dublin Expenses Kuchazi"* on 14 January 2010.
[608] See, for example, FRN Privileged Documents Statement of Facts at paragraphs 6(1)(i) {A5/1/4} (referring to {I/62} and {I/63}) and 60(1)(ii) {A5/1/57} (referring to {I/21} and {I/22}).

profits, and P&ID not yet having ever generated profits, P&ID's disclosure reveals that he was also being paid a regular "*allowance*",[609] and has in fact received regular payments of approximately US$1,000 from Eastwise and ICIL Ireland, commencing in September 2015 until at least May 2017;[610] two apparent 'bonus' payments of US$4,989 each from Eastwise on 29 June 2015 and 13 August 2015,[611] and a further such payment of US$4,975 from ICIL Ireland on 18 January 2017;[612] and a series of US$10,000 payments from ICIL Ireland on 6 February, 12 April and 14 May 2018.[613] Given Mr Kuchazi's lack of any legitimate legal entitlement to these payments, it is to be inferred that they were on behalf of P&ID as part of the illicit agreement with him and to procure his continued concealment of the bribes paid.

g. **Mr Adebayo** (whose role is addressed in further detail in Section F below) is the son of General Robert Adeyinka Adebayo. Mr Quinn, or companies associated with him, paid Mr Adebayo's fees whilst in education. Documents disclosed by P&ID in these proceedings reveal that under the terms of a *"Settlement Brokerage Agreement"* dated 2 July 2014,[614] Mr Adebayo was to act as P&ID's representative during the arbitration,[615] with his role euphemistically being *"to facilitate negotiations between [FRN] and P&ID with a view to securing an amicable settlement of the claims in favour of P&ID"*.[616] In return, Mr Adebayo was promised an extraordinary 50% of any settlement figure totalling $1 billion or more, plus an additional $60 million payment for achieving a settlement of $950 million or more. Pursuant to this, and as P&ID was well aware, Mr Adebayo made corrupt payments on behalf of P&ID to those involved in FRN's arbitration defence and procured FRN Privileged Documents which he passed on to P&ID.

h. P&ID has attempted to deflect the fact that Mr Adebayo has been caught red-handed paying bribes and soliciting FRN Privileged Documents by arguing that he was not acting as P&ID's agent. This attempt to reduce evidence of serious wrongdoing into a technical point of law is misconceived: the key point is that Mr Adebayo was assigned the role of seeking to settle P&ID's claim, and P&ID well knew that he intended to

---

609 Bribery Statement of Facts at paragraph 12(4) {A5/2/6} referring to (inter alia) {H4/116/1}.
610 {M/90/2}.
611 {M/90/2}.
612 {M/90/3}.
613 {M/91/1}.
614 {H9/65}.
615 See, for example, {H7/188} stating *"Mr Adebayo will have full authority to discuss all relevant matters and, if the need arises, to negotiate a settlement on behalf of P&ID"*.
616 {H9/65/5}.

do so, and did in fact do so, through bribery and corruption. P&ID is in any event wrong as a matter of law (see paragraph 447 below).

291. Fourth, P&ID is guilty of deliberate destruction of incriminating documents; more general obstruction and withholding of disclosure; interference with potential witnesses; and a failure to call relevant witnesses. This is addressed further in Section G below.

292. Fifth, many bribes were paid in cash. FRN has, through a painstaking exercise, traced some of these payments back to P&ID-related accounts or records in its internal spreadsheets. In such cases, the evidence that the bribe was paid is very strong. But FRN does not need to trace every cash bribe back to its original bank account, and in many cases it would be impossible to do so. That is why people involved in bribery use cash. While there will be occasional lapses where the payer and recipient of the bribe reveal their activity through banking activity or written records, in many cases some or all of the cash will simply be kept under the mattress, or be laundered through a *bureau de change* (as in fact seems to have happened on multiple occasions),[617] or simply be impossible to trace back to its originating withdrawal from a bank. FRN does not need to prove the source of each and every bribe in order to prove its case. It need only prove, through one means or another, that the bribe was paid.

293. It follows that, whilst FRN can now establish numerous corrupt payments made on behalf of P&ID in connection with (i) the procurement of the GSPA; (ii) the procurement during the arbitration of the continued silence of those who had been bribed; and (iii) the arbitration process itself, it is to be inferred that further bribes were in fact also paid, but the details (including the occasions of payment, amounts, and identity of the recipients) of those further bribes and the full extent of the wrongdoing remain obscured and concealed by P&ID, which has acted in a thoroughly corrupt manner. The inference that further bribes were paid is justified in light of:

    a. The matters set out above in this subsection of the skeleton;

    b. The pattern of disclosure in these proceedings, where each further tranche of disclosure, obtained only after protracted resistance by P&ID, confirms or reveals the incomplete state of the evidence so far provided. This pattern gives the Court every reason to conclude that P&ID still has not given the full detail of bribes paid;

[617] See e.g. {L/30.1/1}.

c. Evidence (i) of many large cash withdrawals by P&ID and other ICIL group companies in the material periods; and (ii) that those withdrawals were often expressly recorded as being for the purposes of *"PR"*, *"Marketing"*, and *"Dublin Expenses"* (i.e. bribes);[618] and

d. P&ID's failure to call Mr Adebayo as a witness or obtain his documents, in circumstances where there is clear evidence that he was involved in paying bribes to those connected to the GSPA and the arbitration.

iii. Identified payments made by or on behalf of P&ID in relation to the GSPA

294. The payments which FRN has identified and upon which it relies are set out in the Bribery Statement of Facts. These will be explored at trial. A summary is set out below.

Payments to Grace Taiga (Director of Legal Services at the MPR)

295. The disclosure now obtained reveals that by WhatsApp message to Mr Andrew and Mr Burke on 15 November 2019, Mr Cahill observed, referring to a recent press article,[619] *"Very strong article but I agree with the comment…about the dangers of making it appear that Grace is the critical component of the entire matter (even if she is)"*.[620] Consistent with this, Mr Cahill's evidence, as set out in Cahill 1 dated 27 April 2020, sought to downplay Ms Taiga's role and maintained that payments to Ms Taiga commenced from 2015,[621] and that they were gifts made out of friendship (albeit accepting they were paid by companies controlled by Mr Cahill)[622] in light of Ms Taiga's medical issues.[623] Mr Cahill asserted:[624]

> *"There was nothing improper about any of the payments to Ms Taiga. They were gifts that were made many years after the execution of the GSPA. She was a retired civil servant, had been retired for a number of years, did not and could not have any influence over any future business projects I might have pursued with the Nigerian Government…."*

296. Consistent with this story, Ms Taiga likewise asserted that:[625]

---

[618] Large gaps exist in the spreadsheets provided, and it is plain that an incomplete record has been disclosed. The spreadsheets that have been disclosed which refer to *"PR"*, *"Marketing"* or *"Dublin"* expenses covering the period since 2008 include those set out in the Bribery Statement of Facts, Appendix 1 {A5/3}.
[619] Likely https://punchng.com/9-6bn-judgement-grace-taiga-confirms-agf-got-draft-of-pid-agreement-witness/.
[620] {L/28/338}.
[621] Cahill 1 at paragraph 99 {E/17/29}.
[622] Cahill 1 at paragraph 105 {E/17/30}.
[623] Cahill 1 at paragraphs 102-106 {E/17/30-31} and paragraphs 107-112 {E/17/31-32}.
[624] Cahill 1 at paragraph 112 {E/17/32}.
[625] Taiga 1 at paragraphs 11-12 {E/16/4}.

"After I retired in September 2010, I kept in touch with Mr Quinn, and I would see him from time to time during his frequent visits to Nigeria. I was sad to hear of his death, in February 2015…I stayed in touch with Mr Cahill and when I asked him for financial help to meet medical expenses he did not hesitate to wire funds to me…"

297. The disclosure since obtained establishes these explanations to be false, as Mr Cahill and Ms Taiga well knew.

298. It is now clear that covert payments from ICIL group companies for the benefit of Ms Taiga commenced from (at least) 2003 when she held the position of Legal Advisor and Head of the Legal Unit at the Nigerian Ministry of Defence.[626] These bribes coincided with Ms Taiga being involved, on behalf of the MoD, with contracts being entered into by ICIL group companies. This is also consistent with Mr McNaughton's statement, based on his own involvement, that Ms Taiga *"who was legal advisor for the MOD on the Albion Marine fast response craft contract received N 2 million for her help"*.[627] In order to conceal the payments, various devices were used, including making payment to Ms Taiga by Western Union transfers,[628] and via her daughters, Ms Vera Taiga,[629] Ms Ise Taiga,[630] and Ms Omafuvwe ('Oma') Taiga.[631] Whether or not Ms Taiga may have chosen to use certain of the funds received in this or subsequent periods towards private medical costs at Harley Street clinics is irrelevant: no legitimate explanation has been given as to why it would have been appropriate for companies in the ICIL group to be using their company assets to make payments towards Ms Taiga,[632] and in any event, whatever their ultimate use, they were corrupt payments for the purpose of influencing her as a public official and then procuring her continued

---

626 Email from Mr Smyth to Mr Cahill dated 25 May 2020 {H9/461/1}; Taiga 3 at paragraph 24 {D/8/7} and paragraph 32 {D/8/9}.

627 Mr McNaughton email dated 29 September 2020 {H10/19/1}.

628 See for e.g. Bribery Statement of Facts at paragraphs 31(1) {A5/2/13} and 31(13) {A5/2/14}; 135(13) and 135(15) {A5/2/55}.

629 See e.g. Bribery Statement of Facts at paragraphs 31(3)-(6) {A5/2/13-14}, 31(8)-(9) {A5/2/14}, 31(11) {A5/2/14}, 31(19)-(20) {A5/2/15}.

630 See e.g. Bribery Statement of Facts at paragraphs 31(26) {A5/2/16}; 32(2) {A5/2/17}; 135(14)-(22) {A5/2/55-56} and 135(21) {A5/2/56}.

631 See for example a WhatsApp message from Ms Grace Taiga to Mr Cahill dated 17 October 2019 in which she stated *"Ise just informed me about all the financial arrangements…using family members may not be prudent, as I initially suggested my daughter Oma Taiga in Washington DC. Perhaps not to put anyone in the family in trouble I have now changed my mind*" {L/30/4}; and a WhatsApp message from Ms Ise Taiga to Mr Cahill dated 21 December 2019 in which she stated *"I would therefore recommend we continue or proceed with 'procurement of goods' to Nigeria using our old faithful My sister Oma"* {L/29/163}. Mr Cahill forwarded Ms Ise Taiga's message to Mr Andrew and Mr Burke that same day {L/31/57}.

632 Nor were those acting for P&ID concerned about the ultimate use of the monies paid to Ms Taiga. Thus, for example, by WhatsApp on 24 October 2019 Mr Andrew wrote to Mr Cahill and Mr Burke in relation to a particular request for payment from Ms Taiga, *"I have the impression that the main thing Grace is concerned about is to have cash for herself to organise her medical trip to London"*, with Mr Cahill promptly responding, *"You may be right but I wouldn't try to second guess her…"* {L/28/220}.

silence.[633] Further, the payments to Ms Taiga subsequent to the entry of the GSPA were understood by those concerned to be *on account of* her promised share of the proceeds of the GSPA; thus in Ms Taiga's WhatsApp to Mr Cahill dated 6 July 2015 she wrote (*inter alia*):

> *"…I am confident that everything will work together in our favor I keep remembering Papa telling me Grace u will be so wealthy u will travel all over d world as much as u wish!...Pls advice me --- should I request Neil here to advance me N50k to complete my medical bills…"*[634]

299. Ms Taiga moved to the MPR in 2006, with the only contract entered into between the MPR and companies in the ICIL group in the period post 2006 being the GSPA. She had a significant role in connection with the entry of the GSPA. Among other things she was P&ID's sole point of contact for negotiating the terms of the GSPA;[635] responsible for providing legal advice to the MPR in respect of it;[636] was a member of the JOC and involved in drafting the MOU and GSPA;[637] she was responsible for ensuring that the entry complied with any applicable legal procedures;[638] and she was responsible for pushing it forward and recommending its execution to Dr Lukman.[639] As Sir Ross Cranston observed, her involvement on the legal side and that of Mr Tijani on the technical side gave the GSPA a particular *"cloak of legitimacy"*.[640]

300. P&ID's evidence is that it first broached the idea of the GSPA with FRN in mid-2008, making its first presentation to the MPR and Mr Odusina, the then Minister at the MPR, in October 2008.[641] Between May 2008 and July 2012 a series of covert payments, totalling at least $62,000, were made to Ms Grace Taiga, both via Western Union transfer and via her daughter Ms Vera Taiga. The payments, which it is inferred were bribes paid on behalf of P&ID to Ms Grace Taiga in connection with the entry of the GSPA,[642] were nominally made

---

633 Indeed, given Ms Taiga received these payments from or on behalf of entities holding or seeking contracts with her government department, they are presumed pursuant to sections 8(2) and 9(2) of the CPORO Act.
634 {H7/312/1}.
635 See e.g. Mr Cahill's email to Mr Hitchcock dated 28 August 2009 {H2/364}; Mr Hitchcock email to Mr Tijani dated 26 August 2009 {H2/353}.
636 Taiga 1 at paragraph 27.6 {E/16/9}. A general description of the role of the MPR's Legal Unit, which includes proffering advice to the Minister and drafting contracts is at {H7/162}.
637 {H2/224/1}, {H2/353/1} and {H2/440.1}.
638 It was Ms Taiga's job, as the senior in-house lawyer responsible for the contract, to make any notifications required by law. The Court will hear expert Nigerian law evidence on whether or not the entry of the GSPA complied with applicable requirements. It is FRN's position that the GSPA was withheld from the normal channels of scrutiny required by Nigerian law.
639 {H3/108}, {H3/31/1} and {H3/109/1}.
640 Cranston Judgment at [86] {C/12/14} and [237] {C/12/37}.
641 Quinn 1 at paragraphs 53-58 {H6/253/15}.
642 SoC at paragraph 19 {A1/1/12}.

by four other ICIL group companies.[643]

301. There was no legitimate reason for these companies to themselves be making such payments, with the payment of 28 October 2008 of US$5,856.87 recorded internally using the euphemism "*PR*";[644] the payments of US $4,969.50 on 30 December 2009 and US $5,000 on 30 January 2012 described as *"commission payment"* on the payment instructions;[645] and the payment of GBP £5,000 on 29 March 2010 identified internally as expressly for the purpose of *"Gas contract"*.[646] It is noteworthy that, by comparison, Ms Taiga's annual salary at the MPR was, according to her evidence, around US$5,000 per year,[647] whilst her pension is approximately US$300 per month.[648]

302. In addition to immediate financial transfers, documents uncovered via the disclosure in these proceedings show Ms Taiga to have been secretly promised a share of P&ID's returns as a result of its entry into the GSPA. Thus, for example, in a message from Ms Taiga to Mr Cahill dated 18 December 2014, she informed Mr Cahill that *"Papa"* (Mr Michael Quinn) had informed her of the *"good news of the commencement of settlement some time ago" and that she was "hoping to spend d [sic] Christmas hols in London! ";*[649] *in a message to Mr Cahill dated 6 July 2015 she wrote " […] I am confident that everything will work together in our favor [sic] I keep remembering Papa telling me Grace u will be so wealthy u will travel all over d world as much as u wish [sic]! Hmmm! As always my fond regards and wishes to u nd [sic] the Patriarch's family Ps Pls advice me [sic] –should I request Neil here to advance me N50k to complete my medical bills. "*;[650] in a message to Mr Cahill dated 11 October 2020, Ms Taiga wrote *"It appears that Nigeria will delay the execution of the Award The only consolation I have is that they will pay interests accruing from their delay…".*[651] She had thus aligned herself with, and was a part of, P&ID and saw herself as having a direct financial interest in the outcome of P&ID's claim against FRN; in a message to Mr Cahill dated 27 March 2018, Ms Taiga wrote *"…I have been wondering and pondering whether Nigeria is making positive responses favourably to* us"[652] [emphasis added] and in a message to Mr Cahill dated 27 May 2019, Ms Taiga wrote *"Re Malami's speech I believe that He is trying to prejudice and bias the*

[643] See the Bribery Statement of Facts at paragraph 31 {A5/2/13-17}. As apparent from P&ID's Response to RFI dated 11 August 2021 {A2/6}, none of Marshpearl, Holgate or Hobson had any legitimate reason to be making payments to Ms Taiga in this period.
[644] {H9/217/1}, {H9/150/1}.
[645] {H3/120}, {H5/49.2}.
[646] {H9/217/1}, {H6/438.1/1}.
[647] Taiga 3 at paragraph 34 {D/8/9}. It is unclear what exchange rates were used for the calculation.
[648] Taiga 1 at paragraph 17 {E/16/5}.
[649] {H7/85/1}, {L/18/1} and {L/12/1}.
[650] {H7/312/1}, {L/18/4} and {L/12/5}.
[651] {H9/144/1}, {L/26/6}.
[652] {L/26/2}.

Judge and public against our company…"[653] Consistent with all of this, a commitment to make a payment to Ms Taiga was included in Mr Cahill and Mr Smyth's internal workings of how to divide the proceeds of the sale to VR of an interest in P&ID.[654] While the exact figures fluctuated, the proposed 'commitment' to Ms Taiga was stated to be up to US$500,000.[655]

303. Further, as set out in the Bribery Statement of Facts, in the period since July 2015, Ms Taiga has received payments amounting to around US$177,000, which it can be inferred were continuing bribes by or on behalf of P&ID, including three cash deposits of NGN 100,000 (US$500), NGN 20,000 (US$100) and NGN 100,000 (US$500) on 14 July, 14 August and 30 September 2015 under the reference *"Adebayo Adetunji"* and approximately USD $172,500 via bank transfers from ICIL Ireland. In addition, recent WhatsApp disclosure references *"procurement of goods' to Nigeria"*,[656] whereby Mr Cahill, in concert with Mr Andrew and Mr Burke,[657] in (at least) 2019-2020 covertly made transfers to Ms Taiga via her daughter Ms Omafuvwe Taiga (or 'Oma' Taiga) in the US, with Ms Omafuvwe Taiga then transferring such sums to Nigeria through a company called ODY of which Ms Ise Taiga is a director.[658] Via this method, US$50,018.58 was sent in November 2019,[659] and US$24,970 was sent in January 2020. Other WhatsApp messages reveal cash drops to Ms Grace Taiga via Mr Nolan giving cash sums to Ms Ise Taiga on behalf of P&ID[660] in Nigeria in (at least) December 2020,[661] and January 2021,[662] and reference Ms Ise Taiga in January 2021 having *"received package as discussed from cousin here in Nigeria"*.[663] It is to be inferred that the promise to Ms Grace Taiga of a share in the proceeds of P&ID's claim against FRN, as well as the ongoing payment of sums to her during the arbitration and during the enforcement proceedings since, were all intended by Mr Cahill and others acting for P&ID to buy her silence about the bribes paid to her around the time of the GSPA.

Payments to Mr Tijani

---

653 {L/26/17}.
649 See e.g. P&ID's 'Split 26 - Oct 2017.pdf' document {H9/76/5}. At paragraph 37 of KK's letter dated 31 December 2021 {O/197/7-8}, KK stated that these documents *"appear to be workings by Mr Cahill and/or Mr Smyth of potential divisions of the proceeds of the sale to VR Capital of an interest in P&ID"*.
655 {H9/208}.
656 {H9/311/1}and {L/29/163}. *"Goods"* being used as a codeword for money within the WhatsApp messages.
657 {L/31/30} and {L/31/77-83}.
658 {L/29/149}.
659 {L/29/146-50} and {L/29/163-171}.
660 Mr Nolan was reimbursed and/or transferred the sums he paid. Thus, for example, on 28 January 2021, Mr Cahill forwarded to Mr Andrew and Mr Burke a message to Isha Taiga stating, *"Isha I understand. I will try to put arrangements in place so that Jim can go to my friend and get some money if you're stuck tomorrow"* {L/38/71}.
661 {L/29/286} and {L/22/400}.
662 {L/29/316}.
663 {L/29/310}.

304. Mr Tijani (who died of Covid-19 in March 2021) was a member of the MPR's technical committee. His role was to scrutinise the bids of potential contractors.[664] He was the chairman of the committee for assessing P&ID's proposal for the GSPA, and served as one of the company's main points of contact.[665] Mr Tijani's backing for P&ID's project was important in giving it a cloak of legitimacy.

305. Mr Tijani initially denied knowledge of any wrongdoing, saying that he had carried out proper due diligence on P&ID. In his interview on 4 September 2019, he told the EFCC that he had *"no objections to the technical proposal and thereby subsequently recommended [it] for the accelerated gas development exercise"*. He said that he relied on P&ID's statements in its letter of 24 February 2009 that funding would be available from SAPETRO, and that to date more than US$40 million had been invested in the project.[666] He also said that he *"did not receive any gift from P&ID in discharging my duties*" and did not recall owning or being the director of any companies at the time.[667]

306. However, on 15 November 2019, the EFCC obtained the banking records for a company associated with Mr Tijani, Conserve Oil.[668] When presented with these documents, Mr Tijani changed his tune. On 12 January 2020, he confessed that he had received payments from P&ID and had overlooked shortcomings in its bid.[669]

307. FRN's case is that bribes were paid to Mr Tijani by or on behalf of P&ID to influence him in relation to the approval of the GSPA and to procure his continued silence during the arbitration.[670] These bribes were paid: (i) directly, and (ii) via payments made by ICIL group companies, S.E.S.F.T.F. Progress Limited ("**SESFTF**") and Lurgi Consult Limited ("**Lurgi Consult**"),[671] under cover of a business project known as the Bonga Audit.

308. As set out in the Bribery Statement of Facts,[672] FRN relies on the following particular corrupt payments made by or on behalf of P&ID to Mr Tijani:[673]

---

[664] Mr Tijani interview with EFCC on 4 September 2019 at p.2 {J/78/1}.
[665] See Mr Tijani interview on 12 January 2020 at p.3 {J/10/2}; Quinn 1 at paragraphs 85-86 {H6/253/21} and 100 {H6/253/24}.
[666] 24 February 2009 letter at {H1/457/2}. P&ID's 11 June 2009 letter contained the same false statement. {H2/122}.
[667] Mr Tijani's interview with the EFCC on 4 September 2019 at pp.4, 6-7 {J/78/2-3}and 12 {J/78/5}.
[668] Cranston Judgment at [101] {C/12/16}.
[669] Mr Tijani's interview with EFCC on 12 January 2020 {J/102/2}. Before then, Mr Tijani had admitted that certain payments were made by Lurgi Consult to Conserve Oil: Mr Tijani's interview with EFCC on 17 December 2019 {J/98/2}.
[670] SoC at paragraphs 4(1) {A1/1/2}, 21 {A1/1/13}, 22(3) {A1/1/16}, 59A {A1/1/35}, 64(4) {A1/1/41}.
[671] SESFTF and Lurgi Consult are both included in P&ID's Response to RFI dated 11 August 2021 as corporate vehicles carrying out business activities on behalf of Mr Michael Quinn and Mr Cahill in Nigeria.
[672] Bribery Statement of Facts at paragraphs 36 {A5/2/18} and 41 {A5/2/19-20}.
[673] SoC at paragraph 35{A1/1/23-24}.

a. A US$50,000 cash payment given directly to Mr Tijani in or around April 2009 by Mr Quinn and Mr Hitchcock of P&ID.[674]

b. A payment of US$30,000 made to Conserve Oil by SESFTF on 17 October 2013, which was intended for Mr Tijani personally. The US$30,000 was immediately transferred out of Conserve Oil's account to a company named Boulos Enterprises which carries out FX transactions under Mr Tijani's instructions.[675]

c. A payment of NGN 3,440,000 (approx. US$21,000) by Lurgi Consult to Mr Tijani on 3 April 2014.

d. A further payment of NGN 4,350,000 (approx. US$27,000) by Conserve Oil to Mr Tijani on 3 April 2014, being an indirect payment to Mr Tijani from Lurgi Consult, which had earlier paid the sum of NGN 55,504,768.41 (approximately US$337,000) to Conserve Oil on 10 March 2014.

e. A payment of NGN 4,000,000 (approximately US $20,000) by Lurgi Consult directly to Mr Tijani on 22 April 2015.

309. In his witness statement for the hearing before Sir Ross Cranston, Mr Tijani said that:[676]

a. He received a proposal from P&ID in 2008. However, he was too busy to review it at the time. In early 2009, the MPR commenced the AGDP as part of an initiative to make use of flared gas from oil fields. Dr Lukman told Mr Tijani that he had a *"particular investor in mind"*. He sent Mr Tijani a copy of P&ID's proposal, and Mr Tijani was appointed the chairman of the technical team to review its bid.[677]

b. In early April 2009, Mr Quinn and Mr Hitchcock came to Mr Tijani's office to introduce themselves. About an hour afterwards, Mr Tijani received a call from Dr Lukman asking him to come to his office. When he arrived, Mr Quinn and Mr Hitchcock were there. This was *"a very unusual meeting":* Mr Tijani had never attended a meeting with potential investors in the Minister's office. Dr Lukman directed Mr Tijani to recommend the project.[678]

---

[674] Mr Tijani's EFCC interview transcript dated 12 January 2020 at {J/102}.
[675] Tijani 1 at paragraph 50 {E/19/11}. The transactions can be seen at {M/30/4}.
[676] Tijani 1 {E/19/1}, in relation to which a hearsay notice has been served subject to FRN's pleaded case that the payments to which Mr Tijani admits were unlawful bribes paid and/or promised to him in connection with the award of the GSPA and induced him to overlook the deficiencies in the GSPA proposal and keep his silence thereafter, rather than mere 'gifts'.
[677] Tijani 1 at paragraphs 14-18 {E/19/4}.
[678] Tijani 1 at paragraphs 20-21 {E/19/4}.

c. Shortly after the meeting, Mr Quinn and Mr Hitchcock came to Mr Tijani's office to invite him for dinner. This was also *"very unusual"*: Mr Tijani never went out with investors. The dinner took place at the Chopsticks Chinese Restaurant in Maitama. The three men spoke about sport and politics, not work. Mr Tijani describes it as a *"friendship dinner"*.[679]

d. At the end of the dinner, Mr Hitchcock walked with Mr Tijani to his car. When Mr Tijani got in, Mr Hitchcock dropped a black bag into the car, describing it euphemistically as a "*gift*". When Mr Tijani got home he found that it contained US$50,000 in cash. He called Mr Hitchcock immediately, who said that *"they normally take care of their friends and that he wanted us to be friends"*. He indicated that payments had been given to other officials at the MPR, although he would not reveal who.[680] Mr Hitchcock assured Mr Tijani that the 'gift' would be kept confidential, with Mr Tijani recounting that*, "Mr Hitchcock also promised that P&ID would further take care of me at a later date."*[681] It is to be inferred that this payment on behalf of P&ID was intended to, and did, cause Mr Tijani to show favour to P&ID in the exercise of his official duties, with Mr Tijani subsequently having contemporaneously described Mr Hitchcock (of P&ID) as *"one of the guys I assisted over the years when I was the technical adviser to the Petroleum Minister"*.[682]

310. Mr Tijani confirms that the award of the GSPA occurred despite the fact that, insofar as Mr Tijani was concerned:

a. It was *"clear"* to Mr Tijani that the project had "*obvious shortcomings*". In particular, P&ID had no experience in gas development projects, and there was no evidence that it had the finance to complete the project, nor that it owned the necessary land.[683]

b. Mr Tijani sent a number of follow-up questions to P&ID,[684] but did not receive meaningful responses.[685] P&ID falsely said that the project was to be funded by SAPETRO, but no evidence of this was provided to Mr Tijani and he never followed up.[686]

---

679 Tijani 1 at paragraph 23 {E/19/5}.
680 Tijani 1 at paragraph 24 {E/19/5}.
681 Tijani 1 at paragraph 24 {E/19/6}.
682 {H5/350/1} and {H5/354/1}.
683 Tijani 1 at paragraph 33 {E/19/7}.
684 Undated letter from MPR to P&ID {H1/425/1} and {H1/456/1}.
685 P&ID letter to MPR dated 24 February 2009 {H1/459}.
686 Tijani 1 at paragraphs 34-35 {E/19/7-8}.

c. There were also serious concerns about the availability of Wet Gas for the project, which had not been properly investigated by the time the GSPA was executed (or, indeed, by the time Mr Tijani left the MPR in January 2011),[687] despite the fact that the contract purported to put the risk of a lack of available gas on FRN.

d. The clear shortcomings in P&ID's proposal were overlooked by Mr Tijani and the Technical Committee.[688]

311. Mr Tijani and the Technical Committee persisted in recommending that the P&ID project proceed, and did not escalate his professed concerns at any stage prior to award of the GSPA. Mr Cahill has tried to downplay Mr Tijani's role in the award of the GSPA, saying that he *"was not someone who was remotely critical to getting the GSPA deal done"*.[689] This is contradicted by Mr Tijani's evidence and the documentary record,[690] and also by Mr Quinn's evidence, who told the Tribunal that Mr Tijani was P&ID's point of contact at the MPR. He even devoted an entire section of his witness statement to P&ID's interactions with the technical committee, of which Mr Tijani was the chairman.[691]

312. Mr Tijani's evidence confirms that, after the initial US$50,000 cash gift, the subsequent payments were made further to Mr Hitchcock's promise that P&ID would take care of him.[692] In particular:

a. The payment of US$30,000 to Conserve Oil on 17 October 2013 was intended for him personally.[693]

b. The payments to Mr Tijani of NGN 3,440,000 (US$17,000) and NGN 4,000,000 (US$20,000) on 3 and 22 April 2015 respectively from Lurgi Consult, and of NGN 4,350,000 (US$22,000) from Conserve Oil on 2 April 2015, are said to have followed an encounter with Mr Hitchcock in or around January 2014, and were "*P&ID's support*" for the weddings of two of Mr Tijani's children due to get married in July 2014 and December 2015. Mr Tijani wrote down his bank account details on a piece of

687 Tijani 1 at paragraphs 37-41 {E/19/8-9}.
688 Tijani 1 at paragraphs 38 {E/19/9}.
689 Cahill 1 at paragraph 117 {E/17/33}. See also Cahill 1 at paragraph 79 {E/17/23}, where he points out that Mr Tijani was *"only one of five individuals on the technical committee"*.
690 See e.g. Mr Adejori email to Mr Hitchcock dated 5 March 2009 {H1/486}; Mr Hitchcock email to Mr Tijani dated 19 August 2009 {H2/317}; SMS from Mr Hitchcock to Mr Cahill dated 17 December 2009 {H3/105}.
691 Quinn 1 at paragraphs 63 {H6/253/16}, 85-86 {H6/253/21} and 100 {H6/253/24}. Mr Tijani was for e.g. the only representative of the MPR at the 6 November 2009 meeting and chaired the meeting on 13 November 2009: Quinn 1 at paragraph 85 {H6/253/21}.
692 Tijani 1 at paragraphs 24 {E/19/5-6} and 45 {E/19/10}.
693 See Cranston Judgment at [237] {C/12/37}.

paper.[694] The NGN 4,350,000 payment by Conserve Oil on 3 April 2014 was funded out of an earlier payment by Lurgi Consult to Conserve Oil on 10 March 2014.[695] The transaction was, in reality, an indirect payment to Mr Tijani from Lurgi Consult.[696]

313. Moreover, and omitted by Mr Tijani in his account, P&ID's successful corruption of Mr Tijani so that he aligned himself against the interests of FRN is further shown by P&ID's disclosure, which reveals that (a) contrary to his duties as a former public official,[697] in March 2013 it appears that Mr Tijani covertly sent to P&ID *"a complete copy of his P&iD file via DHL"*,[698] which it is to be inferred was to assist P&ID in advancing its claim against FRN in the arbitration; (b) in August 2013, Mr Tijani assisted Mr Quinn and Mr Cahill in their attempts to enforce the award in the IPCO arbitration against the NNPC.[699]

314. P&ID has attempted to explain away the payments to Mr Tijani (except for the alleged payment of US$50,000 in cash, which it denies) on the basis that they were payments for services rendered by Conserve Oil in connection with a project named the 'Bonga Audit'.[700] However, Mr Tijani has confirmed that none of the payments above were made in connection with the Audit.[701] Indeed, Mr Tijani had no involvement with the Audit <u>at all</u> beyond making an initial recommendation of a friend's company. His account is as follows:

    a. Mr Quinn and Mr Hitchcock approached Mr Tijani out of the blue in early March 2013 allegedly looking for engineers to be used on an audit exercise ("**the Bonga Audit**") which was a joint venture between Lurgi Consult and Wilbahi. Mr Tijani states that his only prior connection was the GSPA.[702] He was not able to service the contract himself because he held a public office as the Commissioner of Energy at Lagos State. He therefore recommended engineers from Conserve Oil, a company owned by his friend Mr Odebunmi. Mr Tijani had no interest in Conserve Oil at this time, nor did he play any role in the Bonga Audit exercise beyond making the initial recommendation. There is therefore no reason why Mr Quinn and Mr Cahill should

694 Tijani 1 at paragraphs 51-52 {E/19/12} and 55-56 {E/19/13}.
695 The incoming and outgoing transactions can be seen on the banking statements at {M/75/15}.
696 Tijani 1 at paragraph 52 {E/19/12}, referring to the bank statement at {M/75/16}.
697 The Nigerian law experts are agreed that pursuant to various rules of the Federal Government Public Service Rules 2008, the Official Secrets Act, the Criminal Code and the Penal Code, a public officer has a duty not to communicate confidential facts or documents which have come into a public officer's knowledge or possession by virtue of his or her office: Nigerian Law joint memorandum at paragraph 2.2.8 {F4/3/39-40}.
698 {H5/368/1} and {I/89/1}.
699 {H6/9/1}.
700 Defence at paragraph 36 {A1/2/24}.
701 Tijani 1 at paragraph 46 {E/19/10}.
702 Tijani 1 at paragraph 47 {E/19/10-11}. Mr Cahill accepts this at Cahill 2 at paragraphs 12-13 {E/22/4}.

have paid him any money in connection with the Audit.[703] Mr Tijani did not have any role in the company until May 2015.

b. In around August or September 2013 Mr Quinn called Mr Tijani and told him that he should recall P&ID's "*promise*" that he would be taken care of. He said that he would ask Mr Cahill to make a payment of US$30,000 to Mr Tijani. It was convenient to make the payment through Conserve Oil, since they had already set up payment arrangements with the company.[704]

c. Around a month later, Mr Tijani sent an email to Mr Cahill purporting to chase an outstanding payment of US$30,000 on behalf of Conserve Oil. Mr Tijani knew that Mr Cahill would understand that the payment was meant for him.[705] The US$30,000 was duly paid to Conserve Oil on 17 October 2013 and transferred onwards to a firm called Boulos, which carries out FX transactions, under Mr Tijani's instructions.[706]

d. It was only much later, after Mr Tijani left his post as Energy Commissioner in May 2015, that he acquired an interest in Conserve Oil. As demonstrated in the contemporaneous documents, Mr Tijani became a signatory on the company's account in around March 2016 and installed his wife as a proxy director in around June 2015.[707] By that time the Bonga Audit had concluded.

315. Finally, Mr Tijani entered into a revocable plea bargain with the EFCC, which has been disclosed to P&ID.[708] P&ID has previously contended that Mr Tijani has changed his evidence as a result of the plea bargain.[709] But the obvious explanation for Mr Tijani's change of position was that he had been ultimately caught out as a result of being presented with banking documents showing payments to him and Conserve Oil from companies associated with P&ID, for which there was no legitimate explanation. Mr Tijani pointed out that he *"suggested"* the plea bargain himself so that he could *"tell the truth"* about what happened.[710] More recently, P&ID has alleged that Mr Tijani is a dishonest witness because he never said he was paid bribes at the meeting of the MPR technical team with P&ID on 1 April 2009.[711]

---

[703] Tijani 1 at paragraph 49 {E/19/11}.
[704] Tijani 1 at paragraph 50 {E/19/11}.
[705] Tijani 1 at paragraph 50 {E/19/11}, referring to the emails between him and Mr Cahill on 7 and 9 October 2013 {H6/108/1}.
[706] Tijani 1 at paragraph 50 {E/19/11}. The transactions can be seen at Bribery Statement of Facts at paragraph 41(1) {A5/2/19-20}.
[707] Tijani 1 at paragraph 54 {E/19/12}, referring to the corporate documents at {P/8/10} and {P/8/2}.
[708] Letter from the Attorney General to Mr Tijani dated 8 January 2020 {H9/322}.
[709] See Cahill 1 at paragraph 116 {E/17/33}.
[710] Tijani 1 at paragraph 12 {E/19/3}.
[711] Defence at paragraph 51B4 {A1/2/32}.

That Mr Tijani may have failed to mention his receipt of further bribes to him from P&ID takes matters nowhere.

Payments to Dr Lukman

316. Dr Lukman was the Minister of Petroleum from December 2008 until his retirement in March 2010,[712] shortly after the entry of the GSPA. He died on 21 July 2014. Dr Lukman signed the GSPA on behalf of the MPR, witnessed by Ms Taiga.

317. Seen against the evidence of P&ID's campaign of bribery, particularly the unanswerable evidence that P&ID paid bribes to Ms Taiga and Mr Tijani at the MPR, the overwhelming likelihood is that Dr Lukman was also paid bribes, including out of the US$770,000 withdrawn by ICIL Nigeria at the time of negotiating the Agreement,[713] to award the contract to P&ID.

318. The evidence demonstrates that the relationship between P&ID and Dr Lukman was other than an arm's length one, including:

a. Mr Tijani's evidence was that Dr Lukman put him under *"great pressure"* to approve P&ID's proposal for the GSPA and that he believed that this was *"likely a result of 'behind the scenes' discussions between Dr Lukman and P&D".*[714]

b. The disclosure from the arbitration between P&ID and Tita Kuru includes a note of a midnight meeting between Dr Lukman and Mr Kupolokun at the Minister's house, at which Dr Lukman told lies to justify his refusal to transfer the project away from P&ID (paragraph 73 above). It is to be inferred that Dr Lukman told these lies because he had been paid bribes and corrupted by P&ID to award the project to it. He had no other motive for doing so.

c. Mr Tijani's evidence is that, shortly after signature of the GSPA, on 18 February 2010, a meeting of the National Integrated Power Project Steering Council was convened in Abuja. This was a high-level committee formed to harmonise the Government's response to gas flaring issues in the Niger Delta region, including Calabar. Dr Lukman attended on behalf of the MPR. In the context of a discussion regarding the progress of the Calabar Power Project, the committee noted (wrongly) that no gas supply

[712] Tijani 1 at paragraph 14 {E/19/4}.
[713] Bribery Statement of Facts at paragraph 107(1) {A5/2/40}, referring to {M/69/3-5}.
[714] Tijani 1 at paragraphs 20 {E/19/4}, 21 {E/19/5}, 25 {E/19/6}, 41 {E/19/9}.

agreements were yet in place for the project.[715] Dr Lukman was the only person at the meeting who would have known that the GSPA with P&ID had been signed a month previously, but he kept this to himself and did not correct the committee on this point.[716] Again, this is consistent with Dr Lukman seeking to prevent scrutiny of P&ID's award of the GSPA as a result of the transaction having not been at arm's length insofar as Dr Lukman himself was concerned.

319. FRN has been unable to obtain all of Dr Lukman's bank statements because the central codification of Nigeria's banking system took place after his death on 21 July 2014. Despite that, it has identified, and relies on, the following cash deposits and cashflows identifiable from the bank statements FRN has obtained and from P&ID's disclosure:

a. P&ID attended a roadshow held in Abuja on 15 May 2008 as identified in Quinn 1 paragraph 36.[717][718] Dr Lukman attended the roadshow.[719] Around the time of the roadshow, P&ID withdrew hundreds of thousands of dollars (in US dollar and Naira denominations) transferred with the labels *"Dublin Expenses"* and "*PR*", including a specific *"Dublin expense"* of NGN 10 million (US$84,000) withdrawn the day before the roadshow.[720] Given the deliberate opacity of P&ID's records and its incomplete disclosure, it is not possible to say with certainty precisely whom the recipients were, but FRN avers that some or all of the massive cash withdrawals made at the roadshow were paid to Nigerian officials, including Dr Lukman.

b. Mr Quinn says he spoke with Dr Lukman and the President regarding the GSPA in around August 2008. At that time, Dr Lukman was a Special Adviser to the President.[721] In the run-up to those meetings, two withdrawals of US$100,000 each were made from the bank account of ICIL Nigeria,[722] with the ICIL group spreadsheets recording multiple "*Dublin Expenses*" in July and August 2008.[723]

c. Between 2007 to 2015, a total of US$4,150,180.37 was paid into the personal accounts of Dr Lukman for which records have been obtained, of which US$162,863.18 was in

[715] Tijani 1 at paragraph 44 {E/19/10}.
[716] {H3/267/10}.
[717] {G/9/11}.
[718] As P&ID admits: Defence at paragraph 13.3.3 {A1/2/10}.
[719] See the roadshow programme at {H1/290.1/3}.
[720] Bribery Statement of Facts at paragraph 101(1) {A5/2/36-37}, referring to P&ID spreadsheet entitled *"Dublin Exps 2008.xlsx"* {H6/157}; I&ID spreadsheet entitled *"Omnipol.xlsx"* {H3/492.1}; P&ID Spreadsheet entitled *"May – Jun Exs"* {H2/277.1}.
[721] Quinn 1 at paragraphs 55-56 {H6/253/15}.
[722] Bribery Statement of Facts at paragraph 98 {A5/2/35-36} referring to {M/86/4}.
[723] {H1/313/1}.

cash.[724] The cash deposits all took place between 2007 and 2010. By contrast, Dr Lukman's bank statements show that his annual salary was around US$75,000 to US$105,000. The inflows into Dr Lukman's account therefore significantly exceeded his salary.

d. Dr Lukman opened a new US Dollar account at GT Bank on 16 January 2009, one month after his re-appointment as Petroleum Minister. The account was opened with an initial cash deposit of US$10,000.[725] This also coincided with "*Dublin Expenses*" being recorded in December 2008 and January 2009.[726] Additional cash deposits so far identified were made to Dr Lukman as follows: US$10,000 into Dr Lukman's account numbered 206375796 on 8 April 2009; US$4,800 and US$5,000 into his account numbered 206375796 on 5 June 2009;[727] two lots of US$5,000 each (i.e., US$10,000 in total) into his account numbered 206375796 on 24 July 2009 and two lots of US$5,000 each (i.e., US$10,000 in total) into his account numbered 206375796 on 16 November 2009.[728]

e. At the interlocutory stage, P&ID served a witness statement from Dr Lukman's daughter, Ms Ramatu Lukman, but has failed to serve any evidence from her for trial. In any event, she was unable to assist on the provenance of these payments.

Payment to Mr Ibrahim Njiddah

320. Mr Njiddah was a senior special advisor to the former President of Nigeria, Dr Goodluck Jonathan, from 2009 to 2015. He also served on the Oil & Gas Reform Implementation Committee, which was chaired by Dr Lukman.[729] P&ID's disclosure reveals that on 20 May 2011 Kristholm made a payment of US$5,000 to Mr Njiddah. The payment was recorded in an internal table disclosed by P&ID under the reference *"Contract … P&ID"*. Since P&ID did not have any other contracts at the time, this must have been bribe paid on behalf of P&ID in connection with the GSPA, either to Mr Njiddah himself, or for onward payment in whole or in part to Dr Lukman.

321. P&ID admits the payment and the internal table, but denies that it was a bribe, stating that

[724] Bribery Statement of Facts at paragraph 100(1) {A5/2/36} and the account references there.
[725] {M/46} Tab 2.
[726] {H1/447/1}.
[727] {M/50/1}.
[728] {M/50/2}.
[729] Mr Njiddah's EFCC interview on 10 June 2021 {J/121/2}.

"P&ID will address the purpose and context of this payment in factual evidence in due course".[730] However, it failed to do so. Mr Cahill instead asserted that *"I have never heard of this person and I am not aware of the USD5,000 payment made to him mentioned in paragraph 53C of Nigeria's Re-Re-Amended Statement of Case".*[731] Accordingly, no explanation has been offered as to why this payment was made.

Payments to Dr Ibrahim

322. Dr Ibrahim was a Member of the Oil and Gas Sector Reform and Implementation Committee from 2000 until 2010.[732] Between January 2009 and January 2010, he was the Special Senior Technical Assistant and Head of Policy to Dr Lukman.[733] Dr Ibrahim was also a member of the Technical Committee of the MPR, chaired by Mr Tijani, responsible for considering P&ID's proposal for the GSPA,[734] corresponding directly with P&ID on certain matters.[735]

323. As set out in the Bribery Statement of Facts paragraphs 45-47,[736] on 28 April 2008, Dr Ibrahim opened a US Dollar account under the name of his company, Equatorial Petroleum Coastal & Process Limited, with an initial cash deposit of US$10,000, and, for the next seven years, until the account was closed on 13 October 2015, Dr Ibrahim made large, periodic cash deposits totalling US$69,300. This included a deposit into the account of US$5,000 on 13 November 2009, shortly after P&ID was invited to a meeting with the MPR, and coincided with cash withdrawals by Mr Hitchcock on 3, 5 and 6 November of approximately the same amount.[737] Dr Ibrahim also made two cash deposits totalling NGN 4,000,000 (approximately US$34,000) into his personal account at Firstbank on 28 October and 1 December 2008.[738]

324. It is to be inferred from (*inter alia*): (i) the coincidence in timing of the deposits with the assessment and award of the GSPA by the MPR; (ii) the coincidence in timing of such deposits with withdrawals made by ICIL group companies,[739] as well as in a number of

[730] Defence at paragraphs 49C-E {A1/2/29}.
[731] Cahill 5 at paragraph 25 {D/16/7}.
[732] This was set up by Dr Lukman, then Adviser on Petroleum Resources: https://businessday.ng/insight-2/article/reining-in-the-collapse-of-nigerias-oil-industry.
[733] {J/28}.
[734] {J/28}.
[735] See for e.g. {H2/66} and {H2/122}.
[736] {A5/2/21-22}.
[737] {H4/116/1} at 2009 F34; {H10/109/1} at October E796 and {H10/109/1} at November E119.
[738] Bribery Statement of Facts at paragraphs 48 {A5/2/22}.
[739] Bribery Statement of Facts at paragraphs 47 {A5/2/21-22}.

occasions such withdrawals having been expressly identified as *"Marketing"* or *"Dublin"* expenses within P&ID's internal accounts; (iii) Dr Ibrahim's involvement in the assessment of the GSPA and his communications with P&ID; and (iv) P&ID's track record of bribery and corruption generally, that the deposits represent the proceeds of bribes paid by or on behalf of P&ID to Dr Ibrahim to support and not object to the award of the GSPA to it, and to continue to conceal this.

iv. Cash withdrawal patterns

325. FRN further relies on suspicious patterns of cash withdrawals between 2008 and 2010 from certain bank accounts of ICIL and P&ID, which demonstrate 'spikes' at certain key moments in the negotiation and execution of the GSPA. A detailed analysis of those withdrawals, and a rebuttal of P&ID's case that they were used for the purpose of other projects, is set out at paragraphs 102-129 of the Bribery Statement of Facts.[740] The headline points are that some US$10.725 million in cash was withdrawn from the identified accounts between 2008 and 2010, which represented 40% of the outgoing activity on the account.[741]

326. Aside from asserting that this cash was used for other projects, P&ID's case is that Nigeria was a 'cash-driven' economy, such that the large volumes of cash flowing from these accounts is to be treated as unexceptional. This is a point that will be explored with the experts at trial. The short point is that, while cash usage may have been commonplace amongst small businesses, artisan traders, and the like, it was not the norm for companies engaged in half-billion-dollar infrastructure projects. Moreover, P&ID has not established the existence of legitimate business activities that would come close to justifying the very significant cash withdrawals in this period.[742]

327. FRN's need to rely on an inference that the cash withdrawals in 2008-10 were used to fund bribes in connection with the GSPA has diminished in view of its laborious exercise of unpicking P&ID's internal spreadsheets recording "*Dublin expense*" and "*PR*" payments from this period. These spreadsheets show not only that much of this cash was indeed used to pay bribes, but also sometimes the date of the bribe and the identity of the person making the withdrawal (although the recipient of the bribe is in many cases obscured). Nonetheless, to the extent needed, FRN maintains its case that the enormous sums of cash withdrawn from ICIL and P&ID bank accounts between 2008-2010 were used to fund bribes in respect

[740] {A5/2/38-52}.
[741] Bribery Statement of Facts at paragraphs 104-105 {A5/2/39-40}.
[742] Bribery Statement of Facts at paragraphs 110-129 {A5/2/41-52}.

of the GSPA.[743]

v. Bribery as a basis for setting aside the Awards

328. FRN's case is that the GSPA was procured by the payment of bribes and/or promises of bribes to officials, as described above. As a result, the GSPA was passed through on onerous terms to FRN (Mr Hitchcock's *"government lock-in basis"*),[744] and with no due diligence of the viability of the project or of P&ID's (mis)representations about (i) its state of preparedness to perform the contract and (ii) the fact that it had already identified suitable sources of gas, when in fact there were none. Officials continued to be bribed after the GSPA to keep them 'on-side', and to buy their silence about the earlier bribery and the fact that the contract had been passed through with no scrutiny. The bribes thus caused FRN to enter into a contract which was bound to result in a large liability, and deprived FRN of the opportunity to defend itself at the arbitration by contending that (i) the GSPA would and could not have been performed; and (ii) the contract was procured by bribes, and was therefore liable to rescission or, alternatively, termination.

329. In those circumstances, the requirements of s.68(2)(g) of the Arbitration Act 1996 are met. The Awards were directly procured by the fraudulent acts of P&ID, i.e. the payment of bribes which directly resulted in a substantial liability against FRN, and resulted in FRN being unable to defend itself properly. It would be contrary to English public policy to enforce an award in such circumstances. This is a case of concealed bribery on an industrial scale which went to the root of the Tribunal's ruling on who was liable for the contract not being performed: as Sir Ross Cranston said, the fraud is of an exceptionally *"through-going character"* [sic].[745]

330. P&ID seeks to brush aside the evidence of bribery and corruption, saying that it is legally irrelevant and therefore need not be considered by the Court.[746] That is misconceived.

331. First, FRN's case is not only that P&ID paid bribes to procure the GSPA, but also that it served a witness statement which falsely purported to *"explain how the GSPA came about"* without mentioning those bribes.[747] That misrepresentation and/or deliberate omission amounts to perjury, and is itself a ground for setting aside the Awards:

---

[743] SoC at paragraphs 54-55 {A1/1/30–32}.
[744] Mr Hitchcock email to Mr Cahill dated 28 August 2009 {H2/362}.
[745] Cranston Judgment at [73] {C/12/43}.
[746] Defence at paragraph 7.4 {A1/2/4}.
[747] Quinn 1 at paragraph 6.

a. It is well established that: (i) a half-truth or an omission in a purported summary can amount to a positive misrepresentation;[748] (ii) a Court or Tribunal can be wrongfully deceived by implied representations and false impressions. This was established in the seminal case of *Meek v Fleming* [1961] 2 QB 366 at 380, the facts of which were summarised by Stuart-Smith LJ in *Vernon v Bosley (No.2*) [1999] QB 18 (CA) at p.38F-H.[749]

b. Leading to the same outcome, suppression of the truth can amount to suggestion of the false.[750] Thus, in *Celtic Bioenergy*, Jeffrey J held that a failure to disclose a matter could in fact be fraudulent for the purposes of s.68(2)(g) of the 1996 Act so long as the case put forward by a party was contradicted by that matter. That was the case on the facts: there was withheld correspondence which contradicted Knowles' positive case in the arbitration. The withholding had therefore been deliberate and *"utterly misleading",* even though there had been no Order requiring the correspondence to be disclosed: [53] and [91]. As the judge stated at [91]:

> "*There was no order for disclosure in the procedural sense. I do not regard that as relevant on this application and I do not intend this verb/noun to be construed in that way. What I mean is that matters were not disclosed in the sense that matters were not put before the arbitrator which on their face contradicted the version of the facts that was advanced before him. I mention this in part because Mr Rainsberry himself said on a number of occasions that there had been no order for disclosure in the arbitration. That was an attempt to avoid the issue. The March correspondence was contrary to Knowles' case in the arbitration and failing to refer to it was misleading. That Mr Rainsberry should hide behind the absence of an order for disclosure merely reinforces the impression that his failure to refer to the March correspondence was deliberate.*"

c. Here, the effect of Mr Quinn's evidence (and indeed P&ID's case) was to conceal the bribery and give a false impression that P&ID had entered into the GSPA in legitimate

---

[748] *Spencer Bower and Handley: Actionable Misrepresentation* (5th Ed, 2014) at paragraph 4.18.

[749] See also *Harle v Victorian Legal Services Commissioner* [2015] VSC 697, where Mr Harle stated in an affidavit that "*[i]n 1976 [he] was admitted as a Certified Practicing Accountant and maintained such membership until 2008"* but failed to mention that his entitlement to practice as a CPA had been withdrawn in 2009. Mr Harle appealed the tribunal's finding that he had misled the tribunal. The Supreme Court of Victoria cited one of its earlier decisions, which had found in *Meek v Fleming* authority for proposition that "… *the making of a statement to the court that is partly true, but which does not amount to the whole truth, can create a misleading impression to the Court*…": [62]. The Court upheld the tribunal's finding. The purpose of Mr Harle's statement was to demonstrate that he was credible. There had been "*a conscious withholding of certain information in an affidavit, which meant that, although there was no direct untruth in the affidavit, a misleading impression was created*": [92]. In *Harle* at [91], the Court cited with approval the observations of Cullen CJ in *In Re Thom* [1918] NSWStRp 4, (1918) 18 NSWSR 70 at 74-75, to the effect that statements which are literally true may still be misleading: "*It is of the greatest importance that any mere casuistry in the presentation of evidence should be strictly avoided by those entrusted with the responsible duties of a legal practitioner. It is perhaps easy by casuistical reasoning to reconcile one's mind to a statement that is in fact misleading by considering that the deponent is not under any obligation to make a complete disclosure. By this means a practitioner may be led into presenting a statement of fact which, although it may not be capable of being pronounced directly untrue in one particular or another, still presents a body of information that is misleading, and conceals from the mind of the tribunal the true state of facts which the deponent is professing to place before it.*"

[750] *The Alfred Nobel* [1918] at p. 293.

circumstances. This was a positive misstatement to the Tribunal, and a failure by him, and by P&ID more generally, to disclose the fact of (and also the documents and records showing) that bribes had been paid in connection with the conclusion of the GSPA. This was deliberate and misleading, and on either basis fraudulent for the purposes of s.68(2)(g) of 1996 Act.

332. Second, FRN relies not only on the fact that P&ID paid bribes prior to the award of the GSPA, but also that it continued to pay bribes after the contract in order to suppress (i) evidence of the earlier corruption, and (ii) the fact that P&ID had been awarded the contract, without due diligence, based upon lies about P&ID's readiness and ability to perform the contract and the availability of a suitable gas source. Such continued bribery during the arbitration period is sufficient to bring a case within s.68(2)(g). Moreover, and insofar as necessary, such continued silence during the arbitration was a breach of the positive obligations imposed by Nigerian law for the existence of the bribes to have been disclosed by both the bribers and bribees.[751]

333. Third, even leaving aside the perjury and continued bribery, there is no blanket rule that it will never be contrary to English public policy to enforce an award arising out of a contract procured by bribes. It would be very surprising if they did stand for such a proposition. The question of whether enforcement of a particular award would offend public policy is, by its nature, one which will depend on the facts of each case.

    a. P&ID relies, it seems, on *Honeywell* and *National Iranian Oil*.[752] However, these stand, at most, for the proposition that the mere fact that a contract has been procured by a bribe is not always a reason for setting aside an award.

    b. In *Honeywell* the alleged bribe consisted of a (single) payment of certain 'copying charges' which were invoiced to the appellant by the employer's agent as part of the cost of submitting a bid (*Honeywell* at [74]). This was an overt payment: Ramsey J found that there was no real prospect of proving that it was a bribe at all ([88]-[94]). The payment was thus the opposite of the bribes paid in the present case, which were carefully concealed through a number of techniques, including the ongoing payment of further bribes, for many years.

[751] Section 23 of the CPORO Act.

[752] *Honeywell International Middle East Ltd v Meydan Group LLC* [2014] 2 Lloyd's Rep 133 (*obiter*) at [185]; *National Iranian Oil Company v Crescent Petroleum Company International Ltd* [2016] EWHC 510 (Comm), [2016] 2 Lloyd's Rep 146 (*obiter*) at [49(2)].

c. It was in this context that Ramsey J held, *obiter*, that *"as a matter of English public policy, contracts which have been procured by bribes are not unenforceable"* ([185]). This was not, however, a blanket statement that it would never be contrary to public policy to enforce an award based on a contract procured by bribes. The judge's point was that the bribery would not, even if proved, have supplied a defence to Honeywell's claim for work already completed under the contract.[753]

d. By contrast, in the present case the revelation of the bribery would have provided FRN with a defence to P&ID's claim. Under Nigerian law FRN would have been entitled to avoid the GSPA, or at least terminate it going forwards (and therefore deprive P&ID of its right to performance for the 20-year term) because it had been procured by bribes: paragraphs 286 above. The revelation of the bribery would also have shown that the GSPA had been procured through lies told by P&ID about to its ability and willingness to perform the contract: a purpose of the (ongoing) bribes was to ensure that these lies were not scrutinised, and the that the contract was instead passed through without any due diligence. It would have been a complete defence for FRN to show that, at the time of the alleged repudiation, P&ID would not have been able or willing to perform (paragraph 401 below).

e. In *National Iranian Oil* the appellant sought to challenge an award, not on the basis of any fresh evidence, but on the basis of *"evidence before the Arbitrators, as recorded in their Award"* ([32]). The tribunal had already found that the appellant's allegation of corruption had not been proven on the evidence before it, in what Burton J described as a *"very careful analysis of the facts"* ([36]-[37]). The Judge found that it was "*particularly important"* that there was no fresh evidence which might have been a justification for refusing to enforce the award ([48]), before stating that *"There is no English public policy requiring a court to refuse to enforce a contract procured by bribery. A court might decide to enforce the contract at the instance of one of the parties"* ([49(2)]) [emphasis added]. As in *Honeywell*, this was not a blanket statement that it would never be contrary to public policy to enforce an award based on a contract procured by bribery.

f. In *Honeywell* and *National Iranian Oil*, the appellants had already had a proper opportunity, with knowledge of the relevant facts, to seek to avoid the contract in the

[753] Honeywell's heads of claim are set out at [51] of the judgment.

arbitration.[754] By contrast, FRN's counsel made no allegations of bribery or wrongdoing against P&ID at the arbitration, and the Tribunal made no findings on the issue. This is accordingly not a case involving the re-litigation of allegations already made before the arbitrators.

334. Finally, and importantly, in neither *Honeywell* nor *National Iranian Oil* was the award 'procured' by the alleged bribe. The mere fact of the bribe had not caused the defendant's liability, nor had it caused the Tribunal's award: it was at most part of the story as to how the contract, and therefore the arbitration, came about. The position here is different. The bribes paid by P&ID around the time of the GSPA induced Nigeria's officials to award a contract on terms which purported to place the risk of failing to supply (non-existent) gas on the government (a *"government lock-in basis"*),[755] on the premise of lies about (i) P&ID's readiness and ability to perform and (ii) the fact that suitable sources of gas had already been identified by P&ID. There is thus a real and direct link between the bribes paid by P&ID and the outcome of the Awards, unlike in *Honeywell* or *National Iranian Oil*.

335. The test of substantial injustice is also met. Contrary to Mr Andrew's contention that FRN had no defence to P&ID's claim, had the true facts of the bribes paid and promised in connection with the entry of the GSPA been known to FRN and the Tribunal, FRN would have had a compelling defence. Indeed, it is telling that, upon learning of the Cranston Judgment (i.e. meaning that FRN's allegations would proceed to trial) and aware (at least) of her own relevant conduct, Ms Taiga immediately messaged Mr Cahill to state she concurred with the view that, *"…the entire award is likely to be set aside, if matter proceeds to full trial & a new arbitration session may be ordered b4 a newly composed panel, because FGN will canvas the same allegations of fraud, compromise, etc…"*.[756] This Court does not need to be satisfied that this defence would have succeeded in the arbitration, it being sufficient that the outcome *"might have"* been different. But in fact it is overwhelmingly probable that P&ID's claim in the arbitration would have failed had the facts of the bribery and its concealment been known:

a. At the liability stage, FRN would have been able to defend P&ID's claim on the basis that the GSPA was rescindable, terminatable, or void. From a Nigerian law

[754] Thus, in the course of reaching its decision in *Honeywell*, the Court at [178] recounted the respondent's submission that, "*as a matter of English public policy, the courts will enforce a contract procured by bribery subject to the innocent party having, in appropriate circumstances, a right to avoid the contract"* [emphasis added]. In *National Iranian Oil*, the starting point of the Court's reasoning at [48] was that there was no fresh evidence which might have been some justification for refusing to enforce the Award.
[755] Mr Hitchcock email to Mr Cahill dated 28 August 2009 {H2/362}.
[756] {L/30/124}.

perspective, the applicable principles are the same as would be applied under English law (see paragraph 286 above): namely, FRN could have shown that undisclosed payments were made or promised by or on behalf of P&ID to influence one or more of its representatives,[757] who was in a position to influence FRN *"in some way"*, and accordingly FRN was entitled to rescind or terminate the GSPA as a defence to P&ID's claim. Alternatively, such payment or promise to Dr Lukman, as the signatory of the GSPA, rendered it void. Moreover, absent the Liability Award in P&ID's favour, there would have been no Quantum Award.

b. Further, had the bribes been revealed at the liability stage it would have been clear that they had been paid to ensure that the contract was executed without due diligence, and without scrutiny of P&ID's lies as to (i) its readiness and ability to perform, and (ii) the fact that it had already identified suitable gas sources. P&ID's inability or unwillingness to perform the contract would have been a complete defence at the liability stage: see paragraph 401 below. In any event, it would have led to a finding that P&ID was not entitled to substantial damages at the quantum stage.

vi. Section 73: reasonable diligence

336. Quite apart from the evidence of Nigeria's legal representatives having been corrupted (as to which see Section G below), it is common ground that FRN did not know during the arbitral proceedings of the alleged bribery in connection with the procurement of the GSPA, nor of the ongoing concealment and perjured evidence in this regard.[758] Indeed, P&ID continues to adamantly deny that any bribery occurred.

337. Nor can it be said that FRN, with reasonable diligence, should have discovered the bribery prior to the Liability Award on 17 July 2015,[759] or (insofar as relevant) during the remainder of the arbitration. To impose a standard which, firstly, would require an innocent party in FRN's position to have embarked during the arbitration on (any) speculative investigation of possible bribery and cover-up in connection with the GSPA, and, secondly, to find any

[757] Whether to one, or more, or all of Ms Taiga, Mr Tijani, Dr Ibrahim and Dr Lukman (and indeed, it is to be inferred other public officials too).

[758] For example, at Defence at paragraph 78H.2 {A1/2/65}, P&ID pleads, *"There was no bribery in connection with either the GSPA or the FRN Privileged Documents."* At Defence paragraph 78J {A1/2/66} P&ID pleads, *"It was self-evident that FRN did not consider that the GSPA had been procured by bribery or that Mr Quinn had given perjured evidence, otherwise it would inevitably have raised those arguments in the arbitration. Paragraph 78H.2 above is repeated."*

[759] Under the *functus officio* principle, once a tribunal makes an award, its authority terminates. If the award is a partial award, the tribunal is *functus officio* as regards matters finally dealt in that award: *Emirates Trading Agency v Sociedade* [2016] 1 All ER 517 at [26]. Thus, even if the bribery had been identified following the Liability Award, but prior to the Final Award, the Tribunal would have been prevented from seeking to re-open their findings on liability. See also Merkin's *Arbitration Law* at paragraph 18.6.1.

reasonable innocent party in FRN's shoes should have uncovered sufficient evidence of that bribery and concealment prior to the Liability Award, or end of the arbitration, is far in excess of the requirements of s.73 of the 1996 Act.

338. The starting and end point is that there were no reasonable grounds during the arbitration to suspect that the GSPA had been procured by bribery.[760] This is not a case where any reasonable party in FRN's position should have taken further steps in this regard during the arbitration.[761] Rather, a party is entitled to assume that its counterparty has acted with honesty and good faith,[762] even more so in the face of Mr Quinn's witness statement purporting to give a full and fair account (as it transpires, falsely) of the GSPA having been entered into in legitimate circumstances.

339. But moreover, even *had* reasonable grounds for *suspicion* existed during the arbitration (which they did not), it cannot be said that FRN *"should"* with reasonable diligence have discovered the full facts and evidence necessary to prove before the arbitral tribunal the case now alleged as to P&ID's bribery and concealment of the same.[763] Far from FRN *"keeping up [its] sleeve"* a potential challenge that it could have deployed during the arbitration,[764] there is no objective basis for finding that such facts and evidence should have been uncovered by a reasonable lawyer during the arbitration:

    a. P&ID actively concealed the bribery, through the continued payment and promises of payments during the arbitral process; through the false evidence of Michael Quinn; and through the failure otherwise to reveal the true position.

    b. There can be no credible suggestion that, had FRN raised in correspondence or otherwise questioned P&ID during the arbitration about whether it had engaged in bribery and a subsequent cover-up, P&ID would have come clean about its actions, as opposed to persisting in the concealment. On the contrary, it is clear from P&ID's

---

[760] P&ID accepts that FRN did not in fact have any reasonable grounds to suspect the alleged irregularities during the arbitration: Defence at paragraph 78 {A1/2/63}, which admits SoC paragraph 79 {A1/1/57}.
[761] In *Sumakan Ltd v Commonwealth Secretariat* [2007] EWCA Civ 1148, [2008] 2 All ER (Comm) 175 the Court of Appeal held that it was wrong to construe s.73 to mean that a person could with reasonable diligence have discovered facts which it neither knew nor believed nor had grounds to suspect: [36], [38] and [62].
[762] *HIH Casualty & General Insurance Ltd v Chase Manhattan Bank* [2003] 2 Lloyd's Rep 61 at [15].
[763] A high threshold for advancing allegations of dishonesty and fraud applies equally to Nigerian and English lawyers. The professional obligations of English lawyers mean that allegations of fraud or dishonesty can only be advanced where there is reasonably credible material which as it stands shows a prima facie case of fraud or dishonesty in relation to the particular transaction in question (*Medcalf v Mardell* [2003] 1 AC 120 at [79]). Likewise, the Nigerian Rules of Professional Conduct for Legal Practitioners 2007 provide at rule 32(3) that a lawyer shall not state or allude to any matter which he has no reasonable basis to believe will not be supported by admissible evidence.
[764] *Rustal Trading SA v Gill & Duffus SA* [2000] Lloyd's Rep 14 at p.20 (col.2) per Moore Bick LJ.

conduct in these proceedings that P&ID would have gone to great lengths to continue to conceal its wrongdoing. P&ID continues to steadfastly deny that any bribery or concealment occurred, whilst having (i) fought tooth and nail in these proceedings to resist the proper investigation of its actions, including seeking before Sir Ross Cranston the dismissal without trial of the FRN's allegations; (ii) repeatedly obstructed and resisted the proper provision of disclosure to FRN despite FRN now being aided by the powers of the English Court in this regard; and (iii) served witness statements for trial which persist in falsely denying that P&ID engaged in any wrongdoing. At every step, P&ID has sought to erect obstacles to FRN finding out the truth. Getting to the current point of being able to prove the bribery and concealment has been a complicated and convoluted process; it is not something that any reasonable party could and should have uncovered during the arbitration. The history of FRN's long battle to uncover the wrongdoing is set out in Annex 1.

c. Further, as a matter of law, when applying s.73 of the 1996 Act where fraud is concerned, it should not be held against the innocent party that it should have been able to uncover such fraud using reasonable diligence where that fraud was not in issue and determined before the tribunal. This is consistent with the Supreme Court's approach in *Takhar*, including the basic principle identified by Lord Kerr at [44] that the law does not expect people to arrange their affairs on the basis that others may commit fraud.

d. Further still, insofar as there was any requirement for some form of proactive investigation during the arbitration (which is denied), this was more than discharged objectively and did not in fact reveal evidence of the bribery or concealment. As Sir Ross Cranston already found:[765] (i) in February 2016 (i.e. after the Liability Award) the EFCC was asked to look into the GSPA and did carry out an investigation between February and June 2006, but found that the contract had been approved at a senior level, with Ms Taiga on the legal side and Mr Tijani on the technical side; (ii) in other words, the GSPA had a cloak of legitimacy; and (iii) this situation only changed with the EFCC's discovery that in September and October 2019 that Ms Taiga and her daughter had received cash payments from companies in the ICIL group in 2017 and 2019 respectively, and Mr Tijani's statement to the EFCC in 2020.[766]

[765] Cranston Judgment at [83]-[87] {C/12/13}, [107] {C/12/17} and [233]-[239] {C/12/37}.
[766] Cranston Judgment at [220] {C/12/35}.

e. In any event, the requirement for reasonable diligence under s.73 cannot be interpreted to have required a global, widespread investigation of the kind that led to these set-aside proceedings, involving multiple organs of the state (including the EFCC as an independent prosecutor), disclosure applications in multiple jurisdictions around the world, and several years of pursuing and obtaining disclosure of FRN's corruption allegations in proceedings before the English Commercial Court.

340. The Awards are therefore liable to be set aside on the grounds that they and the GSPA were procured by bribery and corruption, and that Mr Quinn gave misleading evidence by omitting that fact from his statement and/or that this was otherwise concealed by P&ID.

E. MICHAEL QUINN'S PERJURED EVIDENCE

341. FRN's second ground for setting aside the Awards is that they were based on the perjured evidence of Mr Quinn. The Court is asked to read Quinn 1 in full, which appears at {G/9}. The exhibit is at {G/10}.

342. Quinn 1 was the only evidence that P&ID served in support of its claim. It relied on the statement at each of the jurisdiction,[767] liability and quantum stages of the arbitration.[768] Mr Cahill has confirmed that he reviewed the statement before it was served.[769]

343. The statement had two main purposes: (i) to explain the circumstances in which the GSPA came about; and (ii) to demonstrate P&ID's readiness and ability to perform by reference to the steps that it had already taken towards performance. It was false in both respects:

a. Mr Quinn sought to give the impression that the contract had been awarded because of its technical merit, following presentations made to, and discussions with, officials and technical personnel. In fact, it had been obtained as a result of a campaign of bribery.[770] This aspect of Mr Quinn's evidence has been addressed in Section D above.

b. Mr Quinn gave evidence that P&ID had already taken significant steps to perform the contract, and was therefore ready and able to perform the GSPA but for FRN's alleged breaches, when in fact it had done next to nothing. This second aspect of Mr Quinn's statement is the focus of the present Section of these submissions.

---

[767] See P&ID's skeleton argument on jurisdiction at paragraphs 3-4 {G/13} (*"The Claimant submits that the contents of Mr Quinn's First Witness Statement are highly relevant to the Preliminary Objection…"*).
[768] Moreover, as explained below, P&ID's own experts relied on Mr Quinn's evidence as the (only) factual basis of their expert reports.
[769] Cahill 3 at paragraph 69 {D/5/24}.
[770] SoC at paragraph 61(1) {A1/1/36}.

344. As explained below, P&ID barely disputes that this second aspect of Mr Quinn's evidence was false, subject only to a handful of ambitious 'interpretations' of Quinn 1 which have been put forward, it seems, more in hope rather than expectation of them succeeding. They are addressed below.

i. Michael Quinn's false evidence

345. Mr Quinn's statement opens with the following passage:[771]

> "*In this witness statement I wish to explain how the GSPA came about, and why P&ID was ultimately prevented from implementing it.*"

346. According to Mr Quinn, his statement was based on his own knowledge of events as well as discussions with his *"colleagues"*, including Mr Hitchcock (now deceased) *"and my main business partner Mr Cahill"*.[772] Mr Cahill was therefore well aware of the contents of the statement when it was served.

347. Mr Quinn's lies, which are scattered across various parts of his statement, can be distilled to four points: (1) that P&ID had already obtained finance for the project;[773] (2) that it had already done the vast majority (90%) of the engineering design work;[774] (3) that it had already expended US$40 million preparing to perform;[775] and (4) that it had been allocated a plot of land on which to build the GSPA Facilities.

348. These four misrepresentations were a continuation of P&ID's lies to the Nigerian government in correspondence before and after the GSPA had been signed, as well as in the recitals to the GSPA itself.[776] P&ID had to continue to tell these lies because, had it not done so, it would have been obvious that (i) it was never going to be able to perform a gas processing contract on the scale of the GSPA, which was forecast to cost some half a billion dollars of capital expenditure and had to be completed within a highly expedited timeframe, (ii) no suitable gas sources for the contract existed, contrary to P&ID representation in the GSPA, and (iii) it had been awarded the contract despite the fact that the project was never going to be performed by paying bribes to officials.

---

[771] Quinn 1 at paragraph 6 {G/9/3}.
[772] Quinn 1 at paragraph 3 {G/9/3}.
[773] SoC at paragraph 61(7)-(8) {A1/1/39}.
[774] SoC at paragraphs 61(2)-(6) {A1/1/38-39}.
[775] SoC at paragraphs 61(2)-(6) {A1/1/38-39}.
[776] In particular recitals (h) (*"P&ID possesses the requisite finance, technology and competence for the fast track development of the Project"*) and (i) (*"P&ID has undertaken all necessary studies, including the identification of suitable associated gas fields and is ready to commence a fast track development of the project in accordance with the terms of this Agreement"*) {H3/140/4}.

349. The key passages of Mr Quinn's evidence are as follows:

> *"47. During the course of the next two years [from 2006], we made good progress and reached a very advanced stage of the preparatory engineering work necessary to implement such a project on the ground. I would estimate that the total costs sunk into the preparatory work during that period were in excess of $40 million, including initial feasibility studies, the cost of licences for the technology required to operate the gas stripping plant and the propylene plant respectively, the production of detailed engineering drawings and our own internal project management costs.*
>
> *48. By way of example, extensive work was commissioned from various specialist engineering companies such as CB&I Lummus Technology Group in New Jersey, KRAN Developments in Johannesburg and ABB Limited in the UK. The cost of the work of these 3 companies alone was about $29 million. In addition our own internal costs were significant. I would say that, from the commencement of our work on the Project in mid-2006, substantially the whole of our internal resource was devoted full-time to the Project.*
>
> *49. By the end of the first 2 years of our work on the Project, we had put together a completed engineering package ready for actual permit applications, procurement and construction, which comprised about 100 volumes of documentation, together with a 3-D software model of the plant which was in such high detail that it would have enabled the training of the plant staff even before completion of construction. An electronic copy of a video from the 3-D software model is enclosed with MQ1. (…)*
>
> *109. In the meantime [in February 2010], the site for the onshore plant at Calabar for the construction of the gas stripping plant and gas storage facilities had been selected by P&ID and secured from the Government of Cross River State. On 1 February 2010 Mr Hitchcock wrote to the Governor of Calabar requesting the formal allocation of the land upon which the plant would be constructed (pages 157 to 158 of MQ1). On 16 February 2010 approval was granted, by the Government of Cross River State, to P&ID, for the allocation of Parcels 1 & 2 of the Energy City (Industrial) at Adiabo in Odukpani Local Government Area, containing an area of about 50.662 hectares of land, for the industrial use of P&ID (pages 159 to 160 of MQ1).*
>
> *110. On 14 May 2010, I wrote to NNPC to update it on the progress made by P&ID. I pointed out that all of the project finance was in place, 90% of the engineering designs had been completed, a 50 hectare site had been allocated to P&ID by the Cross Rivers State Government, and that Addax Petroleum had confirmed to the DPR its readiness to supply to P&ID the Wet Gas that it was at that time flaring in OML 123 in time for Phase 1 of the Project as set out in the GSPA."*

The first lie: "All of the finance is in place"

350. The first untruth in Mr Quinn's statement was his assertion that all of the finance was in place for the GSPA project. This was a bare-faced lie. There was no finance in place, as Mr Quinn and Cahill knew.[777] P&ID accepted this in its 30 June 2022 RFI Response:[778]

> *"FRN appears to interpret Mr Quinn's reference to the project finance being 'in place' as meaning that one or more lenders had entered into binding commitments to provide the required finance. It is not P&ID's case that the project finance was 'in place' in that sense."* [emphasis added]

351. The significance of Mr Quinn's lie is obvious. P&ID, a BVI shell company with no experience of constructing gas processing plants, required (on its own case) around half a billion dollars to construct the GSPA Facilities. If it had persuaded a financier to provide funds on that scale, that would have been compelling evidence that the project was proceedable and P&ID was in a position to perform it.

352. That is no doubt why Mr Quinn represented that finance was in place, when in fact it was not. Mr Quinn also had to tell this lie to ensure consistency with P&ID's representation in recital (h) of the GSPA that *"P&ID possesses the requisite finance, technology and competence for the fast track development of the Project"*.[779] [emphasis added]

353. The fact that P&ID did not have finance in place was particularly significant in circumstances where Mr Cahill had refused to countenance expenditure on the GSPA project from P&ID's own resources, beyond keeping the lights on in the office, within weeks of signing the contract:[780]

> *"Attached request from N. Hitchcock for US$1.5 mio. I have discussed with Neil and propose later to send US$23k to P&ID. The funding for the project will have to come from Arcadia."* [emphasis added]

354. Without funding for the project, P&ID was therefore unable to take even the most basic steps for performing the GSPA in accordance with the agreed *"fast track"* timeframe, which is what in fact happened.

355. P&ID has offered only two meagre responses:

---

[777] See P&ID's RFI response dated 30 June 2022 at paragraph 5(2), where it is accepted that the relevant facts were within the knowledge of Mr Cahill when Quinn 1 was served {A2/15/4}.
[778] P&ID RFI Response dated 30 June 2022 at paragraphs 33-36 {A2/15/18}.
[779] {H3/140/4}.
[780] Mr Cahill email to Mr Murray dated 21 January 2010 {H3/191}. Cited in its full context at paragraph 110 above.

a. First, it says that Mr Quinn's citation of P&ID's 14 May 2010 letter to the NNPC, in which it said *"all of the project finance was in place"*, was accurate insofar as it recounted the terms of the letter itself.[781] This is sophistry. Mr Quinn cited the letter because he wished to rely on the truth of its contents. To the extent there is any doubt about that, it is put to bed by the fact that Mr Andrew put forward the contents of the 14 May 2010 letter in his submissions to the Tribunal as:[782]

"(…) a useful letter on the subject of what progress had been made as of May 2010 in the building of the GPFs [the Gas Processing Facilities]. It is just a letter from P&ID to NNPC which summarises the progress made so far … It is P&ID saying that all necessary project finances are in place. 90 percent of the engineering designs were completed, for construction of the GPFs together with all related infrastructure. A 50-hectare site at Calabar had been allocated by the Cross River State Government and Addax had confirmed their readiness to DPR for the supply of the present referred to 150 million scufs per day and associated wet gas." [emphasis added]

Mr Andrew thus asserted that the contents of the 14 May 2010 letter was true as it applied to the *"GPFs"*, which was a defined term in the GSPA.

b. Secondly, P&ID says that *"Mr Quinn was not asserting (and in any event did not intend to assert) that P&ID had secured binding commitments from lenders to provide the required finance. Rather he was expressing, and providing NNPC with reassurance, that P&ID would have the required the finance, if and when the MPR complied with its obligation to ensure a supply of wet gas"*.[783] This is a risible interpretation of Mr Quinn's evidence. Mr Quinn said, in unqualified terms, that project finance was "*in place*". He did not say that P&ID might have been able to be put it in place in the future. Even Mr Cahill endorses this argument only half-heartedly: he says that *"In hindsight I would personally have used a different expression"*.[784] It does P&ID no credit to be taking points such as this.

356. Mr Quinn's evidence that finance was in place for the GSPA project was therefore false.

The second lie: 90% of the engineering designs were complete

357. Mr Quinn told the Tribunal in numerous parts of his evidence that P&ID had completed the majority of the engineering designs for the GSPA project. Thus, he said that:

[781] P&ID RFI Response dated 30 June 2022 at paragraph 37(1) {A2/15/19}.
[782] Liability transcript at p.60, lines 13-18, 21-25 and p.61, lines 1-3 {H7/293/15}.
[783] P&ID RFI Response dated 30 June 2022 at paragraph 37(2) {A2/15/19}.
[784] Cahill 3 at paragraph 75.1 {D/5/27}.

a. P&ID had reached *"a very advanced stage of the preparatory engineering work"* (paragraph 47);

b. P&ID had spent US$40 million on the project, including for *"production of detailed engineering drawings"* (paragraph 47);

c. P&ID had commissioned *"extensive work"* from specialist engineering companies (paragraph 48);

d. P&ID had *"put together a completed engineering package ready for actual permit applications, procurement and construction, which comprised about 100 volumes of documentation"* (paragraph 49); and

e. that *"90% of the engineering designs had been completed"* (paragraph 110).

358. Mr Quinn also said that the GSPA had been the *"culmination of years of research by my team of engineers into the production of clean energy from natural gas"* (paragraph 4), that P&ID was *"well advanced in its thinking and detailed engineering development"* by the time it presented its proposal to the Technical Committee of the MPR (paragraph 70), and that the design work on the GSPA project had resulted in a *"3-D software model of the plant which was in such high detail that it would have enabled the training of the plant staff"* (paragraph 49).

359. Each of these statements was false for the same basic reason: P&ID had produced no detailed design work for the GSPA project. The engineering experts' joint memorandum {F1/3} records the following agreed positions:[785]

a. *"The Experts agree that P&ID did not have an engineering design for the GSPA"* (paragraph 5.1, paragraph 37).

b. *"The Experts agree that P&ID did not complete 90% of the engineering designs for the GSPA"* (paragraph 9.1, paragraph 55).

c. *"The Experts agree that P&ID had not reached a very advanced stage of the preparatory work necessary to implement the GSPA … in 2009"* (paragraph 6.1, paragraph 42).

d. *"The Experts agree that there is no evidence of any detailed engineering work (as defined by the FEL process) for the GSPA"* (paragraph 6.1, paragraph 46).

e. *"The Experts agree that P&ID did not at any time have a completed engineering package ready for*

[785] These agreed positions are reflected in P&ID's RFI Response dated 30 June 2022 at paragraphs 1-3 {A2/15/3} and, as regards the 3D model at paragraph 17 {A2/15/10}.

procurement and construction of the GSPA" (paragraph 7.1, paragraph 49).

f. *"The Experts agree that there is no evidence of a 3-D model for the GSPA facility"* (paragraph 8.1, paragraph 58).

g. *"The Experts agree that the design of Project Alpha was of very little relevance to the design of the GSPA"* and that *"the concept envisioned under the GSPA by P&ID ended up being very different from the Project Alpha design"* (paragraph 5.1, paragraph 38; paragraph 6.1, paragraph 46).

360. It has taken a significant amount of digging and pushing by FRN to extract these admissions: P&ID only recently amended its pleaded case to accept that it had not completed 90% of the engineering designs. Its previously pleaded case, supported by a statement of truth, and its position before Sir Ross Cranston, was that it had completed the designs.[786]

361. Instead of accepting the obvious, however, P&ID has clung on to an incredible interpretation of Mr Quinn's statement that it did not concern the GSPA project at all. Thus, at paragraph 3 of its 30 June 2022 RFI Response it says:[787]

> *"On the assumption that the reference [in the Request] to the 'GSPA project' is a reference to the particular facilities that P&ID agreed to construct pursuant to the GSPA, it is not P&ID's case that it had, either by 2008 or by the time of the commencement of the arbitration, reached a very advanced stage of the preparatory engineering work necessary to construct those facilities."*

362. This is an extraordinary statement. It does not take much imagination to guess how the Tribunal would have reacted, had it been told that Mr Quinn's evidence was not about *"the particular facilities that P&ID agreed to construct pursuant to the GSPA"*. That was, on its face, the very purpose of Mr Quinn's statement.

363. P&ID's case is that Mr Quinn's statement is to be interpreted as referring to the progress made by P&ID on Project Alpha, not the GSPA.[788] This is utterly implausible:

a. The preparatory work for Project Alpha was, as the parties now agree, *"of very little relevance to the design of the GSPA"*.[789] It would make no sense for Mr Quinn to devote his statement to describing the progress made by P&ID on a project that was, on P&ID's own case, of minimal relevance to the GSPA project for which P&ID was

[786] See e.g. the amendments to Defence at paragraph 57.4.2 {A1/2/40}.
[787] {A2/15/3}.
[788] P&ID RFI Response dated 30 June 2022 at paragraph 4 {A2/15/3}.
[789] Engineering experts' joint memorandum at paragraph 5.1 at [38] {F1/3/7}.

claiming damages.

b. If this had really been Mr Quinn's intention, he would have needed to explain this in very clear terms in order to avoid misleading the Tribunal. He did not: he never mentioned Project Alpha and repeatedly referred to *"the Project"* (singular) without revealing the existence of a second, distinct earlier project.[790]

c. P&ID relies on the fact that Mr Quinn was referring in paragraphs 47-49 of his statement to the period between 2006 – 2008, which preceded the execution of the GSPA. However, (i) that is no answer to paragraph 110 of Mr Quinn's statement, which self-evidently is referring to the progress made on the project as of May 2010, and (ii) no reasonable reader would have interpreted Mr Quinn's reference to preparatory work carried out in 2006-2008 as being a reference to preparations carried out for another project in circumstances where he never revealed the existence of another distinct project at that time, and where the purpose of his statement was to describe P&ID's state of preparedness for performing the GSPA.

d. Crucially, at the liability hearing Mr Andrew positively relied upon the statement that 90% of the engineering designs were complete as evidence of *"what progress had been made as of May 2010 in the building of the GPFs [the Gas Processing Facilities]. It is just a letter from P&ID to NNPC which summarises the progress made so far"* [emphasis added][791]. P&ID thus relied on Mr Quinn's statements as evidence of progress made on the GSPA project. P&ID's case now (based upon the instructions of Mr Andrew, who is one of P&ID's current directors)[792] is therefore the opposite of the case that Mr Andrew put forward at the arbitration.

e. Likewise, P&ID's own experts, BRG, relied on Mr Quinn's evidence at the quantum stage as showing the progress that P&ID had made on the GSPA project specifically (and not some other project). This was an important part of BRG's evidence (see paragraph 396.d below).

f. That Mr Quinn was referring to progress made on the GSPA project is consistent with the repeated representations made by P&ID to the government, both before and after the GSPA was executed, that it had completed almost all of the engineering designs for the GSPA facilities (and not for some other project): see the letters at

[790] See e.g. Quinn 1 at paragraphs 22 {G/9/7}, 41, 44, 45 {G/9/12-13}.
[791] Liability transcript at p.60, lines 13-18 {H7/293/15}.
[792] See P&ID's RFI Response dated 7 September 2022 at paragraph 1 {A2/19/2}.

{H1/326}, {H1/457}, {H3/309}, {H3/330}, {H3/378} and {H3/414}, cited in Section B above. Mr Quinn's statement was designed to continue these earlier lies, which had been expressed in almost identical terms.

g. Finally, if it is now P&ID's position that Mr Quinn's evidence was referring to Project Alpha rather than the GSPA project, it follows that P&ID and its legal representatives (presumably on P&ID's instruction) misled Sir Ross Cranston at the extension of time hearing, where they described these passages of Mr Quinn's statement as being about the GSPA project (see paragraphs 376-380 below and 202 of the Cranston Judgment).[793]

364. Mr Quinn's evidence that P&ID had completed the vast majority of engineering designs for the GSPA project was therefore demonstrably false. In fact, as the experts agree, there is *"no evidence of <u>any</u> detailed engineering work"*.[794]

<u>The third lie: P&ID had spent US$40 million preparing for performance</u>

365. Mr Quinn's evidence was also perjured where he stated that P&ID had spent *"in excess of US$40 million"* on preparatory work for the GSPA project.[795] This third lie was connected to the second one in the sense that Mr Quinn was seeking to give the impression that the US$40 million had been spent on completing the majority (90%) of the engineering designs for the GSPA project (as well as on feasibility studies, the technology licences required to operate the facilities, and project management costs).[796]

366. Shortly after Mr Quinn's statement was served, Mr Hitchcock said in a WhatsApp to Mr Cahill:[797] *"Suggest you get the person who stated 'I has [sic] invested $40 Mio on Engineering' comes up with a defence of this statement … Reality – undefendable."*

367. P&ID now accepts, as it must, that it did not spend US$40 million on the GSPA project:[798]

> *"On the assumption that references to "the GSPA project" are references to the particular facilities that P&ID agreed to construct pursuant to the GSPA, this Request proceeds on a mistaken basis. <u>It is not P&ID's case that P&ID sank in excess of US$40 million into feasibility studies etc. in relation to those particular facilities</u>*." [emphasis added]

[793] {C/12/32-33}.
[794] Engineering Experts' Joint Memorandum at paragraphs 6.1 and 47{F1/3/7}.
[795] Quinn 1 at paragraph 47 {G/9/13}.
[796] Ibid.
[797] Mr Hitchcock WhatsApp message to Mr Cahill dated 21 November 2014 (18:38) {L/1/40}.
[798] P&ID RFI Response dated 30 June 2022 at paragraphs 6-7 {A2/15/5}.

368. P&ID's explanation for Mr Quinn's evidence on the US$40 million is that he was referring to expenditure on Project Alpha, not the GSPA project.[799] Again, this is hopeless. Mr Quinn's statement was patently not referring to a project other than the GSPA, and it is absurd to suggest otherwise, for the reasons at paragraph 363 above.

369. Even if, *quod non*, Mr Quinn's statement properly construed was referring to another project, his evidence was that P&ID had spent US$40 million on the project. It had not. The expenditure on Project Alpha was by Tita Kuru, as P&ID accepts.[800] Sir Ross Cranston specifically rejected P&ID's attempt to explain away the reference to the US$40 million expenditure as Tita Kuru's expenditure on Project Alpha. He found there were *"serious difficulties"* with any suggestion that Mr Quinn's statement could be referring to anything other than expenditure by P&ID on the GSPA.[801] FRN respectfully agrees.

The fourth lie: P&ID had been allocated a plot of land

370. The fourth respect in which Mr Quinn's evidence was perjured was his statement that *"a 50 hectare site had been allocated to P&ID by the Cross Rivers State Government"*.[802]

371. In the most literal sense this was true. P&ID had been allocated a plot of land by the local government in its letter of 16 February 2010.[803] What Mr Quinn conspicuously omitted, however, was that the allocation was conditional upon two steps being taken by P&ID:

    a. Payment of a fee of NGN 21,015,138 (c. US$139,000) within 120 days;[804] and

    b. The submission of planning documents, including a Detailed Site Analysis Plan and Report, an Environmental Impact Statement, and architectural structural, mechanical and electrical drawings of the proposed facility, within 12 weeks.[805]

372. Mr Cahill made a deliberate decision to take neither of these steps, on or around 25 February 2010 (i.e. just one month after the GSPA was signed),[806] such that the allocation had lapsed by mid-May 2010, many years before Mr Quinn served his statement.[807]

[799] P&ID RFI Response dated 30 June 2022 at paragraph 8 {A2/15/6}.
[800] Defence at paragraph 57.2.2 {A1/2/38}.
[801] Cranston Judgment at [203] {C/12/33}.
[802] Quinn 1 at paragraph 110 {G/9/26}.
[803] Cross Rivers State letter to P&ID dated 16 February 2010 at {H9/205/5}.
[804] See the letters from Cross Rivers State at {H9/205/5} and {H9/205/7}.
[805] Letter from Cross Rivers State dated 17 February 2010 {H9/205/6}.
[806] See paragraph 110.d above, referring to Mr Cahill's email of 25 February 2010 {H3/279}.
[807] As the relevant state agencies have since confirmed: e.g. Cross River State's letter of 23 August 2019 {H9/199}.

373. Mr Quinn chose not to mention any of this.[808] Yet it was the critical information from the Tribunal's perspective: the question was not whether P&ID had obtained a historical and conditional allocation of land (for free), but whether it had followed through so as to put itself in a position to perform. Had Mr Quinn told the truth, that P&ID had chosen not to take the basic steps necessary to secure the land just one month into the contract, his statement would have painted a very different picture about P&ID's ability and readiness to perform.

ii. P&ID's shifting case on perjury

374. For the reasons above, Mr Quinn's evidence was perjured in four fundamental respects.[809] P&ID has belatedly admitted this, subject only to a handful of arguments that Mr Quinn's evidence is not to be interpreted as referring to progress made on the GSPA project at all. Those arguments are hopeless for the reasons given above.

375. Until P&ID made these admissions, however, P&ID's case on perjury had been a moving feast. Its original position was that Mr Quinn's witness statement did concern the GSPA project, and that his evidence in this respect was true.[810] P&ID's position only changed when Tita Kuru commenced its arbitration alleging that P&ID had wrongly relied upon designs relating to Project Alpha. This is an important point. It not only demonstrates that P&ID are prepared to say whatever suits them at any given point in time, but also that the task of uncovering the truth has not been a straightforward one. P&ID has obfuscated at every opportunity. It is extraordinary in those circumstances that P&ID is alleging that FRN should have uncovered Mr Quinn's perjury during the course of the arbitration. It has taken years of litigation, and P&ID's changing incentives as a result of the Tita Kuru Arbitration, to extract the truth.

376. The starting point is what P&ID said about Mr Quinn's evidence before Sir Ross Cranston at the extension of time hearing. P&ID's then-counsel, Mr Mill KC, submitted the following to the Judge as regards Mr Quinn's evidence on readiness and ability to perform:[811]

> *"So, my Lord, why have I shown my Lord that material? The answer is as follows: when you go to read the passages in Mr Quinn's evidence that my learned friends rely on, you have to do that against*

[808] SoC at paragraph 61(3) {A1/1/36}.
[809] As well as being perjured in respect of P&ID's use of bribery to obtain the GSPA, which has been addressed in Section D above.
[810] Save that P&ID has never disputed that Mr Quinn's statement that all of the finance was in place was untrue (subject only to their argument on the meaning of finance being *"in place"*) (see paragraph 355.b above.)
[811] Cranston transcript, Day 2 at pp.115-117 {C/11.4}.

> *the backdrop of what appears to be the case, which is that P&ID, or those with whom they were working, had done a very considerable amount of work such that they were in an advanced state of preparation for the building of* ***the facility****. That of course is consistent with an expenditure of $40 million, which of course is the first point that my learned friends rely upon … what is alleged to be the lie? The lie alleged in relation to the 40 million is that, as we saw from the Tita Kuru letter to which I will take you in a minute, the money had not been spent by P&ID, it had been spent by Tita Kuru. So what? Two points. Firstly, he doesn't say the money had been spent by P&ID. It is not what it says. Secondly, the point that he is making in the statement at this point is not about who spent the money. It is about the state of preparedness. It doesn't matter who spent the money. So that is that point. So far as the hundred volumes of documents are concerned, my Lord, there is nothing to suggest, and we do not accept for one moment, that those documents do not in fact exist. The only basis upon which it is said they clearly don't exist is because we haven't volunteered them or any of them on this application. This is not the substantive hearing of the section 67 and 68 application. As a matter of probability, given the expenditure of $40 million given what BRG have said, why is there any reason to doubt what Mr Quinn says in paragraph 49?"* [emphasis added]

377. P&ID's position before Sir Ross Cranston was thus that Mr Quinn's statements were true, not by reference to progress on another project, but because they reflected P&ID's true state of preparation *"for the building of the facility"*, meaning the GSPA facility.[812]

378. Mr Mill went on to read to the judge the 14 May 2010 letter cited at paragraph 110 of Quinn 1 (*"We are pleased to report that significant progress has already been achieved"*), and said that this was *"undoubtedly correct based on the BRG evidence [P&ID's expert quantum evidence]"*.[813] He then referred to Mr Quinn's statement about the finance being in place and submitted *"Well, maybe there was a touch of hyperbole in what Mr Quinn said, but I am sure he had some good basis for that"*.

379. Mr Mill's submissions were then reflected in [202] of the Cranston Judgment, where the Judge said:[814]

> *"Drawing in part on the BRG expert report for the quantum hearing, Mr Mill's submission was that P&ID and those working with it had undertaken a very considerable amount of work such that they were in an advanced state of preparation for building the facility. Mr Quinn never said explicitly*

[812] See similarly Cranston transcript, Day 2 at p.122, lines 21-23 {C/11.4} where Mr Mill referred to Mr Quinn's evidence on the US$40 million as *"showing the amount of work that had been done in order to generate readiness"*.
[813] Cranston transcript, Day 2 at p.118, lines 5-8 {C/11.4}.
[814] {C/12/32}.

that P&ID had spent the US$40 million, only that it had been spent. In Mr Mill's submission it did not matter who had spent the money; the Tita Kuru letter confirmed that it had been spent. The issue was P&ID's state of preparedness. The fact was that the work had been done; that was all Mr Quinn was saying." [emphasis added]

380. Sir Ross Cranston therefore (correctly) understood P&ID's position to be that Mr Quinn's statements concerned the *"state of preparation for building the facility"*, i.e. the GSPA facility. P&ID now claims that Mr Quinn's statements were about its state of preparedness for a different project which had minimal relevance to the GSPA, i.e. Project Alpha. Yet P&ID did not seek to correct the Judge on this point: it chose to remain silent. It seems, therefore, that P&ID instructed its initial legal team that Mr Quinn's evidence concerned the steps taken by it to perform the GSPA but, when that case began to unravel, it concocted a new case based on a (hopeless) alternative reading of Mr Quinn's statements.

381. At the hearing before Sir Ross Cranston, P&ID's case was that Mr Quinn's evidence was referring to the GSPA project and was true, because the Project Alpha work could and would have been used to perform the GSPA. This was then reflected in P&ID's original Defence, served on 6 November 2020 and accompanied by a statement of truth, which pleaded that:

a. *"P&ID had reached an advanced stage of the preparatory engineering work"*;[815]

b. *"A significant proportion of the design work [from Project Alpha] was also capable of being used for the purposes of the GSPA"*;[816]

c. *"Only a small amount of further design work would have been required"*;[817]

d. *"… the allegations that Mr Quinn's statement [sic] at paragraphs 4,42, 48, 50, 49 and 70 are also false and misleading regarding the progress made under the GSPA Project are denied"*;[818]

e. *"A video of the 3D model of the gas processing facility was appended to Mr Quinn's statement"*;[819]

f. *"90% of the engineering designs for the proposed plant had been completed"*.[820]

382. Mr Cahill subsequently served a witness statement on 6 May 2022 setting out P&ID's

[815] Original Defence at paragraph 57.2.1 {A1/2/38}.
[816] Original Defence at paragraph 57.2.3 {A1/2/38}.
[817] Original Defence at paragraph 57.2.4 {A1/2/38}.
[818] Original Defence at paragraph 57.3 {A1/2/40}.
[819] Original Defence at paragraph 57.3.1 {A1/2/40}.
[820] Original Defence at paragraph 57.4.2 {A1/2/40}.

position as regards the relevance of the Project Alpha drawings (and therefore the truth of Mr Quinn's statements as to P&ID's readiness to perform the GSPA):[821]

> *"The Calabar project was therefore in a real sense a continuation of Project Alpha, only in a different location: it was not something fundamentally different. In my view, therefore, it was entirely natural and appropriate, and not at all misleading, for Mick to refer to the work carried out on Project Alpha in the context of explaining the background to what became the GSPA."* [emphasis added]

383. Mr Cahill also said that *"I cannot say for sure whether 90% was an accurate figure … but it was true that only a relatively small amount of brand-new design work would have been required for the revised plant [i.e. the GSPA Project]".*[822] [emphasis added]

384. However, in the meantime Tita Kuru had served a Statement of Claim in its arbitration against P&ID on 18 December 2020. In that document, Tita Kuru repeatedly alleged that P&ID had misappropriated the Project Alpha designs to use for its own benefit on the GSPA project.[823] This boxed P&ID in and forced it to admit in those proceedings the true position: that the Project Alpha designs were of no real relevance to the GSPA. For example:

a. Mr Cahill said in his witness evidence in the Tita Kuru Arbitration that *"the Project Alpha materials would have had only a limited degree of relevance [to the GSPA Project]"*;[824]

b. He also said that *"by the time of the execution of the MoA [the purported settlement agreement between P&ID and Tita Kuru], it was clear to us that the Project Alpha work product was no longer relevant"*;[825] [emphasis added]

c. One of Mr Cahill's associates, Mr David Hallett, gave evidence that *"the vast majority of the engineering design drawings that were prepared for Project Alpha were not applicable at all to the Calabar Project"*, save for minor elements such as designs for the security fence and CCTV systems, and that *"the reality is that new design drawings would have been necessary for the gas stripping plant itself."* [emphasis added][826]

385. This was diametrically opposed to P&ID's position in the present litigation that the Project Alpha and GSPA design work were, in essence, one and the same thing, such that Mr Quinn could fairly present progress on the former as progress on the latter.

---

[821] Cahill 3 at paragraph 71 {D/5/25}.
[822] Cahill 3 at paragraph 75.2 {D/5/28}.
[823] See e.g. Tita Kuru Statement of Claim at paragraph 16 {K/5/8}.
[824] Mr Cahill's first statement in the Tita Kuru arbitration at paragraph 20.8 {K/10/44}.
[825] Mr Cahill's second statement in the Tita Kuru arbitration at paragraph 6.3 {K/15/11}.
[826] Mr Hallett's first statement in the Tita Kuru arbitration at paragraph 4.4 {K/16/4}.

386. FRN discovered the existence of the Tita Kuru Arbitration from P&ID's Disclosure Certificate on 29 October 2021. P&ID initially refused to disclose more than the slimmest selection of documents from the arbitration, but capitulated following a threatened application by FRN and provided a fuller picture through tranches of disclosure given from March 2022 onwards.[827]

387. As a result of its position in the Tita Kuru Arbitration being revealed to FRN (in addition, no doubt, to feedback from its experts as to whether P&ID could really be said to have been in an advanced state of preparedness for the GSPA), P&ID was forced into carrying out a *volte-face*. Through amendments made on 9 March and 22 July 2022, it deleted or qualified each of the pleas set out in paragraph 381 above so as to align with its position in the Tita Kuru Arbitration that the Project Alpha designs were irrelevant to the GSPA project. The upshot was that P&ID abandoned its case that it had achieved an advanced stage of preparation for the GSPA. The revisions can be seen, for example, from the following amendments (of which there are many more):

> 57.2.1. P&ID had reached an advanced stage of the preparatory engineering work for a gas-stripping project in the period 2006-2008, as Mr Quinn stated.
>
> 57.2.3. It is admitted that P&ID and Tita-Kuru disagreed over the proposed gas processing and propylene plant because gas supply in Lagos could not be secured. The dispute was not over the quality of the design work produced. ~~A significant proportion of the design work was also capable of being used for the purposes of the GSPA, in so far as it related to gas processing, and P&ID thus acquired a large amount of detailed know-how in this regard.~~
>
> 57.3. As to sub-paragraphs (4)-(6): the allegations that Mr Quinn's statements at paragraphs 4, 42, 48, 50, 49, and 70 are also false and misleading ~~regarding the progress made under the GSPA Project~~ are denied, for the same reasons as stated at paragraph 57.2 above. Further:

388. P&ID also deleted its plea that *"Only a small amount of further design work would have been required"*.[828] The reality, as Mr Hallett accepted in his statement for the Tita Kuru proceedings,

[827] See the correspondence at {O/180/5-6} and {O/197/7}.
[828] Defence at paragraph 57.2.4 {A1/2/39}.

is that P&ID would have needed to start from scratch. This was a radically different picture to that painted by Mr Quinn in his evidence to the Tribunal, which was that 90% of the design work had been completed and P&ID was therefore 'ready to go'.

389. The consequence of these *voltes-face* is that Mr Quinn's evidence was, on P&ID's own case, grossly misleading. P&ID's contention is that Mr Quinn was giving evidence about a project which was never identified in his statement, was almost entirely irrelevant to the GSPA which was the subject of P&ID's claim, and was therefore irrelevant to P&ID's state of preparedness to perform the GSPA. Contrary to the impression given by Mr Quinn, and P&ID's original position in these enforcement proceedings, the position was not that P&ID had done the vast majority of preparatory engineering work for the GSPA project and had spent US$40 million on designs, technology licences and other steps for the GSPA. The reality was that it had done next to nothing. Indeed, the documentary record shows that Mr Cahill had made a decision within just one week of signing the GSPA that P&ID would not fund steps towards performing the contract (see paragraph 110 above). That is a radically different state of affairs to that which Mr Quinn sought to portray in his evidence.

390. It is concerning that P&ID made these changes to its sworn statement of case (which themselves contradict Mr Cahill's sworn evidence)[829] only when pushed to do so by its tactical interests in the Tita Kuru Arbitration. These are not marginal matters on which opinions can reasonably differ. P&ID and Mr Cahill knew when they served their original Defence and witness evidence that the Project Alpha designs were irrelevant to the GSPA project, and that P&ID had therefore not reached an advanced state or preparedness for the latter. Yet they chose to put forward the opposite case to FRN and this Court.

391. Even more importantly, P&ID's change of tack reveals that it tried to persuade Sir Ross Cranston to refuse FRN permission to bring its fraud allegations to trial on a basis which it now accepts was false, namely that the statements in Quinn 1 were an accurate description of the steps taken by P&ID to perform the GSPA.

392. Following P&ID's belated U-turn, FRN served a notice asking it to admit that Mr Quinn's evidence was untrue in certain respects.[830] P&ID has refused to respond, stating only that *"Our client is not required to respond to your client's Notice to Admit Facts substantively or indeed at all. It will respond if, when and to the extent that it considers it is appropriate to do so"*.[831] P&ID is of course

[829] See paragraphs 382-385 above, referring to Cahill 3 at paragraphs 71 {D/5/25} and paragraph 75.2 {D/5/27}.
[830] {A3/1}.
[831] {A3/2/2}.

correct that it is not obliged to engage with the Notice to Admit. However, its failure to do so is deeply unattractive, and will result in the wastage of much Court time and effort, in light of the obvious reality that Mr Quinn's evidence was, on P&ID's own case, untrue.

393. The end point of P&ID's contortions in relation to Mr Quinn's evidence is its RFI Response dated 30 June 2022,[832] which no longer disputes that Mr Quinn's statements were untrue insofar as they related to the GSPA, but contends that Mr Quinn's statement is not to be interpreted as relating to that contract at all. That is hopeless for the reasons already given, but is also a long way from P&ID's original position in these proceedings.

iii. Substantial Injustice: relevance of Mr Quinn's evidence to the Final Award

394. P&ID contends that the perjury alleged against P&ID was immaterial to the outcome of the arbitration.[833] Standing back, that is an extraordinary submission. If Mr Quinn's evidence was irrelevant to the issues that the Tribunal had to decide, why did he go to the length of telling the lies that he did? The obvious reason is that he felt it necessary to convey the impression that P&ID was a serious outfit that was ready to perform.

395. The authorities demonstrate that, while the hurdle for proving perjury is a high one, the test for whether the proven perjury is sufficiently material to justify setting aside an award is relatively low. The Court must ask whether the Tribunal's decision *"might well have been different"* absent the false evidence: see paragraphs 238 and 253 above.[834] The test is plainly met in this case. If the Tribunal had been presented with the true picture rather than Mr Quinn's fabrications, it *"might well"* (at the very least) have found that P&ID would not have been able or willing to perform the GSPA, and therefore would never have earned the profits it was claiming as damages. Indeed, the evidence is overwhelming that the Tribunal would have found that P&ID was <u>not</u> able or willing to perform the GSPA.

396. The relevance of Mr Quinn's evidence is in any event clear from:

    a. The Tribunal in its Final Award reciting the perjured parts of Mr Quinn's statement *verbatim* in support of its conclusion that *"<u>the evidence shows a high degree of likelihood that if the Government had been willing to perform, P&ID would have acquired the site and built the plant</u>"* [emphasis added].[835] It is difficult to imagine a clearer causal link between Mr Quinn's

---

[832] {A2/15}.
[833] Defence at paragraph 59 {A1/2/41}.
[834] Referring to e.g. *RAV Bahamas v Therapy Beach Club* [2021] UKPC 8, [2021] AC 907 at [34] and *Vee Networks Ltd v Econet Wireless International Ltd* [2005] 1 All ER (Comm) 303 at [90].
[835] At Final Award at paragraph 50 {G/49/13}.

evidence and the outcome of the arbitration than this.

b. P&ID's statement in its skeleton argument that it relied on Mr Quinn's evidence as the factual basis for its claimed losses.[836]

c. Mr Andrew's reliance on paragraph 110 of Mr Quinn's statement as evidence of *"what progress had been made as of May 2010 in the building of the GPFs [the Gas Processing Facilities]. It is just a letter from P&ID to NNPC which summarises the progress made so far"* [emphasis added].[837] There is no reason why Mr Andrew would have relied on this passage if it was irrelevant to the issues in the arbitration.

d. The fact that P&ID's own quantum experts, BRG, relied on Mr Quinn's evidence to support the robustness of their quantum calculations.[838] Thus BRG said in response to the criticism of FRN's experts, Upstream, that its figures were provisional and speculative:[839]

   i. Based on *"information made available to me"* (i.e. Mr Quinn's statement and exhibits) *"a substantial degree of project development and definition for this facility had already been achieved by P&ID"* (paragraph 2.2.1).[840] [emphasis added]

   ii. Contrary to Upstream's criticism, *"at the time that P&ID entered into the GSPA (at which point the decision to invest must be considered final) a significant amount of project definition and estimation had already taken place"* (paragraph 2.2.2).[841] [emphasis added]

   iii. BRG explained that their quantum figures were based on a 'scaling down' of the earlier designs for facilities with a polypropylene plant (paragraph 2.2.1).[842] Unbeknownst to BRG, these were designs for the Project Alpha plant which, as P&ID has now admitted, had no material relevance to the GSPA.

   iv. BRG then set out a *"timeline of project definition and estimating already undertaken by P&ID"* (paragraph 2.2.3). There follows an extensive summary of Mr Quinn's witness evidence, including a reference to his evidence that P&ID had put together a *"completed engineering package"* comprising around 100 volumes of

836 P&ID reply skeleton argument dated 26 August 2016 at paragraph 8 {G/46/2-3}.
837 Liability transcript at p.60, lines 13-18 {H7/293/15}.
838 Reply at paragraph 31(2D) {A1/3/43}.
839 See e.g. the preamble to Upstream 1 at {H8/410/6-9}.
840 {H8/418/8}.
841 {H8/418/8}.
842 {H8/418/8}.

documents, together with a 3D model of the plant which was capable of training staff members (paragraph 2.2.2).[843]

v. Based on Mr Quinn's statements and the documents exhibited thereto, BRG concluded that *"P&ID were well advanced in their preparation to build the Gas Processing Facilities"* (paragraph 2.2.8).[844] [emphasis added]

vi. See similarly paragraph 2.9.1: *"… the documents we have reviewed indicate that P&ID was in an advanced state of readiness to construct the Gas Processing Facilities at the time of the execution of the GSPA"*).[845] [emphasis added]

vii. Mr Caldwell, of BRG, also relied on Mr Quinn's statement that P&ID had already spent US$40 million in preparing to perform the GSPA in answer to cross-examination questions.[846]

e. As Mr Bunten explains, the effect of BRG having the wool pulled over its eyes in this way was that it concluded that its figures had attained a level of accuracy ("Class 2") which could only have been attained if the project had been developed to such an extent that it was ready for an EPC tender. In fact, P&ID's state of preparedness was nowhere near that stage.[847]

f. Mr Quinn's perjury was therefore self-evidently material to the Tribunal's decision to award many billions of dollars of damages to P&ID.

397. Even leaving these points aside, which FRN submits are determinative, the suggestion that P&ID could ever have performed the GSPA, let alone within the expedited schedule imposed by the GSPA, is fanciful for the reasons given by Mr Bunten and Mr George in their expert reports.[848] Contrary to Mr Quinn's evidence, the true position was that:

a. P&ID had secured no funding at all, and had taken nothing other than superficial steps to obtain it. Yet, as Mr George explains in his expert reports, in order to achieve the GSPA's expedited timetable, P&ID needed a finance package ready to go by the time the contract was executed.

b. As is common ground, P&ID *"did not have an engineering design for the GSPA"* and *"had*

[843] {H8/418/10}.
[844] {H8/418/10}.
[845] {H8/418/19}.
[846] Quantum hearing transcript at p.80, line 20 – p.81, line 1 {G/47}.
[847] Bunten 1 at paragraph 266 {F1/1/80}.
[848] Reply at paragraph 31(3) {A1/3/44}.

not reached a very advanced stage of the preparatory work necessary to implement the GSPA".[849] Yet P&ID needed to have taken a whole series of steps (as Mr Quinn represented it had done) by the time the GSPA was executed in order to perform within the contractual deadlines.

c. At most, P&ID had *"only a collection of part-developed concepts for the GSPA"*,[850] such as the hand-drawn sketch at paragraph 67 above. This was a risible level of progress for a half-billion-dollar gas processing contract.

d. It was not the case, as P&ID previously pleaded, that *"only a small amount of further design work would have been required"* to bring the GSPA project to fruition.[851] Rather, as P&ID now admits, it would have had to start from scratch.[852]

e. P&ID had only a single employee at the time, Mr Hitchcock.[853]

f. P&ID never engaged an EPC contractor or even took the necessary initial steps to look for one.[854]

g. Within a week of signing the GSPA, P&ID took a deliberate decision not to spend the necessary money on the project: see paragraph 110 above.

398. Mr Bunten and Mr George consider that, given this state of affairs, P&ID could never have performed the GSPA. They rely on two headline points (the detail of which will be explored in cross-examination): (i) the nature of the project and of P&ID as a shell company with no experience of constructing gas processing plants or access to finance; and (ii) the fact that P&ID made no meaningful progress in achieving the milestones that one would have expected of a reasonable contractor embarking on a half-billion-dollar gas processing contract by the time the GSPA was executed. As to this:

a. P&ID's experts offer very little by way of response to the first point (i.e. the nature of the GSPA project and P&ID as an inexperienced shell company) beyond a bare assertion that P&ID would have been able to perform and comparisons with a handful of projects of an allegedly similar nature which succeeded. Those comparisons are

[849] Engineering Experts' Joint Memorandum at paragraphs 5.1 and 37 {F1/3/6} and paragraphs 6.1 and 42 {F1/3/6}.
[850] Engineering Experts' Joint Memorandum at paragraphs 5.1 and paragraph 39 {F1/3/6}.
[851] See the deletions to Defence at paragraph 57.2.4A {A1/2/39}.
[852] Mr Hallett's first statement in the Tita Kuru Arbitration at paragraph 4.4 {K/16/4}.
[853] Schedule to P&ID's RFI Response dated 6 July 2022 {A2/15.1/1}.
[854] Bunten 1 at paragraphs 349-367 {F1/1/103-108}.

inapposite for the reasons given by Mr Bunten and Mr George.[855]

b. P&ID's experts' response to the second point is that P&ID could not reasonably have been expected to make any progress in implementing the contract before FRN identified the source, and therefore specifications, of the feedstock gas.[856] Mr Bunten explains why that is wrong in his second report.[857] In summary, it was always going to be the case that P&ID had to design the facilities to accommodate a range of gas compositions, not least because the source (and therefore composition) of the feedstock gas was likely to change over the 20-year life of the contract. It would therefore make no sense to have designed the facilities around a single set of gas composition figures, and to stall any progress on the project until those figures were obtained. It is commonplace for a gas processor to design its facilities based on a range of compositions, as demonstrated by the fact that P&ID, on its own evidence, reached an advanced stage of preparedness (90% of the engineering designs) for the Project Alpha gas processing facilities without any information about the source of gas for the project or its specifications.[858] The suggestion that it was impossible or imprudent to carry out any work before the gas source had been confirmed for the GSPA project is therefore simply wrong.

c. In any event, it is not open to P&ID to contend that it was prevented from taking steps towards performance because of a lack of gas composition data in circumstances where:

   i. P&ID represented in the GSPA that it had already *"undertaken all necessary studies, including the identification of suitable associated gas fields, and is ready to commence a fast track development of the project"*.[859] Having made that representation, P&ID is estopped from contending that it did not take any steps to perform the contract because of the absence of studies on the associated gas composition and/or the fact that no suitable associated gas fields had been identified;[860] and

   ii. P&ID's evidence to the Tribunal was that it had completed the vast majority

[855] See Mr Bunten's comments in the Engineering Experts' Joint Memorandum at section 2.1 at paragraphs 251-261 {F1/3/37-40} and in his supplemental report {F1/4/84}; George 2 paragraphs 52-58 {F2/4/22-24}.
[856] Defence at paragraph 59.2.2 {A1/2/42}.
[857] In particular Bunten 2 at paragraphs 33-166 {F1/4/14-57}. See Reply at paragraph 13(8) {A1/3/15}.
[858] Bunten 2 at paragraph 76 {F1/4/26}.
[859] GSPA, recital (i) {H3/140/4}.
[860] *First Tower Trustees Ltd v CDS (Superstores International) Ltd* [2019] 1 WLR 637 at [47]; *Sofer v Swissindependent Trustees SA* [2019] EWHC 2071 (Ch) at [139]. See Reply at paragraph 13(9)(i) {A1/3/15}.

(90%) of the engineering work for the GSPA project. It is abusive for P&ID now to make the opposite point that it had not done any such work because it was prevented from doing so by the absence of gas composition data. This is the scenario that Andrews LJ was anticipating in *Park v CNG Industrial Capital Europe Ltd* [2022] 1 WLR 860 where she said that it is no answer that a fraudulent party could have obtained a judgment (or, by extension, an award) by running an alternative cause of action which would not have relied on the dishonest representation ([52]). That comment applies *a fortiori* in a case such as this, where P&ID is attempting to argue that it could have obtained the award based on alternative (it says truthful) evidence, had it not served false evidence the first time around.

399. To the extent that it matters, therefore, the correct position is that P&ID would not have been able to perform the GSPA, and the Tribunal would have reached that conclusion had it not been misled by Mr Quinn's evidence. It certainly *"might well"* have done so.

iv. Substantial Injustice: relevance of Mr Quinn's evidence to the Liability Award

400. P&ID takes a separate point that Mr Quinn's evidence is said to have been immaterial to the Liability Award.[861] The relevance of this is unclear. It is sufficient for FRN to set aside the Final Award, which is the source of its obligation to pay damages to P&ID. At most, therefore, the point goes to the issue of whether FRN could reasonably have uncovered the perjury at the quantum stage, which is addressed at paragraphs 403-409 below.

401. But on any view, the correct position is that Mr Quinn's evidence was relevant to the issue of liability as well as that of quantum:[862]

    a. Had FRN and the Tribunal known that P&ID was not in a position to perform the GSPA, that would have been a complete answer to P&ID's claim for damages based on FRN's alleged repudiatory breach of contract.[863] As a matter of English law (which the parties agree is materially the same as Nigerian law on this point):[864]

    "… a repudiating party has a defence to a claim in respect of that breach by the innocent party if he can establish that, at the time of the repudiation, the innocent party was already irremediably disabled from performance, provided that that inability to perform on the part of the innocent party is not itself

[861] Defence at paragraph 59.2.1 {A1/2/42}.
[862] Reply at paragraph 32(2) {A1/3/44}.
[863] Reply at paragraph 32(2)(vi) {A1/3/46}.
[864] {O/410} and {O/433}; *Acre 1127 Ltd v De Montfort Fine Art Ltd* [2011] EWCA Civ 87 at [51].

attributable to the repudiatory breach. The same result must in my view follow if it can be shown not that the innocent party was disabled from performance but that he had no intention of performing."

b. It follows that, where a repudiating party can show that his counterparty was unable or unwilling to perform, for reasons independent of the repudiatory breach, *"he is not liable in damages"* (*Acre 1127* at [51]) [emphasis added]. That is precisely the Order that P&ID was asking the Tribunal to make in its Liability Award: that it was *"entitled to damages for breach of contract, to be determined by the Tribunal after suitable directions"*[865] [emphasis added]. In turn, the Tribunal's order in the Liability Award was that *"P&ID is entitled to damages (in an amount to be assessed) for the Government's repudiation of the GSPA"* [emphasis added].[866] There would have been no such liability or entitlement, had the Tribunal found that P&ID was unable or unwilling to perform.

c. On any view, the Tribunal cited Mr Quinn's evidence extensively in its Liability Award.[867] Had it known that this evidence was dishonest, and that P&ID had in fact obtained no finance for the GSPA project, taken no serious steps towards performance, had not spent any money on the project, and had made a decision within weeks of signing the GSPA not to acquire the land offered to it for the facilities,[868] the Tribunal's assessment of the claim for breach of contract would have been substantially different to what it in fact was.[869]

d. Mr Andrew positively relied on Mr Quinn's evidence at the liability hearing as evidence of *"what progress had been made as of May 2010 in the building of the GPFs [the Gas Processing Facilities]. It is just a letter from P&ID to NNPC which summarises the progress made so far"* [emphasis added].[870] He would not have done so had Mr Quinn's evidence been irrelevant to the issue of liability.

e. Further, had the Tribunal known that P&ID's evidence was perjured, it would have struck the claim out at the liability stage as an abuse of process on the basis that a fair trial could not take place, since Mr Quinn's evidence was the only evidence before the Tribunal on the circumstances surrounding the GSPA and P&ID's attempt to perform

[865] P&ID liability skeleton argument at paragraph 111.5 {G/29/35}.
[866] Liability Award at paragraph 80(2)(c) {G/31/19}.
[867] See e.g. Liability Award at paragraphs 37-38 {G/31/7}.
[868] Ibid.
[869] Reply at paragraph 32(2)(iv) {A1/3/45}.
[870] Liability transcript at p.60, lines 13-18 {H7/293/15}.

it.[871]

402. P&ID is therefore wrong to contend that Mr Quinn's perjured evidence was irrelevant to the Liability Award, to the extent that it matters.

v. Section 73: reasonable diligence

403. P&ID's final roll of the dice is to contend that the Awards should stand even if they were obtained by the perjured evidence of Mr Quinn as to P&ID's readiness and ability to perform, because it is suggested that FRN could and should have raised that objection during the course of the arbitration. Accordingly, it is contended that FRN should be barred from setting aside the Awards on grounds of perjury under s.73 of the 1996 Act.[872]

404. This is on its face an astonishing submission. Its effect would be that P&ID is entitled to use the English Court as the vehicle for enforcing a US$11 billion Award procured by fraud, for the sole reason that (on P&ID's case) FRN acted negligently in failing to detect that fraud, which *ex hypothesi* was deliberately concealed from it, sooner.

405. There are two threshold objections to P&ID's reliance on s.73 in this context:

a. The first is that, as a matter of public policy and the proper construction of s.73, a fraudster may not profit from his own dishonesty by alleging that his victim ought reasonably to have uncovered the fraud sooner.[873] That is the effect of *Takhar*, which Sir Ross Cranston found (*obiter*) applies to set-aside applications of the present kind.[874] The law is addressed in greater detail at paragraph 269 above. The only exception to the *Takhar* principle, which P&ID relies on, is where there has been a deliberate decision not to run a fraud argument. There was no such decision in this case for the reasons below.

b. The second is that FRN's legal team was corrupted by P&ID at the jurisdiction and liability stages of the arbitration, and remained in place for much of the quantum stage: Section F below. In those circumstances it does not lie in the mouth of P&ID to contend that FRN ought to have identified and raised the issue of Mr Quinn's perjury at those stages of the arbitration (nor can it be said that FRN's replacement legal team could have rescued the situation at the quantum stage for the reasons given below).

[871] Reply at paragraph 32(2)(vii) {A1/3/46}. *Summers v Fairclough Homes Ltd* [2012] UKSC 26, [2012] 1 WLR 2004; *Arrow Nominees Inc v Blackledge* [2001] BCC 591.
[872] Defence at paragraph 60 {A1/2/43}.
[873] Reply at paragraph 32(2)(i) {A1/3/44}.
[874] Cranston Judgment at [183] {C/12/29}.

As the Court of Appeal held in *Westacre*, the reasonable diligence test does not apply where there is *"reason to suspect collusion or bad faith in the obtaining of the award"* (at p.317B). That is precisely this case.

406. Each of these arguments is, on its own, dispositive of P&ID's s.73 argument.

407. But even if both points were wrong, there was no trigger which ought to have put a reasonable person in FRN's shoes on notice of Mr Quinn's perjury:

a. The starting point is the finding of Sir Ross Cranston that there was no such trigger, during the quantum stage of the arbitration or thereafter, such that FRN was entitled to an extension of time to challenge the Awards. He said:[875]

"… Henderson LJ's words, albeit in the context of section 32 of the Limitation Act 1980, are apposite: the concept of reasonable diligence only makes sense if there is something to put the claimant on notice of the need to investigate whether there has been a fraud: Gresport Finance Limited v Carlo Battaglia [2018] EWCA Civ 540, [49]. In this case the trigger for a thorough fraud inquiry was absent." [emphasis added]

b. Likewise, at [264] of the Cranston Judgment he said:[876]

"*Overall, for the reasons I have set out at length, I accept that there was nothing which Nigeria ought to have been aware of to act as a trigger causing a reasonable person, exercising reasonable diligence, to have discovered the alleged fraud.*" [emphasis added]

c. These findings related to the period from 11 November 2015, which is when Mr Malami was appointed as the Attorney General and FRN was preparing for the quantum hearing, to the present day: Cranston Judgment at [229]-[230].[877]

d. It would be very odd if, Sir Ross Cranston having found that there was no trigger for uncovering P&ID's fraud after 11 November 2015, it were found that FRN ought reasonably to have uncovered the fraud before then. There is no reason of logic as to why a trigger might have existed before then but ceased to exist after it.

e. Tellingly in this respect, P&ID has not itself pointed to any specific trigger or moment in the arbitration which ought to have reasonably put FRN on notice of Mr Quinn's perjury. All that P&ID says is that FRN had notice of *"the relevant facts"* (which are not

[875] Cranston Judgment at [250] {C/12/39}.
[876] {C/12/41}.
[877] Sir Ross Cranston's finding that FRN could not reasonably have uncovered the fraud during the quantum stage of the arbitration is at [239] of the Cranston Judgment {C/12/38}.

particularised) and *"could have raised its objection before the Tribunal, but failed to do so"*.[878] That is not good enough. The irregularity which P&ID contends FRN should have uncovered and objected to is its own dishonest evidence (not, for example, a mere procedural irregularity). A party to arbitration is entitled to assume the honesty of the other party and its witnesses.[879] Absent a very clear trigger to put the innocent party on notice of perjury, there can be no reasonable expectation that it should have uncovered the fraud that has been concealed from it under the cloak of an ostensibly honest witness statement.

f. In this respect, the test is not whether FRN's legal team could by any means have discovered P&ID's dishonesty, but whether it should have done so. An innocent party is not to be punished *"if the right stone was not turned over"*.[880] P&ID's case is not, however, that any reasonable lawyer acting for FRN should have uncovered P&ID's dishonesty, but rather that FRN's legal team did not do so *"because [they] knew that there were no reasonable grounds to dispute P&ID's willingness and ability to perform the GSPA"*.[881] In other words, P&ID's case is that there was no perjury to discover. It cannot also contend that any reasonable lawyer should have discovered that perjury.

g. This is compounded by P&ID's shifting position on the truth of Mr Quinn's evidence. P&ID initially told this Court that Mr Quinn's evidence was a true account of the progress made by P&ID on the GSPA project, before conducting a *volte-face* and admitting that P&ID had not, in fact, made any substantial progress on the GSPA project, but seeking to re-cast Mr Quinn's evidence as being about a different project which, on P&ID's latest admission, was largely irrelevant to the GSPA. FRN has therefore faced a moving target, even at this late stage of the proceedings (see paragraphs 374-393 above). The amount of time, effort and pressure required, in the course of these heavy proceedings, to extract the true position of itself leans strongly against the proposition that there was an (unspecified) trigger in the arbitration that ought to have caused FRN to uncover the perjury, let alone the full facts in this regard.

408. P&ID next contends that, even if FRN could not reasonably have been expected to raise its objections at the liability stage of the arbitration, it ought to have rescued the position by doing so, through its replacement counsel Chief Ayorinde, at the quantum stage. That is

[878] Defence at paragraph 60 {A1/2/43}.
[879] *HIH Casualty & General Insurance Ltd v Chase Manhattan Bank* [2003] 2 Lloyd's Rep 61 at [15].
[880] *Stati v Republic of Kazakhstan* [2017] 2 Lloyd's Rep 201 at [73].
[881] Defence at paragraph 63 {A1/2/45}.

misconceived:

a. It was not open to Chief Ayorinde to re-open the truth of Mr Quinn's evidence. Mr Shasore had already accepted that evidence by not challenging any relevant part of it in his Statement of Disputed Facts pursuant to Procedural Order No.9.[882] The Tribunal had already reached this conclusion at the liability hearing, where Mr Andrew submitted that *"it was my understanding that my learned friend [i.e. Mr Shasore] agreed to all of the facts in Mr Quinn's witness statement apart from the ones on the statements of facts and issues"*.[883] Mr Andrew went on to say *"It is my submission that the position now, in this arbitration, is that the facts that are not challenged in Mr Quinn's witness statement are the factual basis of the arbitration"* [emphasis added].[884] Lord Hoffmann agreed, holding that the effect of the Statement of Disputed Facts was to *"remove any issue as to matters which were left unchallenged"*.[885]

b. This conclusion was recorded in paragraphs 28-29 and 34 of the Tribunal's Liability Award {G/31/6-7}. Mr Quinn's evidence was thus 'baked in' at the liability stage.

c. At the quantum hearing, Lord Hoffmann expressed the view that *"on the basis of our liability award, the only contingency beyond actual failure of the plant itself that you have to take into account would be a failure of supply of gas"* [emphasis added].[886] It was therefore not open to FRN, in Lord Hoffman's view, to introduce new contingencies in the counterfactual, such as that P&ID would not have been able to perform.

d. This was confirmed in the Final Award itself:

   i. The Tribunal began by saying *"Before considering the quantification of the Government's liability, it is necessary to be clear about the findings made by the Tribunal in its second Partial Final Award. The evidence for P&ID at that stage consisted of [Quinn 1] …"*.[887]

   ii. It went on in the same paragraph to quote from Mr Quinn's witness statement, including the statement at paragraph 110 that P&ID had completed 90% of the engineering designs, had put all project finance in place and had been allocated a site for the facilities.[888]

[882] See paragraph 180 above.
[883] Liability transcript at p.16, lines 8-15 {H7/293/4}.
[884] Liability transcript at p.19, lines 15-16 {H7/293/5}.
[885] Liability transcript at p.29, lines 8-11 {H7/293/8}.
[886] Quantum transcript at p.7, lines 16-18 {G/48/3}.
[887] Final Award at paragraph 29 {H8/477/6}.
[888] Ibid.

iii. At paragraphs 33-34 the Tribunal describes the process under Procedural Order No.9, under which Mr Shasore had chosen not to dispute any material part of Mr Quinn's statement {G/49/8}.

iv. The Tribunal then held at paragraph 50 that *"the evidence shows a high degree of likelihood that if the Government had been willing to perform, P&ID would have acquired the site and built the plant"*. Under that conclusion, the Award cites extensively from Mr Quinn's evidence, including the key perjured passages at paragraphs 42, 47-49 and 110 {G/49/13-14}.

v. The Tribunal then concluded at paragraph 51 {G/49/14}:

"*As recorded in paragraph 33 above, the Government was directed by Procedural Order No.9 to serve notice of any primary facts in Mr Quinn's witness statement which it disputed. It did not dispute any of the matters mentioned above. P&ID thus showed every sign of being willing, indeed anxious, to implement the project and there is no dispute over its ability to have done so.*"

vi. Finally, at paragraph 56, the Tribunal summarised its conclusion that *"the Tribunal finds on a balance of probability that P&ID would have performed its obligations under the GSPA and therefore did suffer loss"* {G/49/15}.

e. It therefore simply was not open to Chief Ayorinde to call the truth of Mr Quinn's evidence into question at the quantum stage.[889] That evidence had already been baked in at the time of the Liability Award, as the Tribunal was at pains to point out in its Final Award. To use Mr Andrew's own language, Mr Quinn's evidence was *"the factual basis of the arbitration"*.[890]

f. In any event, even if it was technically open for Chief Ayorinde belatedly to dispute Mr Quinn's evidence (which it was not), it was objectively reasonable to have proceeded on the basis that he could not and/or did not seek to do so.[891] Moreover, there is no reason, and P&ID has identified no such reason, why Chief Ayorinde

[889] In addition, there is a strict deadline (30 days) and thresholds (limited to computation, clerical or typographical errors) for seeking to re-open a prior arbitral award during the course of ongoing proceedings under the Nigerian Arbitration Rules: see P&ID's own submission to the Tribunal at {H7/503}.
[890] Liability transcript at p.19, lines 15-16 {H7/293/5}.
[891] Especially in circumstances where P&ID had insisted on running *res judicata* and estoppel points at the liability hearing, so as to prevent FRN re-running points at the jurisdiction and liability phases: P&ID's liability skeleton argument at paragraphs 34-36 {G/25.1/9}. There was every reason to believe that P&ID would have taken the same point as regards the status of Mr Quinn's evidence between the liability and quantum stages.

should have chosen to challenge the truth of evidence which had been accepted by his predecessor, Mr Shasore. Chief Ayorinde was entitled to assume the honesty of both Mr Shasore and P&ID. The points about the absence of a trigger for alleging dishonesty apply with equal force at this stage of the arbitration (see paragraph 407 above). As Sir Ross Cranston found:[892]

"*When Mr Shasore was replaced for the quantum hearing and Final Award, I also accept Mr Howard's submission that Nigeria's new counsel, Mr Ayorinde would have no reason to suppose that Mr Quinn's evidence to the Tribunal had been perjured, that P&ID was not a legitimate business which was ready and able to perform the GSPA, or that Mr Shasore was implicated in illegitimate payments to senior civil servants acting with him. Mr Ayorinde's conduct of the arbitration in this regard was explicable.*"

g. That Chief Ayorinde acted reasonably in not seeking to allege that Mr Quinn's evidence was perjured is underlined by the fact that he was instructed just two months before the quantum hearing,[893] and P&ID actively resisted an attempt to obtain an extension so that Chief Ayorinde could properly prepare.[894] It is fantastical to suggest that Chief Ayorinde could have got a perjury case up and running within this timeframe.

h. Sir Ross Cranston's conclusion, reached with the benefit of thousands of documents before him including the arbitration record, was that *"Nigeria can rightly claim that it could not with reasonable diligence have ascertained the fraud"* at the quantum stage of the arbitration.[895] P&ID has identified no good reason to depart from that finding.

409. P&ID's final point is that FRN made a *"deliberate decision not to investigate and/or raise the matters of which it now complains at the time of the arbitration"*.[896] The significance of this argument, it seems, is that the Supreme Court in *Takhar* identified as a possible exception to the principle that a fraudster cannot criticise his victim for unreasonably failing to uncover his fraud, the situation where the victim makes a deliberate decision not to run a fraud point at trial. However, in order for a deliberate decision to add anything to the *Takhar* test, it must mean something more than a decision which was negligent or careless. In *Elu v Floorweald* Linden

[892] Cranston Judgment at [235] {C/12/37}.
[893] Chief Ayorinde was sent a pack of documents to read-in on 15 July 2016 {H8/330}. The quantum hearing was on 30 and 31 August 2016 {G/47}.
[894] {H8/377/1-2}.
[895] Cranston Judgment at [239] {C/12/38}.
[896] Defence at paragraph 60 {A1/2/43}.

J held that the rule in *Takhar* did not apply *"where the party positively believes that a claim is fraudulent and … has the evidence to prove it"* [emphasis added].[897] Most recently, in *Park v CNG* Andrews LJ said *"A person self-evidently cannot take a deliberate decision not to rely on evidence of fraud, unless he is not only aware of that evidence, but knows that he can rely on it to plead fraud in answer to the case brought by his opponent"*. The bar is thus set very high: actual knowledge of fraud is necessary (but not sufficient).

410. A similar point was made in *The Law Society v Sephton & Co* [2004] EWCA Civ 1627, [2005] QB 1013 at [110] per Neuberger LJ (as he was) citing the first instance Judge: *"a claimant does not 'discover' a fraud until he has 'material sufficient to enable him properly to plead it'"*. Thus, for a determination to be made that a person could have *"discovered the grounds for the objection"* of fraud at an earlier date, there must first be a determination that he had the material sufficient to enable him properly to plead it. Mere suspicion is not enough.

411. There was no deliberate decision in this sense at any stage in the arbitration. P&ID has identified no basis at all for contending that FRN knew about, but deliberately chose not to challenge, Mr Quinn's perjury, let alone that it held the evidence to mount such a challenge. Nor does it lie in P&ID's mouth to make such an argument at the same time as denying that there was any perjury at all, as Sir Ross Cranston held in his extension of time ruling.[898]

412. In any event, the simple answer to P&ID's case on deliberate decision is to ask: 'why?' P&ID has identified no plausible reason why FRN's legal team would have known that Mr Quinn's evidence was perjured but chosen not to challenge it. There are only two possibilities. The first is that (at least some members of) FRN's legal team knew that Mr Quinn's evidence was untrue, but chose not to make the point because they had been corrupted by P&ID. That obviously does not assist P&ID. The second is that FRN's lawyers were not aware of any (let alone sufficient) material to justify running an argument that P&ID's evidence was perjured, in which case it did not make a *"deliberate decision"*, properly so-called, at all. On either scenario, therefore, the deliberate decision point fails.

413. To summarise, therefore, FRN's position on s.73 is as follows:

    a. The s.73 argument only applies to Mr Quinn's perjury as to P&ID's willingness and ability to perform to the GSPA. P&ID has identified no basis for contending that FRN ought to have been aware of Mr Quinn's perjury relating to bribery and

[897] *Elu v Floorweald Ltd* [2020] 1 WLR 4369 at [156(vi)].
[898] See the Cranston Judgment at [245] {C/12/38}.

corruption (which is addressed separately in Section D above).

b. As a matter of law and public policy, and consistent with the Supreme Court's ruling in *Takhar*, it is not open to P&ID to profit from its own fraud by alleging that FRN acted negligently in failing to uncover the fraud. That is a complete answer to the s.73 argument.

c. In any event, P&ID corrupted FRN's legal team at the jurisdiction and liability stages of the arbitration. As a result, it does not lie in P&ID's mouth to contend that FRN ought reasonably to have objected to the perjury at those stages of the arbitration.

d. In any event, there was at no point during the arbitration a trigger which ought to have put FRN on notice of Mr Quinn's perjury, nor has P&ID identified one. On the contrary, P&ID continues to deny that there was any perjury at all, at the same time that it has chopped and changed its case on Mr Quinn's evidence.

e. It was not open to FRN to re-open Mr Quinn's evidence at the quantum stage of the arbitration, since it had already been accepted in the Tribunal's Liability Award. In any event, Chief Ayorinde did not act objectively unreasonably in not seeking to challenge the truth of Mr Quinn's evidence at that stage. He was also entitled to assume the honesty of Mr Quinn and his predecessor, Mr Shasore.

f. There was no deliberate decision not to allege perjury against P&ID in the arbitration.

414. Accordingly, the Awards must be set aside on the ground that they were procured by the perjured evidence of Mr Quinn concerning P&ID's willingness and ability to perform the GSPA.

F. COLLUSION WITH FRN'S LEGAL TEAM

415. The matters uncovered are remarkable and egregious. In short:

a. Those acting on behalf of P&ID illicitly obtained both documents and information which was legally privileged or otherwise confidential to FRN throughout the arbitral process (the "**FRN Privileged Content**"), including the specific FRN Privileged Documents of which FRN is aware as set out in FRN Privileged Documents Statement of Facts.[899]

b. There is incontrovertible evidence that Ms Adelore, her secretary Ms Aderemi and

[899] {A5/1}.

one of Mr Shasore's partners at his law firm, Mr Ukiri, were implicated in the leaking of FRN Privileged Content. Each of those individuals have been caught red-handed. There is very strong evidence that Mr Shasore, and possibly others at his firm, were also implicated. All of this evidence emerged after the Cranston Judgment.

c. There is no sensible explanation for the leaks, and in most cases P&ID has not attempted to give one. The only plausible explanation is that those involved in FRN's defence who leaked the documents had been compromised by P&ID. Remarkably, P&ID has pleaded only a non-admission as to whether payments were made by Mr Adebayo, one of the main conduits, in return for the FRN Privileged Content.[900] Moreover, while P&ID insisted that FRN write to the EFCC to gather any relevant investigative documents, it refused to countenance releasing the collateral use restriction over the FRN Privileged Content so as to enable a full and proper investigation.[901] P&ID clearly has something to hide.

d. Apart from the sharing of FRN Privileged Documents, there is incontrovertible evidence that a corrupt payment was made by Mr Adebayo to one of FRN's lawyers, Ms Belgore. That, in itself, is sufficient to set aside the Awards. Again, this is new evidence that has emerged since the Cranston Judgment.

e. There is also incontrovertible evidence that corrupt payments of US$100,000 each were made to Ms Adelore and Mr Oguine and of US$150,000 to Mr Alegeh (the only dispute in each case being whether this was corruption linked to P&ID or unrelated corruption). It is also undisputed that US$300,000 was paid to Mr Ukiri shortly after he leaked an FRN Privileged Document.

f. In addition to these undisputed payments, there is compelling evidence that large, round-figured cash payments were made to Ms Adelore and Mr Shasore in the critical period from around November 2014 to the liability hearing, and to Mr Dikko in the early stages of the arbitration. These payments, which (especially in the case of Ms Adelore) are out of proportion to the means of the recipients, can in some cases be traced to specific P&ID-related transactions. In other cases it can be shown that sufficient cash was being withdrawn from P&ID-related accounts, or by Mr Adebayo (and his sidekick Mr Shonibare, who was involved in the obtaining of FRN Privileged Documents), to fund the payments. Either way, P&ID has identified no explanation

[900] Defence at paragraph 70L {A1/2/58}.
[901] See the correspondence at {O/612} and {O/638}.

for why Ms Adelore and Mr Shasore were receiving eye-watering amounts of cash in large, round-numbered denominations during the critical period in the arbitration, nor does it seem to have asked them that simple question. As regards Mr Dikko, Mr Cahill does not even deny that a payment was made. Instead, he dismisses it as largesse typical of Mr Quinn.[902]

g. It is outrageous that so many members of FRN's legal team were compromised by P&ID. But it would be sufficient, for the purpose of setting aside the Awards, that just one of them was. P&ID rightly has not contended that an arbitral award could survive a proven allegation that a party has corrupted one of the other side's legal team or the representatives otherwise involved in defending it. The fact that FRN has been able to implicate multiple members of its legal team reflects the depths to which P&ID was prepared to stoop, but is not strictly necessary for the setting aside of the Awards.

h. Finally, there has also been both deliberate destruction and withholding of evidence by those acting on behalf of P&ID to cover up further details of the corrupting, including as to the identities of all those providing FRN Privileged Content from inside FRN, such that the Court should infer others were also corrupted, but their identities remain concealed.

416. This is all far outside the ambit of what could ever reasonably be expected in the arbitral process. Both the obtaining by P&ID of the FRN Privileged Content and the collusion with members of FRN's defence team are matters which are more than sufficient to individually constitute *"the award being obtained by fraud"* or *"the way in which it was procured being contrary to public policy"*, though of course the matters should also be viewed collectively. The leaking of the FRN Privileged Content was part and parcel of, and a product of, P&ID's corruption of individuals involved in FRN's defence. Either way, justice demands that the Awards cannot stand.

i. Obtaining of FRN Privileged Content by those acting on behalf of P&ID

417. It will be no surprise to the Court that legal professional privilege is as equally an applicable principle in Nigeria as it is in this jurisdiction.[903] There are various provisions of Nigerian law which prohibit public officers from sharing confidential information, including

[902] Cahill 3 at paragraph 59 {D/5/21}.
[903] Professor Ojukwu explains in Ojukwu 1 at paragraph 7.20 {F4/1/45}: *"That communications (oral or written) made between a party and its lawyers are legally privileged and confidential is a well-established and well-known principle in Nigeria".*

privileged material, with outsiders.[904] There are also specific rules which provide that a Nigerian lawyer may not take it upon himself to reveal the content of any privileged communications (whether oral or written) to third parties without full permission of and disclosure to the client.[905]

418. On 29 October 2021, shortly before disclosure was due to be provided in these proceedings, Mr Hayes of KK separately wrote to MdR stating that he was *"writing in relation to certain documents located amongst the universe of documents provided to K&K for the purposes of the document disclosure exercise in the Proceedings, which appear to contain information over which your client might seek to assert privilege, or that may otherwise be confidential to your client"*.[906] Mr Hayes' letter did not set out the basis on which his letter was being sent but it was presumably sent in recognition of the duty of a party's legal representatives, upon encountering illicitly obtained materials, to ensure that they are returned to their owner.[907]

419. Thereafter MdR pursued, via correspondence and applications, information and disclosure as to all FRN Privileged Content that had been obtained, by and from whom, and in what circumstances. The FRN Privileged Documents Statement of Facts summarises, with trial bundle references, the key existing disclosure in this regard. However, as addressed below, P&ID has been obstructive in terms of the provision of information and disclosure, and continues, in its evidence, to seek to present a false narrative. These matters will all be explored at trial.

420. P&ID places reliance on the fact that privilege in various of the FRN Privileged Documents has been waived by FRN as part of these proceedings challenging the Awards.[908] This is a red herring. The point is that the documents and information were privileged or otherwise confidential to FRN (and indeed, obviously so) at the time they were illicitly obtained by P&ID before, during and after the arbitration, as P&ID knew.[909]

---

[904] Ojukwu 1 at paragraphs 7.25-7.32 {F4/1/47-50}; Bamodu 1 at paragraph 7.66 {F4/2/60}.
[905] Rules 19(1)-(3) of the Nigerian Rules of Professional Conduct for Legal Practitioners 2007 (the **"Rules for Professional Conduct"**). As Professor Ojukwu explains at Ojukwu 1 at paragraph 7.24 {F4/1/47}, and has not been disputed by Professor Bamodu, an in-house government lawyer is not entitled or permitted to reveal the content of any privileged communications outside of the legal team dealing with the specific case.
[906] {O/135}.
[907] The authorities establish that documents obtained in breach of confidence must be returned to their owner: *Arbili v Arbili* [2015] EWCA Civ 542, [2016] 1 FLR 473 at [35]; *L v K (Freezing Orders: Safeguards)* [2014] 2 WLR 914 at [56(3)]. This is also consistent with the obligation of a party to an arbitration to participate in good faith and/or to cooperate. See s.40 of the 1996 Act and *China Machine New Energy v Jaguar Energy* [2018] SGHC 101 – Kannan Ramesh J at [194] – [199].
[908] See, for example, Defence at paragraph 78A.3 {A1/2/63}.
[909] Reply at paragraph 37A(7) {A1/3/65}.

421. The Court is asked to read the FRN Privileged Documents Statement of Facts and Bundle I, which contains the relevant material. Just by way of example, the subject matter of FRN Privileged Documents contemporaneously obtained by P&ID included:

a. Communications concerning legal advice to FRN relating to P&ID's commencement of the arbitration;[910]

b. Communications concerning legal advice to FRN as to the merits of P&ID's claim in the arbitration;[911]

c. Communications concerning legal advice to FRN as to FRN's selection of its counsel and the conduct of the arbitral proceedings;[912]

d. Communications concerning legal advice to FRN as to settlement and strategy in relation to settlement;[913]

e. Communications seeking information to assist FRN's counsel to defend the arbitration and draft its pleadings;[914]

f. Communications concerning legal advice to FRN relating to the applications to set aside the Liability Award in England (including advice provided by FRN's English solicitor Mr Kamal Shah, a partner at Stephenson Harwood LLP);[915]

g. Communications concerning legal advice to FRN on FRN's selection of expert witnesses and FRN's approach to the technical and quantum expert evidence,[916]

h. Legal advice to FRN on challenging the Awards before Nigerian Courts[917] and relating to possible enforcement of the Awards.[918]

422. It is evident, as set out in the FRN Privileged Documents Statement of Facts, that P&ID was obtaining confidential and/or privileged material belonging to FRN over a period stretching from prior to the entry of the GSPA,[919] throughout the arbitration (which commenced on 22 August 2012, with the Final Award issued on 31 January 2017),[920] and

[910] E.g. {I/49}, {I/63} and {I/95}.
[911] E.g. {I/148}, {I/156}, {I/160}, {I/165}, {I/175}, {I/194}, {I/198} and {I/212}.
[912] E.g. {I/63}, {I/134}, {I/162}, {I/179} and {I/231}.
[913] E.g. {I/160/7}, {I/166}, {I/176}, {I/178}, {I/208}, {I/212} and {I/265}.
[914] E.g.{I/106}, {I/110}, {I/117}, {I/124} and {I/206}.
[915] E.g. {I/220}.
[916] E.g. {I/245/1-4}, {I/245/6-8}, {I/247}, and {I/224}.
[917] E.g. {I/256}.
[918] E.g. {I/278} described by Mr Smyth to Mr Cahill as "*Memo from CBN - 30 Aug 2019*" {I/272/3}.
[919] See FRN Privileged Documents Statement of Facts at paragraph 58 {A5/1/53-55}.
[920] See FRN Privileged Documents Statement of Facts at paragraphs 5-51 {A5/1/2-48}.

indeed during the course of these English proceedings.[921]

423. P&ID has been evasive as to the facts surrounding its obtaining of the FRN Privileged Documents. It has sought to falsely present such facts as beyond its knowledge, asserting that *"FRN Privileged Documents were obtained by Mr Hitchcock (deceased), Mr Lloyd Quinn (deceased) and Mr Adetunji Adebayo. Mr Cahill does not know how or from whom the three said individuals obtained FRN Privileged Documents"*,[922] and that "*Mr Smyth, Mr Murray, Mr Andrew and Mr Burke QC are unaware of the sources or circumstances of the provision of FRN Privileged Documents to P&ID, its custodians or any associated persons or entities"*.[923] P&ID's repeated mantra is accordingly now to assert that it *"does not have any understanding as to how"* particular FRN Privileged Documents were obtained.[924] Notwithstanding this, P&ID's case is that it did not pay bribes or corruptly collude with anyone in order to obtain FRN Privileged Documents,[925] that the documents were not provided to it at its request, but voluntarily provided to it *"by individuals representing FRN or third parties"*,[926] that P&ID did not consider the FRN Privileged Documents to be privileged or confidential to FRN when they were contemporaneously provided to it,[927] and that P&ID did not know that the FRN Privileged Documents had been shared wrongfully.[928] This case lacks credibility and is false. Very tellingly, P&ID does <u>not</u> deny that Mr Adebayo paid bribes in return for the FRN Privileged Documents: it has pleaded a non-admission in this respect.[929]

424. Whilst Mr Hitchcock,[930] Mr Lloyd Quinn,[931] and Mr Adebayo,[932] were indeed all involved in obtaining FRN Privileged Content on behalf of P&ID, each of (at least) Mr Michael

[921] See FRN Privileged Documents Statement of Facts at paragraphs 56-57 {A5/1/53-54}.
[922] KK's Second Letter of 30 December 2021 at paragraph 11(a) {O/195/4}.
[923] KK's Second Letter of 30 December 2021 at paragraph 11(c) {O/195/5}.
[924] See Annexes to P&ID's RFI Response dated 17 May 2022 at {A2/12} and{A2/13}.
[925] Defence at paragraph 7.3A {A1/2/4}.
[926] Defence at paragraph 61.5.1 {A1/2/44}.
[927] Defence at paragraph 78A.3 {A1/2/63}.
[928] Defence at paragraph 78G {A1/2/65}.
[929] Defence at paragraph 70L {A1/2/58}.
[930] FRN Privileged Documents Statement of Facts at paragraphs 13 {A5/1/10} and 62{A5/1/60-61}.
[931] FRN Privileged Documents Statement of Facts at paragraphs 6(1)(i) {A5/1/4}, 15(1)(i) {A5/1/12}, 29(1) {A5/1/25}, and 30(1) {A5/1/26}.
[932] FRN Privileged Documents Statement of Facts at paragraphs 24(1)(ii) {A5/1/21}, 33(1) {A5/1/29}, 34(1) {A5/1/30}, 35(1) {A5/1/31-32}, 36(3)(i) {A5/1/33}, 38(1)(i) {A5/1/35}, 39(1)(i) {A5/1/36}, 40(1)(i) {A5/1/37}, 42(1) {A5/1/39}, 44(2) {A5/1/41}, 45(1)(i) {A5/1/42}, 46(1) {A5/1/43}, 47(1) {A5/1/44-45}, 48(1)(i) {A5/1/46}, 49(1)(i) {A5/1/46-47}, 52(1)(i) {A5/1/50}, 54 {A5/1/51-52}, 55 {A5/1/52} and 61(1) {A5/1/59-60}.

Quinn,[933] Mr Cahill,[934] Mr Smyth,[935] Mr Murray,[936] Mr Adam Quinn,[937] Mr Kuchazi,[938] Mr Andrew,[939] and Mr Burke[940] were also involved in the receipt of such documents on behalf of P&ID.[941] As will be explored at trial, P&ID's assertion that these individuals lacked knowledge of the circumstances in which the FRN Privileged Content was obtained, and the precise identities of all those involved in supplying them, beggars belief. Nor is it consistent with the documentary record, including the fact that FRN Privileged Documents were emailed directly to Mr Andrew, yet he now claims to have no idea of who his contacts supplying those documents were;[942] Mr Cahill's contemporaneous acknowledgement that P&ID's sources included a *"Lady contact"* at the MPR in addition to Ms Taiga;[943] and evidence that Mr Cahill, Mr Murray, Mr Andrew, and Mr Burke all liaised closely with Mr Adebayo, who was directly involved in obtaining such documents and information on behalf of P&ID.

425. P&ID could have called Mr Adebayo as a witness in these proceedings, but has not, nor has it obtained any of his documents.[944] This is an important omission. Mr Adebayo's documents would identify the sources of the FRN Privileged Content, why the sources provided that content, and whether corrupt payments were made in return for it. P&ID has not given any reason why it has failed to call Mr Adebayo or obtain his documents. Nor has it felt able to deny the allegation that Mr Adebayo made covert payments for the FRN Privileged Content,[945] despite confirming that its pleaded position is based on *"reasonable enquires"* made

---

933 FRN Privileged Documents Statement of Facts at paragraphs 5(1)(i) {A5/1/3}, 20(1)(i) {A5/1/16-17}, 25(1)(ii) {A5/1/22}, 26(1)(i) {A5/1/23}, 28(1)(i) {A5/1/24} and 32(1)(i) {A5/1/28}.

934 See FRN Privileged Documents Statement of Facts at paragraphs 31 {A5/1/26-28}, 40 {A5/1/37-38}, 43 {A5/1/39-40}, 45 {A5/1/42-43}, 46 {A5/1/43-44}, 48 {A5/1/45-46} and 52 {A5/1/50}.

935 FRN Privileged Documents Statement of Facts at paragraphs 6(1) {A5/1/4}, 16(1) {A5/1/12-13}, 18(1) {A5/1/15}, 27(1) {A5/1/23}, 28(1) {A5/1/24-25}, 29(1) {A5/1/25}, 30(1) {A5/1/26} and 43(2) {A5/1/40}.

936FRN Privileged Documents Statement of Facts at paragraphs 11(1) {A5/1/8-9}, 16(1) {A5/1/12-13} and 18(1) {A5/1/15}.

937 FRN Privileged Documents Statement of Facts at paragraphs 23(1) {A5/1/19-20} and 43(1) {A5/1/40}.

938 FRN Privileged Documents Statement of Facts at paragraphs 6(1) {A5/1/4}.

939 FRN Privileged Documents Statement of Facts at paragraphs 12(1) {A5/1/9}, 15(1) {A5/1/11-12}, 17(1) {A5/1/14}, 19 {A5/1/15-16}, 23(1) {A5/1/19-20}, 31(1) {A5/1/26-27}, 33(2) {A5/1/29}, 36(3) {A5/1/33}, 40(1) {A5/1/37}, 45(1) {A5/1/42-43}, 46(2) {A5/1/43-44}, 47(2) {A5/1/45}, 48(1) {A5/1/46}, 49(1) {A5/1/46-47}, 50(2) {A5/1/48} and 51(1) {A5/1/49}.

940 FRN Privileged Documents Statement of Facts at paragraphs 11(1) {A5/1/8-9}, 12(1) {A5/1/9}, 15(1) {A5/1/11-12}, 17(1) {A5/1/14}, 19 {A5/1/15-16}, 20(1) {A5/1/16-17}, 23(1) {A5/1/19-20}, 31(1) {A5/1/26-27}, 33(2) {A5/1/29}, 45(1) {A5/1/42-43}, 50(2) {A5/1/48}, 51(2) {A5/1/49} and 52(1) {A5/1/50}.

941 In P&ID's 17 May 2022 RFI Response it admits at paragraph 3A {A2/11/3} that the individuals who it accepts acted for or on behalf of P&ID were Mr Cahill, Mr Smyth, Mr Murray, Mr Brian Murray, Mr Nolan, Mr Michael Quinn, Mr Adam Quinn, Mr Lloyd Quinn, Ms Anita Quinn, Mr Andrew, Mr Burke, Mr Michael Black KC, Mr Muhammad Dele Belgore, Mr McElligot, Mr Andy O'Donovan and Mr Isaac Ebubeogu. See also SoC at paragraph 79C {A1/1/58}.

942 Andrew 5 at paragraph 60 {D/6/16}.

943 {H6/243/1}.

944 {O/170}, {O/269}, {O/317}, {O/319}, {O/322}, {O/344} and {O/360}.

945 Defence at paragraph 70L {A1/2/58}.

by P&ID's directors, which would unquestionably include asking Mr Adebayo whether the allegations made against him are true. The consequence is that the Court is entitled to infer (see paragraphs 505 and 508 below) that, to the extent not already abundantly clear from the documents, Mr Adebayo did obtain the FRN Privileged Content from members of FRN's legal team, that he did so on behalf of P&ID and in order to further its overall aims in the arbitration, and that he obtained the content by paying (or promising) bribes to the lawyers and others who illicitly leaked it.

426. Contrary to P&ID's case, those acting on behalf of P&ID were well aware that FRN Privileged Content was being illicitly obtained by and on behalf of P&ID.

427. In terms of the period prior to the arbitration, it is probable that Ms Taiga was amongst the sources from whom P&ID illicitly obtained documents, given that, amongst P&ID's disclosure, there are the confidential internal MPR minutes (drafted by Ms Taiga) of a Ministerial Stakeholders Meeting held on 10 August 2010.[946] That P&ID was contemporaneously aware that such documents had been illicitly provided is evidenced by: (a) the fact that, when attaching a copy of the document to an email from the ICIL email account, such attachments were titled *"FAX_DELETE_ME.dat"*;[947] (b) when it came to the preparation of Mr Quinn's Witness Statement in the arbitration, Mr Smyth subsequently identified this document to Mr Andrew and Mr Burke as *"an internal report of the [Meeting 10th August 2010] of Grace Taiga proposing certain actions",* noting *"Unofficial – do not use"*.[948]

428. Likewise, P&ID's disclosure reveals that, following the commencement of the arbitration, on 21 March 2013 Mr Hitchcock sent an email to Mr Cahill with the subject line *"Calabar Data"*. The body of the email stated, *"Can you please let Mick know that TJ is sending a complete copy of his P&iD file via DHL"*.[949] *"TJ"* was a reference to Mr Tijani. In breach of his duties under the Public Service Rules 2008, it is to be inferred that Mr Tijani had retained and was supplying to P&ID confidential documents that had come into his possession whilst performing his role as public officer. Again, it would have been obvious to those acting on behalf of P&ID that it was improper for Mr Tijani to be supplying such documents to P&ID to assist P&ID's claim against his former employer, the MPR. Indeed (at least) Mr Cahill, Mr Quinn and Mr Hitchcock would have known that Mr Tijani was providing such documents as a result of having received payments and been corrupted by P&ID: see Section

946 See FRN Privileged Documents Statement of Facts at paragraph 60 {A5/1/57-59} referring to {I/20}.
947 {I/23/1}.
948 {I/145/1}.
949 {I/89}. P&ID has not disclosed what the file consisted of.

D above.

429. In terms of the FRN legal advice and litigation privileged documents relating to the arbitration, P&ID admits that *"some FRN Privileged Documents were provided to P&ID during the arbitration by individuals representing FRN…"*,[950] but the reality is that all such documents must have ultimately come from representatives of FRN involved in FRN's defence, and who thereby had access to the content in question. Whilst P&ID has concealed and withheld the full facts as to which individuals involved in FRN's defence were illicitly providing such documents to it, it can be inferred that the corrupted individuals supplying such documents to P&ID included:

a. **Ms Adelore, Legal Director at the MPR from 2013-2017:** in one of the few instances where P&ID's disclosure includes the identity of the original sender of an FRN Privileged Document, on 16 December 2015, Ms Adelore sent an email from her account 'flakeytee@yahoo.com' to Mr Adebayo,[951] with no explanation or other representatives of FRN copied, forwarding a communication to her from Mr Shasore containing advice about FRN instructing valuation experts and the form of valuation.[952] P&ID has asserted that this document "*was sent to P&ID in an effort to lobby for a consensual extension [of time for FRN to serve its evidence in relation to quantum], by demonstrating that FRN was at least getting on with the instruction of its own expert, and not just seeking further delay*".[953] This purported explanation does not withstand scrutiny: (a) inconsistent with any contention it was legitimately provided, it was covertly sent by Ms Adelore to Mr Adebayo late at night, with no explanation and with no other members of FRN's legal team copied, as opposed to being openly sent via external counsel direct to P&ID's own external lawyers; (b) Mr Adebayo has not been called to support this purported explanation, which is damning; (c) there was no legitimate reason for Ms Adelore to have shared the confidential and legally privileged draft engagement letter from KPMG at this time and without explanation, thereby revealing to FRN's adversary the initial advice provided by KPMG as to the valuation methodology, or the limits of the exercise to be conducted by KPMG, or the fees to be paid to KPMG; and (d) the fact of Ms Adelore's corruption is consistent with the evidence of significant cash deposits into her personal accounts that has been

[950] Defence at paragraph 61.5.1 {A1/2/44}.
[951] {I/223}.
[952] {I/224}.
[953] Andrew 5 at paragraph 113 {D/6/33}.

uncovered. In short, there is no legitimate reason for a privileged document to have been shared by Ms Adelore at all. Given that the documents evidencing who leaked other FRN Privileged Documents have not been disclosed and a significant number of the leaked documents appear to have emanated from the MPR legal department, it is to be inferred that Ms Adelore was responsible for illicitly and extensively providing other FRN Privileged Content too.[954]

b. **Ms Aderemi, an employee of the MPR and secretary to, in turn, Ms Taiga, Mr Dikko and Ms Adelore:** the disclosure reveals Ms Aderemi to have been on extraordinarily close terms with P&ID's principals with her referring to Mr Quinn as *"Papa"* in communications.[955] She illicitly supplied confidential documents to P&ID: (i) on 19 August 2009 she sent internal minutes of the first AGDP Joint Operating Committee to Mr Adebayo stating *"as discussed please keep it confidential"*;[956] (ii) on or around 19 September 2012, Mr Murray forwarded a PDF of a legal advice privileged to FRN concerning the Notice to Arbitration which was titled *"Ex Rem"* (a reference, it is inferred, to the document having been supplied by Ms Aderemi), with Mr Murray stating *"Please forward to Mick. Also, confirm it reads ok so that I can remove from here"*;[957] (iii) on 20 September 2012 she emailed to icil@eircom.net what she describes as an *"advance copy"* of an invitation from Mr Dikko that P&ID engage in a Stakeholders Meeting to seek an amicable settlement.[958] Ms Aderemi's close and illicit contact with P&ID makes sense in circumstances where P&ID corrupted each of her superiors at the MPR in turn: Ms Taiga, then Mr Dikko, then Ms Adelore.

c. **Mr Shasore, FRN's external counsel:** the FRN Privileged Documents obtained by P&ID include multiple privileged communications to and from Mr Shasore,[959] which it is inferred he provided, or arranged to be provided, to P&ID. Mr Shasore was a common feature of these leaked communications. Further, associates of Mr Shasore – who had no reason to have copies of such documents other than via Mr Shasore

[954] Including (*inter alia*) the documents particularised in the FRN Privileged Documents Statement of Facts at paragraphs 21 {A5/1/18}, 26 {A5/1/22-23}, 29 {A5/1/25}, 30 {A5/1/26}, 32 {A5/1/28}, 35 {A5/1/31-32}, 36 {A5/1/32-34}, 40{A5/1/37-38}, 41 {A5/1/38}, 42 {A5/1/38-39} and 43 {A5/1/39-40}. See also memo dated 15 January 2015 titled "Arbitration update" {H7/112.1}.
[955] {H5/195}.
[956] {I/6.1}.
[957] The email is at {I/48} and the attachment at {I/49}.
[958] {H5/195/1}.
[959] See (*inter alia*) the documents particularised in the FRN Privileged Documents Statement of Facts at paragraphs 11 {A5/1/8-9}, 23 {A5/1/19-20}, 24 {A5/1/20-21}, 28 {A5/1/24-25}, 45 {A5/1/42-43}, 48 {A5/1/45-46}, 49 {A5/1/46-47}, 50 {A5/1/47-48} and 51 {A5/1/48-48}.

and where those documents are likely to have been available to Mr Shasore – can be seen to be directly implicated in sharing FRN Privileged Documents with P&ID. It is inferred that they did so on behalf of Mr Shasore both on the occasions revealed by the existing disclosure and on other occasions too:

i. On 28 October 2014, Mr Ukiri, a partner at Mr Shasore's firm who carried out no discernible work on the arbitration but received a payment of US$300,000 from Mr Shasore on 14 November 2014,[960] sent an email to Mr Adebayo attaching a scan of a privileged letter from Mr Shasore to Mr Adoke (then Attorney General) dated 24 October 2014 advising on the powers of the Tribunal and seeking instructions in relation to settlement.[961] There is no legitimate reason for this privileged material to have been sent by Mr Shasore (who was the external counsel with conduct of the arbitration) in this covert way to P&ID via Mr Adebayo and Mr Ukiri, or indeed for Mr Ukiri to have been sharing this document at all.

ii. A 'Mr Saheed Akanji' (potentially using an alias) used the email address saheedakanji1980@gmail.com to send FRN Privileged Content which appears to have been leaked from within the MPR on 17 November 2014,[962] 8 May 2015,[963] and 26 May 2015.[964] Despite both Mr Adebayo and Mr Cahill having received emails from Mr Akanji, P&ID alleges that it does not know his identity. However, the documents reveal that Mr Akanji was a contact of Mr Shasore.[965] There is no legitimate reason for this privileged material to have been shared by Mr Akanji with Mr Adebayo or Mr Cahill.

d. **Other individuals within the MPR, NNPC and within the Attorney General's office involved in FRN's defence, but whose identity remains deliberately concealed:** it is noteworthy that various of the FRN Privileged Documents disclosed by P&ID have stamps indicating them to be copies of communications marked as having been received by the MPR and the MoJ respectively.[966] This demonstrates the

[960] Mr Ukiri told the EFCC on 20 October 2021 that the payment *"was supposedly part of the fees [Mr Shasore] received for his brief"* but states that it was made to him (Mr Ukiri) *"because [he] was [Mr Shasore's] partner in the law firm not for playing any specific role in the handling of the brief [Mr Shasore] received from the government"* {J/72.1/3}.
[961] {I/183}.
[962] Email at {I/190}, and attachment at {I/191}, which appears to have been leaked from within the MPR.
[963] Email at {I/213}, and attachment at {I/214}, which appears to have been leaked from within the MPR.
[964] Email at {I/215}, and attachments at {I/216}, which appears to have been leaked from within the MPR.
[965] {H7/378/3}.
[966] FRN Privileged Documents Statement of Facts at paragraphs 6 {A5/1/4}, 12 {A5/1/9}, 34 {A5/1/30-31}, 35 {A5/1/31}, 38 {A5/1/34-35}, 39 {A5/1/36} and 43 {A5/1/39-40}.

leakers include public officials with access to the documents in those departments.[967] In addition, the limited disclosure that has been provided also reveals the use of apparent aliases to disguise the true identities of those providing FRN Privileged Documents. The apparent aliases included "*Rachael Mulero*" (sending emails attaching FRN Privileged Documents from mulero.rachael@yahoo.com),[968] "*Tokunbo James"* (sending emails attaching FRN Privileged Documents from tokunbojames1@gmail.com),[969] and "*Smith James*" (sending emails attaching FRN Privileged Documents from smithjamesxyz007@gmail.com).[970] Despite such persons sending emails directly to Mr Adebayo in the case of *"Rachael Mulero"*, and directly to the ICIL email account and Mr Andrew's own email account in the case of *"Tokunbo James"* and *"Smith James"*, P&ID incredibly claims to have no knowledge of who was behind these emails. Notwithstanding this professed lack of knowledge, the disclosure shows the FRN Privileged Documents received in this way to have been promptly shared within P&ID upon receipt,[971] with no messages sent quibbling the identity of the sender as would be expected if those acting for P&ID had in fact not known the true identities of the senders at the time.

430. As evident from the content of the documents and information provided to P&ID, that such matters were privileged and confidential to FRN is not a borderline judgment call. They are paradigm examples of content that was privileged and confidential, as would have been obvious to P&ID.[972] Further, the nature of the content (for example, disclosing the advice being received by FRN on the merits, strategy and conduct of the arbitration, all of which had no place being passed to P&ID),[973] was such that it must have been clear to all those acting on behalf of P&ID that it was not being lawfully provided. But moreover, the suggestion that P&ID was unaware that the FRN Privileged Content was being illicitly

[967] In the case of documents leaked from the MPR it is inferred that the leakers included Ms Adelore, Ms Belgore, Mr Dikko and Ms Aderemi.
[968] FRN Privileged Documents Statement of Facts at paragraphs 46 {A5/1/43-44} and 47 {A5/1/44-45}.
[969] FRN Privileged Documents Statement of Facts at paragraph 50 {A5/1/47-48}.
[970] FRN Privileged Documents Statement of Facts at paragraph 51 {A5/1/48-49}.
[971] The document particularised in the FRN Privileged Documents Statement of Facts at paragraph 46 {A5/1/43-44} was further shared internally within 20 minutes of receipt, the document at paragraph 50 {A5/1/47-48} within an hour and the document at paragraph 51 {A5/1/48-49} within 30 minutes.
[972] This would have been apparent not only to Mr Andrew and Mr Burke, as lawyers, but more generally to the others acting on behalf of P&ID, who all had experience of business and litigation.
[973] Thus, just for example, Mr Shasore's opinion dated 17 July 2014 revealed that FRN was being advised that, *"there appears to be a lack of exonerating facts or any documentary evidence with which to defend the Claim"* {I/156}; Professor Sagay's communication revealed that FRN was being advised that FRN *"appears to be in a very difficult legal position"* and that the statement of P&ID's Nigerian law expert (Justice Belgore) is "*quite formidable*" {I/148}; Mr Adoke's (the Attorney General's) communication to the President {I/165} revealed that FRN was being advised that *"there are no legal grounds to defend the claim"* and recommended commencing settlement negotiations.

provided is at odds with the reality that such documents were being provided not *"voluntarily"*,[974] but at P&ID's instigation, and because those acting on its behalf had successfully corrupted individuals representing FRN to act against FRN's interests, as part of which they provided the FRN Privileged Content to P&ID. This is consistent with the documentary record,[975] and the evidence of corruption by P&ID of FRN representatives.

431. That those acting on behalf of P&ID knew that FRN Privileged Content was being illicitly provided to P&ID, and therefore sought to conceal that such content was being obtained and the identity of the corrupted FRN's representatives providing it, is also evident from the repeated references in P&ID's disclosure to the need to delete communications, as well as clumsy attempts to conceal the identity of the leaker by, for example, tearing the top and bottom of pages off before scanning a document.[976] Thus, for example, when Mr Murray sent to Mr Smyth an FRN Privileged Document by email with subject "*Defence notes*" on 2 August 2013,[977] he wrote *"Please pass to Mick and Brendan immediately. Please also confirm received opened ok as I want to delete here"*;[978] likewise, Mr Murray stated, *"Please confirm clean receipt so that I can delete"* when circulating a further FRN Privileged Document[979] on 26 August 2013.[980] P&ID's explanation in its Defence is that, *"Mr Murray was concerned to delete emails he had received because he feared that the Nigerian authorities might raid P&ID's or ICIL's offices and/or bring prosecutions on trumped-up charges as retaliation for bringing the arbitration claim"*.[981] But this proves the point that Mr Murray recognised that such documents would be incriminating if found. P&ID was therefore deliberately deleting documents to conceal its receipt of FRN Privileged Content, and who was providing them to it.

432. In light of such practices of deletion, as well as the other shortcomings in P&ID's document retention and disclosure in these proceedings,[982] it is to be inferred that the existing disclosure does not evidence all instances of the provision to, and use of, FRN Privileged Documents by P&ID. This is quite apart from the fact that it is also to be inferred that other FRN Privileged Content is likely to have been shared and discussed only orally, such that no

---

[974] Reply 33A {A1/3/47}. Albeit whether or not the FRN Privileged Content was being provided 'voluntarily' makes no difference to the question of whether it was being provided illicitly.
[975] Including the agreements with Mr Adebayo, and the contemporaneous documents evidencing no surprise by the recipients that they were receiving the FRN Privileged Content, but rather were expecting it.
[976] See e.g. {I/48} and {I/49}; {I/109} and {I/110}.
[977] Namely, an email from Ms Hakeem-Bakare (Twenty Marina Solicitors) to Ms Belgore requesting information required to establish FRN's defence that the GSPA was discharged by frustration {I/110}.
[978] {I/109}.
[979] Namely, privileged minutes relating to requests for information to establish FRN's defence {I/124}.
[980] {I/123}.
[981] Defence at paragraph 78E.1 {A1/2/64}.
[982] Addressed in Section G of this Skeleton.

record now exists.[983]

433. Further, whilst it is to be inferred that those acting on behalf of P&ID were well aware of the true identities of those using aliases to provide FRN Privileged Documents to P&ID, the very fact that aliases were used by some individuals when providing FRN Privileged Documents would have also underscored to those acting on behalf of P&ID that such documents were being provided illicitly. Indeed, the overall covert circumstances of the provision of the FRN Privileged Documents to P&ID would have highlighted the untoward nature of the sharing.

434. The fact that it was known to those acting on behalf of P&ID that it had illicitly been provided with documents is further evidenced by P&ID's disclosure which reveals that, when Mr Andrew was preparing the exhibit to Mr Quinn's witness statement for use in the arbitration, he wrote to Mr Cahill on 6 January 2014, copied to Mr Burke, stating that he had *"identified 12 documents which we would not obviously have had – either letters to which we were not copied on the face of the letter, or minutes of meetings which were not "P&ID" minutes … Could you possibly look through these 12 documents to see whether we are comfortable saying that these were provided to us 'officially' by MOPR … Where there is any doubt we may wish to keep them out of Mick's witness statement"*.[984] The following day Mr Smyth sent to Mr Andrew a Word document containing a schedule of the 12 documents, various of which were marked *"Unofficial – do not use"*.[985] It is thus clear that, by January 2014, Mr Andrew and Mr Burke were aware that P&ID might well have illicitly obtained documents and were conscious of wishing to keep this fact from FRN and the Tribunal to avoid damaging P&ID's position. Similarly, when circulating by e-mail FRN Privileged Documents that had been obtained, those acting on behalf of P&ID often included the subject line "*Privileged and Confidential",* thereby hoping to protect from any subsequent investigation the fact that illicitly obtained documents had been obtained and shared.

435. Consistent with all of this, at no stage during the arbitration did those acting on behalf of P&ID ever (i) raise with FRN or the Tribunal that P&ID was obtaining, or – to put it neutrally – being provided with, on an ongoing basis, copies of materials privileged to FRN concerning FRN's conduct, defence and strategy in respect of the arbitration itself, or (ii) return such documents to FRN, as a party behaving honestly and seeking to uphold the

[983] SoC at paragraph 79A {A1/1/58}.
[984] {I/139}.
[985] {I/145}.

integrity of the arbitral process would have done.

436. P&ID maintains that its legal representatives *"were not under any duty to make any disclosure to FRN or the Tribunal"*.[986] This submission does P&ID no credit and takes it nowhere. For the purposes of s.68(2)(g) it is sufficient that P&ID illicitly obtained and/or was illicitly provided with documents and information privileged to FRN in connection with the arbitration, let alone that these materials were provided to P&ID as a product of it having more generally corrupted members of FRN's defence team. But in any event, the brazen suggestion that P&ID and its legal representative could decline to disclose to (and indeed, in this case, consciously take steps to withhold from)[987] FRN and the Tribunal that P&ID was in possession of illicitly obtained documents belonging to FRN is remarkable. As a party to an arbitration, P&ID was under a general obligation to arbitrate in good faith, and to deal honestly and fairly with FRN.[988] Moreover, a legal representative, upon encountering illicitly obtained materials, is required, in accordance with English law authorities, to ensure their return to their owner.[989] The professional duties applying to English barristers and solicitors (i.e. applicable to Mr Burke and Mr Andrew) lead to the same outcome, or for that representative to cease to act.[990] As would be expected, the professional duties of Nigerian lawyers are materially identical.[991]

ii. The role of Mr Kuchazi and Mr Adebayo

437. As described in Section D above, a feature of P&ID's conduct was its use of Nigerian middlemen, acting as its agents, to facilitate making bribes on the ground. The two agents who FRN has to date been able to particularly identify are Mr Kuchazi and Mr Adebayo. As part of their roles, and consistent with them having offered bribes and corrupted Nigerian

---

[986] Defence at paragraph 78H.1 {A1/2/65}.
[987] See paragraph 434 above and Reply at paragraph 33B(2) {A1/3/50}.
[988] For example, in Born, *International Commercial Arbitration* (3rd Ed, 2022) paragraph 8.02 it is said: *"The most fundamental objective and effect of an international arbitration agreement is to obligate the parties to participate cooperatively, diligently and in good faith in the resolution of their disputes by arbitration pursuant to that agreement…Simply put, an agreement to arbitrate necessarily entails a commitment to cooperate in good faith in the arbitral process, with both the arbitral tribunal and other parties to the arbitration, in resolving the parties' disputes in a fair, objective and efficient manner"*. See similarly the obligation under s.40 of the 1996 Act to *"do all things necessary for the proper and expeditious conduct of the arbitral proceedings"* and *China Machine New Energy v Jaguar Energy* [2018] SGHC 101 – Kannan Ramesh J at [194] – [199]
[989] *Arbili v Arbili* [2015] EWCA Civ 542, [2016] 1 FLR 473 at [35] and *L v K (Freezing Orders: Safeguards)* [2014] 2 WLR 914 at [56(3)].
[990] Both barristers and solicitors are subject to core duties/principles, including to act with integrity and honesty, not to behave in a way which is likely the diminish the trust and confidence which the public places on him or her or in the profession, and to uphold the proper administration of justice. See the BSB Code of Conduct (which was in force until 6 January 2014) and the accompanying Written Standards for the Conduct of Professional Work, and the subsequent BSB handbook, and the SRA Code of Conduct 2011 (in force from 6 October 2011 to 24 November 2019).
[991] Ojukwu 1 at paragraph 11.1-11.8 {F4/1/71-73}.

officials and individuals involved in FRN's defence, both Mr Kuchazi and Mr Adebayo acted on behalf of P&ID as a conduit for its illicit obtaining of FRN Privileged Content.

438. Insofar as Mr Kuchazi is concerned, he asserts in his witness statement that*: "[I] did not seek to obtain or give P&ID privileged or confidential Nigerian documents, or arrange for anyone to do so, nor did I ever offer or agree to do so".*[992] This is contradicted by the documentary evidence. Thus, on 5 November 2012, Mr Ebubeogu (Secretary, ICIL) sent an email to Mr Smyth and the ICIL email account with Mr Lloyd Quinn and Mr Murray in copy, attaching a scan of a privileged advice of that day's date from Mr Dikko to the Attorney General relating to the commencement of arbitration, and FRN's choice of arbitrator and counsel. The body of the email states *"Letter from NNPC to Hon. Attorney General of the Federation in respect of P&ID courtesy of Alhaji Kuchazi"* [emphasis added].[993] It is thus clear that Mr Kuchazi was one of P&ID's representatives involved in obtaining FRN Privileged Content, and that his evidence to the contrary is false. Notwithstanding that Mr Kuchazi is P&ID's witness in these proceedings, P&ID has incredibly advanced a case, supported by a statement of truth, that it has no understanding as to how or from whom this advice was obtained.[994]

439. Insofar as Mr Adebayo is concerned, P&ID has admitted that Mr Adebayo was one of the central protagonists involved in obtaining FRN Privileged Documents.[995] The admission is rightly made. As set out in the FRN Privileged Documents Statement of Facts, there are numerous examples of Mr Adebayo, either directly or via his assistant Mr Shonibare, forwarding FRN Privileged Documents to others acting on behalf of P&ID by email, including documents illicitly received from Ms Adelore,[996] Ms Aderemi,[997] and Mr Ukiri,[998]

---

[992] Kuchazi 2 at paragraph 9 {D/3/3}.
[993] {I/62}.
[994] P&ID's 17 May 2022 Response to RFI at paragraph 6A and Annex One at entry 23 {A2/12/1}. Similarly, it has become apparent, upon enquiries made at the behest of P&ID, that the EFCC recovered copies of potential internal government documents from Mr Kuchazi's home, with the EFCC identifying that *"He failed to disclose who shared the documents within him and the circumstances"* {I/282/1}. FRN contends two of the three documents to have been illicitly obtained internal government documents (i.e. {I/283} and {I/285} from Ms Taiga and Ms Adelore respectively) and they have been included in the FRN Privileged Documents Statement of Facts. The third document – {I/284} – is the signed version of a letter from Ms Taiga to NNPC dated 9 November 2010 (pre-dating the arbitration) regarding the NNPC issuing an undertaking to P&ID, which P&ID's disclosure in these proceedings reveals to have in fact been provided to Ms Taiga by P&ID in draft on 14 October 2010 (see {H4/38} and {H4/39}). Mr Cahill's evidence at Cahill 3 paragraph 81 {D/5/30} is that there was nothing untoward in relation to this specific episode/P&ID's possession of these particular documents in that he contends that requesting the proposed undertaking was the outcome of a stakeholders' meeting, with P&ID preparing the letter to be sent and providing it to Ms Taiga accordingly. All FRN's rights are reserved as to this explanation.
[995] KK's second letter dated 30 December 2021 at paragraph 11a {O/195/4}.
[996] See, for example, FRN Privileged Documents Statement of Facts at paragraph 44(2) {A5/1/41}.
[997] {I/6.1}.
[998] See FRN Privileged Documents Statement of Facts at paragraph 33(1) {A5/1/29-30}.

and it is inferred from others involved in FRN's defence too, including Mr Shasore.[999] Further, recent disclosure reveals that Mr Adebayo also used WhatsApp to forward photographs of FRN Privileged Documents to Mr Cahill.[1000] There was no legitimate basis for Mr Adebayo to be acting as such a conduit, or to have been provided with or obtained copies or photographs of FRN Privileged Documents, as he and others acting for P&ID would have been well aware.

440. Further, as addressed below, the documents establish that Mr Adebayo made a transfer of NGN 500,000 (approx. US$3,000) to Ms Belgore, Assistant Legal Adviser at the MPR, on 11 December 2014,[1001] which she has identified was intended for partial onward distribution by her to others within the MPR Legal Unit.[1002] In other words, there is incontrovertible proof of Mr Adebayo having made payments into the team responsible for FRN's defence whilst the arbitration was on foot. It is to be inferred that this was not a one-off incident: indeed, there is ample evidence of further cash bribes being paid by Mr Adebayo, as explained below. Moreover, Mr Adebayo made (at least) three payments to Ms Taiga of NGN 100,000 (US$500), NGN 20,000 (US$100) and NGN 100,000 (US$500) on 14 July, 14 August and 30 September 2015,[1003] respectively, which it is inferred was on behalf of P&ID.[1004]

441. In a very unsatisfactory state of affairs, P&ID has not provided disclosure of documents held by Mr Adebayo,[1005] nor called Mr Adebayo as a witness. This is notwithstanding that, from (at least) 2019, Mr Adebayo appears to have been responsible for funding 10% of P&ID's costs,[1006] and stands to personally receive approximately US$825 million if P&ID were to succeed in enforcing the Award against FRN.[1007] Those acting for P&ID obviously

---

[999] On 28 October 2014, Mr Ukiri sent an email to Mr Adebayo attaching a scan of a privileged document, which it is inferred came from and was sent with the approval of Mr Shasore. More generally, P&ID's belated WhatsApp disclosure reveals Mr Adebayo and Mr Shasore to be on close terms (see {L/31/2-3}).

[1000] See FRN Privileged Documents Statement of Facts at paragraphs 48 {A5/1/45-46} and 49 {A5/1/46-47}. P&ID maintains in its 17 May 2022 Response to RFI at paragraph 6A and Annex One at entries 111, 112 and 113 {A2/12/5} that it has no understanding as to how these communications were obtained or who the original source was.

[1001] {M/53} row 56.

[1002] Ms Belgore's EFCC interview dated 30 June 2022 at p.5 {J/14/2}.

[1003] See Bribery Statement of Facts at paragraph 22(5)-(7) {A5/2/11} referring to {M/24/1}.

[1004] SoC at paragraph 71(2Aiv) {A1/1/45}.

[1005] P&ID maintains that Mr Adebayo's documents are not within P&ID's control. In its letter dated 15 March 2022, KK stated that *"On the basis that Mr Adebayo was merely a contractual counterparty of our client's and was not an employee or agent of our client, our client considers it unlikely that Mr Adebayo holds or held any undisclosed documents within our client's control and which may be relevant to any issues in this case"* {O/269/2}. In its letter dated 18 May 2022, KK stated that it had received no response from Mr Adebayo to its request for documents {O/319}.

[1006] {H9/306/1}.

[1007] The documents belatedly disclosed by P&ID reveal that Mr Adebayo has a 10% interest in the proceeds of the award received by Lismore {H9/57/4}.

consider Mr Adebayo's evidence to be incriminating, as reflected by Mr Smyth's email to Mr Cahill dated 14 September 2019 in which he stated "*I assume Tunji has deleted all emails between us from his phone*".[1008] Altogether, the correct inference is that Mr Adebayo acted on behalf of P&ID to bribe individuals, including those involved in FRN's defence, to impede FRN's defence including through (and as evidenced by) P&ID being supplied with FRN Privileged Content.[1009]

442. Confronted with the overwhelming and toxic documentary proof of Mr Adebayo's actions, P&ID resorts to claiming that Mr Adebayo and his assistant, Mr Shonibare, were not acting as agents for and on behalf of P&ID.[1010] P&ID thus asserts (*inter alia*) that *"Mr Adebayo did not act as P&ID's agent but merely as a contractual counterparty"*,[1011] that, accordingly, *"Save as indicated on the face of a communication of a specific FRN Privileged Document…P&ID has no understanding as to how any third party came to have access to the same"*,[1012] and, more generally, that, *"P&ID has no knowledge of any alleged payments by Mr Adebayo, which are not admitted. In so far as they were made, they had nothing to do with P&ID*".[1013] P&ID has notably failed to call Mr Adebayo to give evidence supporting these self-serving contentions, which are for that reason alone to be rejected.

443. In any event, P&ID's attempt to reduce the wrongdoing by Mr Adebayo into a technical question on the law of agency is a diversionary tactic. Mr Adebayo was part of the P&ID camp. He, alongside Mr Cahill and subsequently Mr Andrew and VR, held a multi-million dollar stake in the company. His interests were aligned with the company, and he was *"part of a team which was helping to row [P&ID] to victory"*. This is sufficient to attribute Mr Adebayo's conduct to P&ID for the purpose of s.68 of the 1996 Act.[1014]

444. Standing back, the obvious question is: <u>why else</u> would Mr Adebayo have been soliciting privileged material from FRN's lawyers and paying bribes to those lawyers if not on behalf of P&ID in order to further the company's objectives? The suggestion that he was on a frolic of his own is a fantasy.

445. This is reinforced by the intermingling of Mr Adebayo's and P&ID's financial affairs in a

---

[1008] {H9/233}.
[1009] SoC at paragraphs 4(4) {A1/1/3}, 64(5) {A1/1/41}, 71 {A1/1/44-53}, 71(2Aviii) {A1/1/47}, (2Aix) {A1/1/47} and (3A) {A1/1/49} and Reply at paragraph 33C(6) {A1/3/53}.
[1010] P&ID's RFI Response dated 17 May 2022 at paragraph 3A {A2/11/3}.
[1011] Defence at paragraph 70A {A1/2/55}.
[1012] P&ID's RFI Response dated 17 May 2022 at paragraph 4A {A2/11/3}.
[1013] Defence at paragraphs 70F{A1/2/57} and 70J {A1/2/58}.
[1014] *Odyssey Re (London) Ltd (formerly Sphere Drake Insurance Plc) v OIC Run Off Ltd (formerly Orion Insurance Co Plc)* [2000] EWCA Civ 71, [2001] Lloyd's Rep IR 1.

way which is inconsistent with an arm's length relationship. For example:

a. Despite having no contractual entitlement to any payment until the Awards were enforced or a settlement was agreed, Mr Adebayo received hundreds of thousands of dollars from P&ID and its related companies between September 2011 and April 2018. The payments are set out in the Bribery Statement of Facts.[1015]

b. In its Defence P&ID has admitted these payments to Mr Adebayo, save for denying the payments of US$5,000 on or around 9 September 2011 and US$10,000 on or around 16 December 2011.[1016] However, P&ID's disclosure proves these payments to have been made: the payment of US$5,000 in September 2011 is identified as *"Adam- Cash to Tunji- $5 000"* in one of P&ID's internal spreadsheets,[1017] and the payment of US$10,000 in December 2011 identified as "*$10,000 Neil/Tunji- Dublin Exps*".[1018] The description of these payments as *"Cash to Tunji"* and *"Dublin Exps"* is a strong indicator that P&ID was feeding cash to Mr Adebayo for the purpose of paying bribes.

c. On 30 June 2015, P&ID made a particularly large payment of US$100,000 to Mr Adebayo's company Trenko.[1019] Mr Smyth created a paper trail for this payment by emailing a purported invoice to Mr Adebayo on 1 July 2015 from Eastwise Trading Ltd and stating *"attached copy of the invoice we propose to use if documentation is required"*.[1020] The invoice identified that the payment was in return for (*inter alia*) attending the settlement talks in London on 21 November 2014 and attending the arbitration hearing in London on 1 and 2 June 2015 (i.e. services on behalf of P&ID and linking the payment to the arbitration).[1021] This is an example of how the ICIL companies made payments on behalf of each other interchangeably. That the invoice was covering up the true purpose of the payments is evidenced by the fact that Mr Adebayo had no contractual right to be paid any salary or expenses. His consideration was his entitlement to a share of any settlement.

d. The same applies to a payment of US$50,000 made on behalf of P&ID to Mr Adebayo in February 2013. That payment, which was stated to be in respect of the *"Calabar Gas Processing Plant"*, i.e. the GSPA, was also the subject of a false invoice, purportedly for

[1015] See Bribery Statement of Facts at paragraph 20-21 {A5/2/8-9}.
[1016] Defence at paragraph 70E {A1/2/57}.
[1017] {H6/159/1}.
[1018] {H6/159/1}.
[1019] Spreadsheet entitled "Jan 2016 Budget" {H8/19}, cell G/13. The payment is described as *"Tunji – P&ID"*.
[1020] {H7/311.1}.
[1021] {H7/308.1}.

the preparation of a report of which there is no evidence.[1022]

e. The same applies to a payment of US$70,000 made to Mr Adebayo just three days before Ms Adelore deposited US$70,000 into her bank account. The payment is implausibly described in P&ID's documents as being for *"Flights + Hotels"*.[1023] Mr Cahill has been unable to identify any excuse for this payment save for a bare assertion that any and all payments made to Mr Adebayo in this period were *"to help Mr Adebayo personally and/or with his business endeavours and not on behalf of P&ID"*.[1024]

f. These false paper trails were created to disguise payments to Mr Adebayo intended to fund or reimburse bribes paid by him on behalf of P&ID. They are not, on any view, consistent with an arm's length contractor relationship.

g. Further still, it is inferred that Mr Adebayo received additional sums to those known about.[1025] For example, following Mr Adebayo having provided by WhatsApp an FRN Privileged Document[1026] to Mr Cahill on 21 February 2017, Mr Cahill responded that he *"Could do couple of grand on payment"*,[1027] which it is inferred related to reimbursing or providing funds to Mr Adebayo to make such payments.

h. Mr Adebayo set and approved the budget for expenditure on Nigerian operations in 2014[1028] and 2016[1029] and appears to have been making financial contributions. Since Mr Adebayo had no actual expertise in the operations of the ICIL group companies, it is to be inferred that this was a budget for paying bribes, reinforced by Mr Adebayo's statement to Mr Cahill in his email of 17 December 2013 that *"I understand from Papa that either Lloyd or Adam will be going back to visit home each month so this should facilitate your proposed arrangements with the cash."* i.e. that Mr Lloyd Quinn and Mr Adam Quinn were to courier sums of cash to Nigeria.

i. Moreover, it seems that by 2019, Mr Adebayo was potentially footing the bill for 10% of P&ID's expenditure, no doubt to protect his 10% financial stake in the outcome

[1022] Invoice dated 21 February 2013 {H5/329}.
[1023] {H7/232/2}.
[1024] Cahill 6 at paragraph 28.2 {D/26/10}.
[1025] SoC at paragraph 71(2A)(iii) {A1/1/45}.
[1026] Namely, the document particularised at paragraph 52 of FRN Privileged Documents Statement of Facts {A5/1/50}.
[1027] {L/25/19}.
[1028] {H6/192}.
[1029] {H7/70}.

of these proceedings.[1030]

j. In short, Mr Adebayo was, and is, a fully-fledged participant in P&ID's affairs.

446. It is therefore wrong to reduce the question of Mr Adebayo's role to a technical point about the law of agency. He was on P&ID's team, had aligned financial interests with P&ID and, as will be explored at trial, P&ID knew full well that his role included the payment of bribes to officials. The wrongdoing by Mr Adebayo, relied upon by FRN, was attributable to P&ID.

447. To the extent that it is necessary to assess whether Mr Adebayo was an agent of P&ID for the purpose of any given payment or course of conduct, the answer is plainly also in the affirmative. The position is as follows:

a. It is common ground that Nigerian law should be treated as the same of English law when determining whether or not an agency relationship exists.[1031] Accordingly, (i) the relationship must be assessed objectively, and the subjective views of the parties and the labels that they attach to their relationship are therefore not determinative;[1032] and (ii) a principal will be liable for the fraud or other illegal act committed by his agent within the general scope of the authority given to him.[1033]

b. The chronology of P&ID's arrangements with Mr Adebayo is as follows.

c. **2 July 2014 (the Settlement Brokerage Agreement):** Under the terms of a *"Settlement Brokerage Agreement"* dated 2 July 2014 signed by Mr Cahill and Mr Adebayo, and witnessed by Mr Andrew and Mr Burke, in consideration for Mr Adebayo's appointment on behalf of P&ID to *"facilitate negotiations"*,[1034] it was agreed that Mr Adebayo was to be remunerated on a sliding scale and was to be entitled to 50% of any settlement exceeding US$1 billion.[1035] The Settlement Brokerage Agreement, once entered into, was to continue until the full settlement of the claims, and did not contain any right to terminate.

14 August 2014: By a board resolution dated 14 August 2014,[1036] P&ID authorised

[1030] Spreadsheet entitled *"Payments – 18 Nov 2019"* {H9/306}.
[1031] KK Second Letter to MdR dated 21 September 2022 {O/433} in response to MdR First Letter to dated 14 September 2022 {O/410}.
[1032] *Branwhite v Worcester Works Finance Ltd* [1969] 1 AC 552 at p.587; *Garnac Grain Company Incorporated v HMF Faure & Fairclough Ltd* [1968] AC 1130 at p.1137.
[1033] *Petrotrade v Smith* [2000] 1 Lloyd's Rep 486 at paragraph 21.
[1034] See clauses 2, 5.1 and 5.2.1 of the Settlement Brokerage Agreement {H9/65}.
[1035] {H9/65/9}.
[1036] {H6/389}.

Mr Adebayo in very broad terms to *"facilitate negotiations"* with FRN.[1037] As will be explored at trial, the evidence is overwhelming that Mr Adebayo acted more broadly as P&ID's agent.[1038] But in any event, Mr Adebayo was unquestionably P&ID's agent, and his actions were attributable to P&ID as within the scope of that agency.[1039]

d. Indeed, it is to be inferred that the reason for the colossal consideration agreed with Mr Adebayo, as well as the additional cash payments he received, was that the true agreement between P&ID and Mr Adebayo was for Mr Adebayo to act as P&ID's agent in paying bribes and procuring FRN Privileged Content.[1040] But in any event, whether or not the parties contemporaneously regarded their relationship as one of agency (and it is suggested that they in fact did), the consensual agreement between P&ID and Mr Adebayo was such that Mr Adebayo was authorised to represent P&ID in connection with seeking to settle its dispute with FRN. His actions in illicitly obtaining FRN Privileged Content and making payments to Ms Taiga, Ms Belgore and (it is inferred) other individuals involved in FRN's defence and the GSPA, were within the general scope of the authority given to him, as well as being known to,[1041] and, in any event attributable to, P&ID.

e. On any view, therefore, Mr Adebayo was P&ID's agent between 14 August 2014 and 8 August 2016, and his actions during that period as regards officials dealing with the GSPA and the related arbitration, including the payment of bribes and the harvesting of FRN Privileged Documents, are attributable to P&ID. As it happens, this covers the vast majority of payments and sharings of FRN Privileged Contents that FRN relies upon in these proceedings.

f. **8 August 2016 (Internal Advisory Agreement):** P&ID subsequently entered into a replacement agreement with Mr Adebayo dated 8 August 2016,[1042] signed by Mr Cahill and witnessed by Mr Smyth, whereby it was purportedly agreed that Mr Adebayo's

[1037] Defence at paragraph 70D {A1/2/56}.
[1038] SoC at paragraph 71(2Aviii) {A1/1/47} and Reply at paragraphs 36Ba(2)-(7) {A1/3/61-63}.
[1039] See paragraph 447 below.
[1040] Including from the massive amount of the compensation P&ID agreed to pay for the role purportedly performed by Mr Adebayo; Mr Adebayo's position of influence; the payments to Mr Adebayo for which there was no apparent legitimate contractual basis; the known payments from Mr Adebayo to Ms Taiga and Ms Belgore for which there was no apparent legitimate contractual basis; Mr Adebayo's involvement in the obtaining of FRN Privileged Documents on behalf of P&ID; as well as the evidence of P&ID's bribery to other Nigerian officials both in connection with the entry of the GSPA and the conduct of the arbitrations. SoC at paragraph 71(2Aviii) {A1/1/47}.
[1041] As pleaded, this was the very reason behind the agreements and payments to Mr Adebayo: SoC at paragraph 71A(2Aviii) {A1/1/47}. See also SoC at paragraph 71A(2Ax) {A1/1/48}.
[1042] {H8/405}.

role as an agent of P&ID was ended,[1043] and that he was thereby retained as a confidential advisor, in consideration for 10% of the proceeds of the Arbitration, or 20% of the proceeds in the event that a settlement in excess of US$900m was entered into before 30 December 2016 ("**the Settlement Premium Date**").[1044] By a further agreement dated 5 September 2016,[1045] the Settlement Premium Date was extended to 31 March 2017.

g. **24 March 2017 (Share Sale and Advisory Agreement):** On 24 March 2017, P&ID and Mr Adebayo entered a further replacement agreement called a *"Share Sale and Internal Advisory Agreement"*,[1046] varied on 2 October 2017,[1047] the effect of which is that Mr Adebayo is personally entitled to a payment from Castleknock Holdings Limited (a company beneficially owned by Mr Cahill, Mr Andrew and Mr Burke) referrable to 10% of the proceeds of the Awards received by Lismore, which payment is guaranteed by Mr Cahill.[1048]

h. Regardless of how these latter agreements described Mr Adebayo's role, it should be properly found that Mr Adebayo acted as P&ID's agent at all material times.[1049] Given that P&ID had no contractual right to terminate the pre-existing Settlement Brokerage Agreement, and that Mr Adebayo in fact continued to represent P&ID,[1050] these agreements were intended to create a paper trail distancing Mr Adebayo's actions from P&ID, and were not reflective of the true position. The purpose of the Share Sale Agreement as varied in October 2017 appears to have been intended to allow any payment to Mr Adebayo to be disguised as received from Castleknock and relating to a share sale, as opposed to being from P&ID in connection with Mr Adebayo's corrupt actions in connection with the arbitration.[1051]

iii. Corruption of FRN's representatives during the arbitration

[1043] Clause 14 of the 8 August 2016 Advisory Agreement {H8/405/7}.
[1044] By a further agreement dated 5 September 2016, the Settlement Premium Date was extended to 31 March 2017 {H9/67/4}.
[1045] {H8/435}.
[1046] {H9/1}.
[1047] {H9/57/2}.
[1048] {H9/57/4}.
[1049] Reply at paragraph 36Ba {A1/3/61}.
[1050] Including through representing P&ID in settlement discussions (as reflected for example in his WhatsApp messages to Mr Cahill of 28 June and 31 July 2017 {L/25/39-40}) and obtaining and transmitting FRN Privileged Documents and information to P&ID (for example by his WhatsApp message to Mr Cahill dated 23 April 2018 {I/271.1}).
[1051] See clause 4 of the October 2017 agreement {H9/57/3}. See also SoC at paragraph 71(2Avi) {A1/1/46}.

448. The evidence that this is a remarkable case involving corruption and collusion as between those involved in FRN's defence of the arbitration and those acting for P&ID is overwhelming, including as demonstrated by the provision to P&ID of the FRN Privileged Content.[1052]

449. In short, FRN's case is that those acting on behalf of P&ID entered into corrupt arrangements with individuals involved in FRN's defence,[1053] with a view to ensuring that FRN was deprived of the loyal and disinterested advice and representation to which it was entitled. This included ensuring that FRN's defence was impeded, and/or that Mr Quinn's false evidence went unchallenged in the arbitration; and/or that P&ID and its advisers continued to be furnished with confidential and privileged documents belonging to FRN, and P&ID was, as a result, awarded substantial damages by the Tribunal.[1054] An invidious aspect of P&ID's calculated pretence in these proceedings that it knows little as to who was providing FRN Privileged Content to it or which individuals received payments or promises of the same, is to seek to obscure the identities of all those involved in FRN's defence who were corrupted. As addressed elsewhere in this skeleton, this is intolerable, and one of a number of unsatisfactory aspects of P&ID's conduct in these proceedings such that this Court should draw inferences as against P&ID.

450. Notwithstanding this, and whilst the corruption of any one individual involved in FRN's defence should be sufficient for the purposes of s.68(2)(g) of the 1996 Act, the evidence demonstrates those corrupted in relation to the arbitration (at least) included members of the MPR legal department (namely, Mr Dikko, Ms Belgore, Ms Aderemi, and Ms Adelore), members of the NNPC legal department (namely, Mr Oguine) and FRN's external counsel, Mr Shasore.[1055] The effect of this corruption was to deprive FRN of *bona fide* and disinterested legal advice and representation.

451. It will come as no surprise to this Court that such undisclosed payments by a party engaged in a dispute to individuals involved in defending its adversary are equally offensive to Nigerian law as they are to English law and public policy. Receipts of bribes by public officials involved in FRN's defence were criminal offences under s.8 of the CPORO Act

---

[1052] SoC at paragraph 71(3A) {A1/1/49} and paragraph 79B {A1/1/58}; Reply at paragraphs 33A(3) {A1/3/47}, 34A(1) {A1/3/57}.
[1053] SoC at paragraph 4(4) where the long hand (*"individuals responsible for representing FRN in the arbitration and/or individuals responsible for obtaining evidence for or giving instructions to FRN's legal team and/or individuals directly and/or indirectly involved in FRN's defence"*) is used {A1/1/3}.
[1054] SoC at paragraph 4(4) {A1/1/3}.
[1055] SoC at paragraph 4(4) {A1/1/3}.

and section 10 of the Code of Conduct Bureau and Tribunal Act 1991.[1056] Receipts of bribes by external lawyers were offenses under s.17 of the CPORO Act.[1057]

452. Further detail as to the evidence of payments is set out in the Bribery Statement of Facts and will be explored at trial. There are five important points to make by way of introduction:

a. First, it is beyond serious dispute that P&ID obtained FRN Privileged Content leaked by (at least) Ms Adelore, her secretary Ms Aderemi, and Mr Shasore's partner, Mr Ukiri. It is highly likely that such content was also leaked by other officials or external lawyers. Mr Adebayo and his assistant Mr Shonibare were the intermediaries for soliciting and then forwarding much of this material to P&ID. The very fact that this material was leaked is a strong indicator of corruption.

b. Second, there was an undisputed payment by Mr Adebayo to a member of FRN's legal team, Ms Belgore, on 11 December 2014. That, in itself, is a sufficient ground to set aside the Awards. But it, alongside the leaking of FRN Privileged Content, also makes the allegation of bribes to other members of the legal team inherently more likely.

c. Third, Mr Shasore has been caught making US$100,000 payments to Ms Adelore and Mr Oguine that were, it is common ground, corrupt.[1058] Mr Shasore has therefore shown himself to be corruptible. The only question is whether he was corrupted by P&ID.

d. Fourth, as described elsewhere, the disclosure obtained in these proceedings has revealed bribery to be P&ID's *modus operandi*. The bribery of FRN's legal representatives was the continuation of a pattern of conduct by P&ID.

e. Fifth, much of the evidence set out below, including for example the payment to Ms Belgore, the payments by Mr Shasore to Mr Ukiri and Mr Alegeh, and the evidence of the illicit sharing of FRN Privileged Content, has been discovered since the Cranston Judgment. The proof that P&ID corrupted FRN's legal team has thus become even more compelling since then.

[1056] Each such public officer having corruptly received property on account of actions either already, or afterwards to be done or omitted to be done, or for showing to P&ID in relation to a matter connected with the functions, affairs, or business of the government department in which he or she was serving as an official.

[1057] Such external lawyer having corruptly accepted, or agreed to have accepted, a gift or consideration as an inducement or reward for doing, forbearing to do, or for having done, forborne to do, any act or thing in relation to his principal's affairs or business.

[1058] See Defence at paragraph 73 {A1/2/61} alleging, in substance, that the payments are likely to have been kickbacks in return for Mr Shasore's fee.

Ms Belgore

453. In March 2010, Ms Belgore was posted by the Ministry of Justice to the role of Assistant Legal Adviser at the MPR. She remained in that role until at least April 2015.[1059] Her role included giving legal advice to the MPR, attending to Court matters, and acting as an *"assistant legal adviser"* to Ms Taiga, Mr Dikko and Ms Adelore,[1060] including in relation to the arbitration.[1061]

454. The financial records incontrovertibly prove that Ms Belgore received a transfer of NGN 500,000 (US$3,000) (many times her monthly salary at the time) from Mr Adebayo on 11 December 2014.[1062] When interviewed by the EFCC on 30 June 2022, she admitted receiving such sum from Mr Adebayo stating that *"The payment was meant for everyone in the legal unit at that time as a gift through me"*.[1063] Confronted with this evidence, P&ID again resorts to asserting that *"P&ID has no knowledge of any alleged payment by Mr Adebayo to Ms Belgore, and so the existence and purpose of any such payment is not admitted. In so far as it was made, it had nothing to do with P&ID"*.[1064] This does not withstand scrutiny: for the reasons set out above, Mr Adebayo's actions were known to others at P&ID (including Mr Cahill), and in any event, attributable to, P&ID.[1065] Why else would Mr Adebayo have been making payments to the MPR's legal unit which was handing the P&ID arbitration? If there was a simple explanation, P&ID would have called Mr Adebayo to give it. Yet he has said nothing.

455. The payment by Mr Adebayo to Ms Belgore has a greater significance too: it proves beyond any doubt FRN's case that those acting for P&ID *were* making payments to those involved in FRN's defence during the arbitration. Once this is acknowledged, the evidence relied upon by FRN as establishing *other* bribes by and on behalf of P&ID is in turn reinforced.

Ms Adelore

456. Ms Adelore was the Legal Director of the MPR between 2013 and 2017.[1066] She was

[1059] See e.g. {H7/181}.
[1060] From attending the 10 October 2012 settlement meeting {H5/211} to communicating instructions on behalf of the FRN to Mr Shasore (e.g. {H6/453}).
[1061] Ms Belgore's interviews with the EFCC dated 9 September 2019 {J/12} and 30 June 2022 {J/14/1}.
[1062] The incoming transfer with the reference *"Adebayo Adetunji"* is at {M/53/1}. The outgoing transfer is at {M/70/20}.
[1063] {J/14/2}.
[1064] Defence at paragraph 49A {A1/2/29}.
[1065] Mr Adebayo was P&ID's agent, and such actions were within the scope of his authority: see SoC at paragraph 71(2Aviii) {A1/1/47}. Even on the face of P&ID's documents, Mr Adebayo was authorised in very broad terms to *"facilitate negotiations"* {H6/389}, and his actions were within the scope of this.
[1066] Ms Adelore's interview with the EFCC dated 6 May 2022 {J/68/1}.

responsible for the day-to-day conduct of the arbitration on behalf of the MPR;[1067] was regularly in communication with, and provided instructions to, Mr Shasore;[1068] attended settlement meetings with P&ID,[1069] alongside Mr Shasore and Mr Oguine; and provided advice to FRN (amongst other things) on the strategy,[1070] merits and settlement.[1071]

457. Despite this position of responsibility, the evidence is overwhelming that Ms Adelore was corrupted, with FRN's counsel for the first two stages of the arbitration, Mr Shasore, having admitted in an interview to the EFCC on 24 December 2019 that he made payments of US$100,000 each to Mrs Adelore and Mr Oguine as *"gifts to them personally"*.[1072] As a result of the disclosure in these proceedings, it is now proven that Ms Adelore was one of the sources who illicitly provided privileged materials to P&ID via Mr Adebayo.[1073] That in itself is compelling (FRN would say determinative) evidence that she had been corrupted by those acting on behalf of P&ID.

458. The known payments which FRN alleges were made by or on behalf of P&ID to Ms Adelore during the arbitration on which FRN relies are set out (with references to the underlying documents) at paragraphs 59-70 of the Bribery Statement of Facts.[1074] They comprise:

a. Cash deposits of US$25,000 and US$20,000 by Ms Adelore into her account on 11 and 12 November 2014 respectively, coinciding with Ms Adelore instructing Mr Shasore to inform the Tribunal that FRN intended to pursue a settlement with P&ID.

b. The cash payment of US$100,000 from Mr Shasore, deposited by Ms Adelore on 18 November 2014.

c. A cash deposit of US$3,400 made by Ms Adelore into her account on 28 November 2014, with the reference *"Cash Dep by Remi Aderemi"*. It is to be inferred that this was a reference to Ms Aderemi and that Ms Aderemi was funnelling cash to Ms Adelore on behalf of P&ID.

d. Cash deposits totalling US$200,000 on 8 December 2014, by way of three deposits of US$70,000, US$70,000 and US$60,000. These deposits were preceded by some

[1067] See for e.g., {I/220}, {I/245} and {I/256}.
[1068] See for e.g., {I/160}, {I/208}, {I/223} and {I/220}.
[1069] See for e.g., {H7/61}, {H7/112.1} and {H7/198}.
[1070] {I/176}.
[1071] For example {I/160}, {I/176}, {I/178}, {I/196} and {I/212}.
[1072] {J/62/3}.
[1073] See paragraph 429.a above.
[1074] {A5/2/23-27}.

remarkably similar transactions on P&ID's side:

i. A payment to Mr Adebayo of US$70,000 three days previously (for which P&ID has offered no explanation), identified as a *"P&ID cost"*.[1075]

ii. A payment to ICIL of US$70,000, also three days previously.[1076]

iii. A payment to ICIL of US$75,000, also three days previously.[1077]

iv. A payment to ICIL of US$60,000 slightly earlier, on 25 November 2014.[1078]

e. Cash deposits of US$30,000 on 2 April 2015.

f. Cash deposits of US$88,000 on 20 May 2015.

g. A deposit of NGN 200,000 (US$1,000) on 18 December 2015 with the description *"smith"*.[1079] It is inferred that this represented the proceeds of a bribe paid by Mr Cahill's assistant Mr Smyth, on behalf of P&ID.

459. Ms Adelore accordingly received cash exceeding US$466,000 in the critical period from November 2014 to December 2015. This is to be compared with her modest salary: according to Ms Taiga, the salary of the Legal Director as at 2012 was around US$5,000 per year, and it is to be presumed that Ms Adelore's salary was of a similar order of magnitude. P&ID has not offered any explanation for the provenance of this cash. If it had come from some independent means, it would have been possible for P&ID to obtain this information from Ms Adelore. But they have produced no evidence from her. That is no doubt because, as will be explored at trial, the bank statements of Mr Adebayo, his related companies, and P&ID's related companies, show very large cash outflows around this time, including multiple large cash withdrawals by Mr Shonibare, that were easily sufficient to fund the massive deposits into Ms Adelore's account at the time. These were bribes that came from P&ID (whether direct or via related companies), and Mr Adebayo, and Mr Shasore, on behalf of P&ID and/or for its benefit.

460. The deposits coincided with a critical period in the arbitration, both in term of P&ID's attempts to engineer a settlement and, when this was not forthcoming, its transformative

[1075] Spreadsheet entitled *"P&ID costs"* {H7/323} row 48. See similarly spreadsheet entitled *"P&ID past Exs"* {H9/50} row 34.
[1076] {H7/84.03/2}.
[1077] Spreadsheet entitled *"Eastwise – Cayman"* {H10/131} *"Bank"* tab.
[1078] Spreadsheet entitled *"Eastwise – Cayman"* {H10/131} *"Bank"* tab.
[1079] {M/35/76}.

victory via the Liability Award issued on 17 July 2015. The full story is set out at paragraph 169 above.

461. Although Ms Adelore's internal recommendations of settlement did not ultimately result in a deal (Ms Adelore was unsuccessful in persuading her superiors that there was any reasoning behind the proposed figure of US$1.1 billion),[1080] the compromise of litigation through contrived 'settlement discussions' is an obvious means to extract money from dishonest litigation. The payments were then followed by Mr Shasore's failure to dispute any relevant part of Mr Quinn's evidence in the context of the liability hearing, as described below.

Mr Dikko

462. Mr Dikko replaced Ms Taiga as Legal Director of the MPR in 2011, remaining in that position until 2013.[1081] As such he was the Legal Director at the time that P&ID sent its Notice of Arbitration on 22 August 2012,[1082] and was involved in the conduct of the arbitration on behalf of MPR, including providing advice on how to respond to the commencement of the arbitration.[1083]

463. Notwithstanding this, in an interview with the EFCC in January 2020, Mr Dikko admitted to having been introduced to Mr Quinn by Mr Kuchazi and *"on the advice of Mohamed Kuchazi"* collected a sum of US$2,000 from Mr Quinn,[1084] purportedly to fund a trip to the International Bar Association Conference in Dublin in late September 2012.[1085] P&ID's position is that no admission is made as to such payment,[1086] but Mr Cahill's evidence is that it *"would not surprise [him]"* that Mr Quinn had made such a payment.[1087] P&ID's recourse is therefore to deny that the payment was made on its behalf.[1088] This is to be rejected: Mr Dikko was himself clear in his interview with the EFCC that Mr Quinn was interacting with him in his capacity as a representative of P&ID.[1089] It is in any event implausible that a cash

[1080] In a response to one of Ms Adelore's memos, an (unidentified) official says: *"Nothing I have read in the file factually supports the proposed $1.1bn damages being offered the claimants. Secondly, what is the legal and factual basis for the $1.1bn? Thirdly, exactly how did the team plan to pay this spurious amount? […] The proposed settlement is clearly, therefore, inactionable"* {H7/69/2}. See likewise the rejection by President Goodluck Jonathan at {H7/261/6}.
[1081] {J/16}.
[1082] Notice of Arbitration {G/1/1}.
[1083] See, for example, the Letter dated 2 November 2012 from the MPR to the Attorney General {H5/224/1}.
[1084] {J/16/2}.
[1085] The IBA Conference took place from 30 September – 5 October 2012.
[1086] Defence at paragraph 40 {A1/2/25}.
[1087] Cahill 1 at paragraph 147 {E/17/41}. But whether or not the payment in advance of the September 2012 IBA Dublin Conference was dressed up as relating to accommodation costs (which in fact would have been funded by the NNPC {H5/134}), it was improper and unlawful.
[1088] Defence at paragraph 40 {A1/2/25}.
[1089] Mr Dikko explained that *"Mr Mohammed Kuchazi introduced Mr. Michael Quinn as the Chairman of the Board of Directors of the Company Process and Industrial Developments Limited"* {J/16/2}.

payment made by Mr Quinn to an official representing P&ID's opponent in the arbitration was, or was intended to be, entirely unconnected to that arbitration.

464. In addition to the payment of US$2,000, Mr Dikko made a number of substantial, round-numbered cash deposits into his bank account during his tenure as Legal Director of the MPR, including a series of cash deposits of exactly US$2,000 made on 26 September 2012, 11 October 2012, 16 October 2012, and 17 October 2012.[1090] It is FRN's case that one of these deposits represents the US$2,000 cash payment by Mr Quinn referred to above, and that the remainder represented other cash payments made to Mr Dikko by or on behalf of P&ID. This is further evidenced by the cash withdrawal of NGN 100,000 (US$600) recorded as a *"Dublin Expense"* in P&ID's internal documents on 9 October 2012,[1091] the day before P&ID attended a settlement meeting with Mr Dikko and Ms Belgore on 10 October 2012,[1092] with Mr Dikko duly making a cash deposit of US$2,000 on 11 October 2012.

Ms Aderemi

465. Ms Aderemi was employed by the MPR, working in the MPR legal department as secretary to, in turn, Ms Taiga, Mr Dikko and Ms Adelore. However, rather than being at arm's length, P&ID's disclosure reveals that Ms Aderemi was on remarkably familiar terms with those acting for P&ID, referring to Mr Quinn as *"Papa",* to Mr Kuchazi informally as *"Alhaji Mohammed"* and signing *"Remmy",* when covertly providing an *"advance copy"* of a letter to P&ID.[1093] More generally, Ms Aderemi was one of P&ID's moles within the MPR and illicitly provided FRN Privileged Documents to P&ID on a number of occasions.[1094]

466. Moreover, on 28 November 2014, Ms Adelore made a cash deposit of US$3,400 into her account with the reference *"Cash Dep by Remi Aderemi"*.[1095] This was the same day as Ms Adelore met with Mr Oguine and Mr Shasore to discuss P&ID's offer to settle its claim for US$1.5 billion.[1096] The following day, a confidential and privileged note of the said meeting was sent to P&ID, via Mr Adebayo.[1097] The metadata of the document indicates that it was leaked by somebody within the MPR Legal Unit.[1098] It is accordingly to be inferred that Ms

[1090] {M/73/1-2}.
[1091] {H6/160} row 56.
[1092] {H5/211}.
[1093] {H5/195}.
[1094] {H5/195},{I/48} where the subject line of this email reads: *"Rem for Mick"* which, it is to be inferred, is a reference to Ms Aderemi; and {I/49} where the saved file name is *"Ex Rem"*.
[1095] {M/49/41}.
[1096] Report of the Meeting {H7/61/10}.
[1097] {I/195}.
[1098] See FRN Privileged Documents Statement of Facts at paragraph 36 {A5/1/32-34} and the references to the metadata documents there.

Aderemi was funnelling cash from P&ID to Ms Adelore, and that the FRN Privileged Document was then sent by either Ms Adelore or Ms Aderemi, in either case acting in concert with the other.[1099]

Mr Oguine

467. Mr Oguine was the legal director and the Secretary of the Corporation of the NNPC between May 2014 to May 2015.[1100] Amongst his other actions in relation to the arbitration, he attended the settlement meeting in London on behalf of FRN on 20 and 21 November 2014, accompanied (only) by Ms Adelore and Mr Shasore. Following that meeting, Mr Oguine joined Ms Adelore in presenting advice that recommended that FRN should pay a settlement to P&ID of US $1.1 billion.[1101] Mr Oguine was also tasked with identifying suitable factual witnesses for the proceedings, but insisted that none were *"available"*.[1102] He therefore served his own witness statement in relation to the liability hearing (which was dismissed as irrelevant by the Tribunal).[1103]

468. In any event, in an interview with the EFCC on 13 September 2019, Mr Oguine admitted to having received US$100,000 in cash from Mr Shasore, apparently shortly before attending the November 2014 meeting in London and advising the NNPC to settle at US $1.1 billion.[1104] Mr Shasore himself subsequently confirmed having made such payment in in his interview dated 24 December 2019,[1105] with Ms Adelore also having admitted she was aware of a payment by Mr Shasore to Mr Oguine around the same time as the US$100,000 payment made to her.[1106]

469. Mr Oguine's story in his EFCC interview that he accepted this cash in November 2014 on the basis that it would be repaid as an (undocumented) loan lacks any credibility. Rather, it simply proves that he and Mr Shasore have continued to seek to withhold the truth and full picture: namely, the US$100,000 payments to Mr Oguine and Ms Adelore were bribes paid by Mr Shasore in concert with and on behalf of P&ID. It, alongside the payments to Ms Adelore, were intended, and succeeded, to induce Mr Oguine and Ms Adelore to work against the interests of FRN in the arbitration and settlement discussions with P&ID, as well

[1099] SoC at paragraph 73(1) {A1/1/54}.
[1100] {J/20/1} and {H7/166}.
[1101] Mr Oguine memo dated 24 December 2014 {H7/87}. Ms Adelore sent a memo in almost identical wording to the MPR on 30 December {H7/88}.
[1102] Mr Oguine's EFCC interview dated 13 September 2019 at pp.6 and 9 {J/20/2-3}.
[1103] Liability Award at paragraph 35 {G/31/7}.
[1104] Mr Oguine's EFCC interview dated 13 September 2019 at pp.10-11 {J/20/4}.
[1105] Mr Shasore's EFCC interview dated 24 December 2019 {J/62/2}.
[1106] Ms Adelore's EFCC interview dated 6 May 2020 {J/68/3}.

as for their silence as to the corrupt arrangement between P&ID and Mr Shasore.[1107]

Mr Shasore

470. Mr Shasore was appointed as FRN's counsel for the arbitration in November 2012. He appeared on behalf of FRN at the jurisdiction and liability hearings. He was formally disinstructed on 27 June 2016,[1108] following the conduct of the arbitration being taken over by the Ministry of Justice and Mr Shasore was replaced by Chief Ayorinde.

471. The evidence is overwhelming that P&ID colluded with Mr Shasore in respect of his conduct of the arbitration.[1109] Whether this arrangement was first reached with Mr Shasore via Mr Adebayo on behalf of P&ID or by others at P&ID remains obscured; likewise, whilst certain payments to Mr Shasore have been identified, what other consideration Mr Shasore received or was to receive (such as payments into currently unidentified accounts, or a future share of any settlement or proceeds) remains masked.[1110] However, that a corrupt arrangement was reached between P&ID and Mr Shasore with a view to ensuring that FRN's defence was impeded (with the plan at the outset likely being to extract a large sum from FRN via forcing it into a settlement) is supported by:

a. Mr Shasore's conduct of the arbitration, including his failure to challenge any relevant aspect of Mr Quinn's false evidence, having failed to seek any disclosure from P&ID (as to which, see paragraphs 177-189).

b. The evidence of P&ID's widespread use of bribes in connection with the GSPA, including in relation to those involved in the defence of the arbitration.

c. The large cash deposits made by Mr Shasore into his account between January 2013 and the Liability Award, amounting to US$668,360, including cash deposits totalling US$100,000 on 4 September and 20 October 2014[1111] (shortly before the settlement meeting in London on 20-21 November 2014) and deposits totalling US$140,000 in several large-round number payments in the six months leading up to the Liability hearing that took place on 1 June 2015 (on 8, 19 and 29 December 2014 and 12 January 2015).[1112] Many of these deposits are bunched up with large, round-figured cash

[1107] SoC at paragraph 74 {A1/1/56}.
[1108] Letter of Disengagement dated 27 June 2016 {H8/351}.
[1109] The corrupt arrangement being with a view to, at the least, ensuring that FRN did not seek any disclosure from P&ID and that Mr Quinn's evidence went unchallenged in the arbitration and/or that FRN's defence was impeded.
[1110] SoC at paragraphs 71, 71(2Aviii) {A1/1/47}, 74 {A1/1/56}.
[1111] See Bribery Statement of Facts at paragraph 94(5) {A5/2/32} referring to {M/2}.
[1112] See Bribery Statement of Facts at paragraph 94(7) {A5/2/33-34} referring to {M/72/1-2}.

deposits by Ms Adelore into her account. As with those deposits, the deposits by Mr Shasore are preceded by large cash withdrawals from accounts related to P&ID and Mr Adebayo, which were more than sufficient to fund the bribes.

d. The payments made by Mr Shasore in the period surrounding the 20-21 November 2014 settlement meeting and his subsequent advice to settle at US$1.1 billion. There is incontrovertible proof of payments by Mr Shasore in November 2014 of US$100,000 to Ms Adelore, of US$100,000 to Mr Oguine, of US$150,000 to Mr Alegeh and of US$300,000 to Mr Ukiri. It is to be inferred that these payments were made in concert with P&ID further to the corrupt arrangement: (i) Ms Adelore and Mr Oguine were being paid by Mr Shasore on behalf of P&ID to induce them to work against the interests of FRN in the arbitration and settlement discussions with P&ID, as well as for their silence; (ii) Mr Alegeh (who was to act as counsel or co-counsel for FRN in the arbitration) was being paid in return for not seeking to involve himself in or interfere with Mr Shasore's conduct of the arbitration and settlement discussions;[1113] (iii) Mr Ukiri, a partner in Mr Shasore's law firm, was being paid[1114] to act as one of the conduits for collusion between P&ID and Mr Shasore, as evidenced by his having sent a privileged document emanating from Mr Shasore's office directly to Mr Adebayo with the subject line *"See attached as discussed"* on 26 October 2014.[1115]

e. The coincidence in timing between the said payments and the purported settlement meeting on 20-21 November 2014 in London, attended (only) by Mr Shasore, Ms Adelore and Mr Oguine. Although the details of the actual discussions at the meeting are concealed, this is likely to have been a discussion about how the spoils of the proposed settlement, which Mr Shasore, Ms Adelore and Mr Oguine were to persuade their superiors to accept, would be divided.

f. More generally, that Mr Shasore was corrupted and acting in concert with P&ID is evidenced by the flow of FRN Privileged Documents and FRN Privileged Content that P&ID received during the arbitration, and which appear to have illicitly emanated from Mr Shasore's own office (in one case incontrovertibly so, i.e. the document shared by Mr Ukiri): see paragraph 429.c above.

[1113] Mr Shasore has claimed when interviewed by the EFCC on 10 September 2019 that this payment to Mr Alegeh was *"part of the legal fees for the arbitration"* {J/56/4}. This does not withstand scrutiny for the reasons at Bribery Statement of Facts at paragraph 87 {A5/2/30}.

[1114] Bribery Statement of Facts at paragraph 94(3) {A5/2/32}.

[1115] See FRN Privileged Documents Statement of Facts at paragraph 33 {A5/1/29-30}.

472. Mr Shasore's bizarre conduct of the arbitration in the period leading up to the liability hearing, and his performance at the hearing itself, is, when seen against the evidence of corrupt payments and sharing of FRN Privileged Content from his office, reflective of the fact that he colluded with P&ID. An account of the way in which this stage of the arbitration was conducted, including Mr Shasore's failure to seek any disclosure, his agreement to accept the entirety of Mr Quinn's evidence as accurate, and his failure to take the obvious point that P&ID never could or would have performed the GSPA, are set out at paragraphs 172-188 above. The result was that Mr Quinn's evidence was accepted as true: see paragraph 408 above.

473. Mr Andrew, for P&ID, professes that he is *"bemused"* by the allegation that the MPR and its counsel deliberately lost the case:[1116]

a. Mr Andrew stated that, in his view, *"the MPR's legal team was doing its best, but had great difficulty in obtaining instructions"*.[1117] He relies on Mr Shasore's standing as an author of an arbitration textbook and his membership of the Lagos Court of Arbitration.[1118] But Mr Shasore's alleged inability to obtain instructions, and his professional standing, cannot explain why he paid sums of US$100,000 each to Ms Adelore and Mr Oguine,[1119] US$150,000 to Mr Alegeh and US $300,000 to Mr Ukiri. Nor does it explain the cash deposits into his account or the fact that FRN Privileged Content appears to have been illicitly shared by him with Mr Adebayo and others acting for P&ID. These were each demonstrably dishonest things to do. Nor does it explain why Mr Shasore chose not to seek any disclosure of even the most basic kind, or to challenge the vast majority of Mr Quinn's evidence, including his statements that P&ID was ready and able to perform the contract.

b. Mr Andrew suggests that FRN's fundamental problem in the arbitration was that it had *"no real defence"* to the claim.[1120] That is untrue. Whilst the fact that the GSPA had been procured by bribery and that the arbitral process was an abuse of process remained concealed, and it can be no surprise that such defences would therefore not have been raised even assuming that FRN had been represented by honest counsel, Mr Shasore failed to seek to take the obvious defence that P&ID would itself have

[1116] Andrew 3 at paragraph 7 {E/18/2-3}.
[1117] Andrew 3 at paragraph 17 {E/18/5}.
[1118] Andrew 3 at paragraph 18.2 {E/18/5}.
[1119] Ms Adelore subsequently gave a witness statement to the English Commercial Court in support of FRN's unsuccessful application for an extension of time to challenge the award {G/34}.
[1120] Andrew 3 at paragraph 17 {E/18/5}.

been unable to perform the contract.[1121] Nor did Mr Shasore mention this possible point when he advised that FRN had no realistic defence to the claim.

c. Mr Andrew also says that MPR's strategy during the arbitration was to *"play for time"*, contending that this is inconsistent with the allegation that there was any collusion.[1122] However, the arbitration needed to be given an appearance of legitimacy if P&ID's fraud was to succeed, with Mr Shasore also needing (particularly after the Liability Award) to give an appearance of being concerned with the protection of FRN's interests in order to deflect attention away from his wrongdoing. A dispute worth US$5-6 billion could not plausibly have been completed in a short time-frame, and without any ostensible attempt to defend it, without raising suspicions.

iv. Obtaining of FRN Privileged Content and/or collusion as a basis for setting aside the Awards

474. The requirements of s.68(2)(g) of the Arbitration Act 1996 are plainly met. P&ID's actions, as now uncovered, irremediably tainted the arbitral process and plainly met the threshold of reprehensible or unconscionable conduct. In *R (Morgan Grenfell & Co Ltd) v Special Commissioner of Income Tax* [2003] 1 AC 563 at [7], Lord Hoffmann identified that legal professional privilege *"is a fundamental human right long established in the common law. It is a necessary corollary of the right of any person to obtain skilled advice about the law."* Likewise, the right of a party involved in a legal dispute to have disinterested representation acting in its best interests, and the protection of legal professional privilege are fundamental conditions upon which the administration of justice as a whole rests. In this case, P&ID's illicit obtaining of FRN Privileged Content during the arbitration, as well as more generally its collusion with one or more individuals involved in FRN's defence,[1123] is each alone more than sufficient to individually constitute *"the award being obtained by fraud" or "the way in which it was procured being contrary to public policy"*. Each is also to be viewed in combination: the illicit obtaining of the FRN Privileged Content was one of the products of P&ID's corruption of individuals involved in FRN's defence of the arbitration.

475. It may be unsurprising that given the remarkable nature of the conduct, FRN's research has

[1121] Albeit, as shown in these proceedings, the overwhelming likelihood is that P&ID would in fact have persisted in concealing the truth in this regard and would not have come clean as to the full, true position.
[1122] Andrew 3 at paragraph 18.4 {E/18/6}.
[1123] FRN contends that the evidence clearly establishes that P&ID colluded with individuals that included (but was not limited to) Mr Shasore, Ms Adelore, Ms Belgore, Mr Oguine and Ms Aderemi. However, proving collusion with any of FRN's representatives is sufficient to establish that the Awards should be set aside pursuant to s68(2)(g).

found no comparator case coming close to the facts. In *Hamilton v. Al-Fayed (No 2)* [2001] EMLR 15, the Court considered a more limited situation where counsel's opening speech and certain draft questions for cross-examination[1124] had been accidently discarded as waste, taken from the dustbins outside Mr Hamilton's counsel's Chambers and purchased by a Mr Macnamara, acting on behalf of Mr Al-Fayed. There was no suggestion of any collusion by Mr Hamilton's representatives with Mr Al-Fayed whether in obtaining those documents or more generally. In that case, which turned on its particular facts and where the relevance to the setting aside of a judgment in Mr Al-Fayed's favour was chiefly said to be that the new evidence re-opened the issue of Mr Al-Fayed's credibility, the Court of Appeal declined to set aside the judgment. In so declining, the Court found that: (a) had the jury been aware of the purchase of the stolen documents, it would not have adversely affected Mr Al-Fayed's credit, as the jury was already proceeding on the basis that Mr Al-Fayed had no credit;[1125] (b) there was also no basis on the facts to infer that the particular and limited documents[1126] obtained in that case had been used (or indeed were capable of being used)[1127] to obtain a tactical advantage. In *Libananco v Turkey* (2007) ICSID Case No. ARB/06/8, Libananco was unable at the interlocutory stage to establish that the content of its intercepted privileged material had in fact been shared with those individuals engaged in conducting the arbitration on behalf of Turkey. This is all very different from the case at hand.

476. In terms of establishing substantial injustice for the purposes of s.68(2) of the 1996 Act, there are multiple routes to such determination in the current case.

477. First, the case law is clear that certain irregularities are so serious that substantial injustice is to be inferred from the nature of the irregularity. The principle has been held to apply where arbitrators have failed to deal with a key issue before them.[1128] Likewise, substantial injustice is to be inferred where apparent bias of an arbitrator is established. In *ASM Shipping Ltd of India v TTMI Ltd of England* [2006] 2 All ER (Comm) 122 at [39] Morison J thus held:[1129]

> *"(3) In my judgment, if the properly informed independent observer concluded that there was a real possibility of bias, then I would regard that as a species of "serious irregularity" which has caused*

[1124] Or at least the Court proceeded on that basis (see [113]: *"Assuming that all of those documents were handed over to Mr Macnamara…"*).
[1125] *Al-Fayed* at [125].
[1126] By contrast to the current case, on the facts Mr Hamilton's legal team *could* be expected to identify all the documents that had got into Mr Al-Fayed's hands: see *Al-Fayed* at [111].
[1127] *Al-Fayed* at [109], [113]-[114] and [117]-[121].
[1128] See, for example, the decision of the Privy Council in *RAV Bahamas v Therapy Beach Club* [2021] AC 907 at [35]-[36]. As the Court identified at [35], *"Some irregularities may be so serious that substantial justice is "inherently likely" or "likely in the very nature of things" to result."*
[1129] Cited with approval in *Norbrook Laboratories Ltd v Tank* [2006] 2 Lloyd's Rep 485 at [145].

substantial injustice to the applicant. I do not accept Mr Croall's submission that even if that conclusion was reached the court must then inquire as to whether substantial injustice has been caused. In my judgment there can be no more serious or substantial injustice than having a tribunal which was not, ex hypothesi, impartial, determine parties' rights. The right to a fair hearing by an impartial tribunal is fundamental; the Act is founded upon that principle and the Act must be construed accordingly. In these circumstances, upon a proper construction of sections 1, 33 and 68(1) & (2), if the tribunal were not impartial, then the requirements of section 68(1) & (2) are satisfied. I profoundly disagree with paragraphs 33 and 34 of HHJ Bowsher's judgment in the Groundshire case. It is contrary to fundamental principles to hold that an arbitral award made by a tribunal which was not impartial is to be enforced unless it can be shown that the bias has caused prejudice. The problem with unconscious bias is that it is inherently difficult to prove and the statements made about it by the judges themselves cannot be tested. Nor can the court know whether the bias actually made any difference or not." [emphasis added]

478. The principle applies equally in the highly unusual circumstances of this case. If this Court accepts the overwhelming evidence (including, but not limited to the evidence of payments and evidence that P&ID was illicitly provided with the FRN Privileged Content) that one or more individuals involved in FRN's defence were colluding with P&ID during the arbitration, that very fact, in and of itself, should be held sufficient to infer and establish substantial injustice for the purpose of s.68(2) of the 1996 Act.[1130] Once the existence of collusion between a litigant and a representative acting on behalf of the other party in a dispute is established, it would be invidious for the innocent party to have to prove the precise consequences of such collusion or the precise effect it had on the minds and actions of its representative(s). Rather, the innocent party was entitled to disinterested representation acting in its best interests, and substantial injustice has inherently resulted from this having been deprived.[1131] This irregularity is so extreme and serious, striking at the heart of the fair administration of justice and the right of a party to have a full and fair opportunity to have his case presented properly, that it goes without saying that substantial injustice occurred. The injustice of the irregularity is of course further compounded in this case by the fact that one of the results of such collusion was the blanket disregard for FRN's fundamental right to legal professional privilege. In short, P&ID's conduct in connection

[1130] SoC at paragraph 59 {A1/1/35}; Reply at paragraphs 3(3) {A1/3/3}, 33A(6) {A1/3/50} and 37F(3)-(4) {A1/3/69-70}.
[1131] SoC at paragraph 59 {A1/1/35}.

with the arbitration was so egregious that justice calls out for it to be corrected.[1132]

479. Second, if contrary to the above, it falls to FRN to show that the irregularities had a particular influence on the outcome, this can be amply established. The test is whether the outcome of the arbitration was one that, but for the irregularity (or irregularities), it *"might"* not have been: see paragraph 253 above.

480. Insofar as the collusion is concerned:

a. There is clear evidence that collusion with one or more of the individuals involved in FRN's defence occurred.[1133] Absent the existence of such collusion, the outcome of the arbitration might well have been different in that FRN had defences which, had they been uncovered and advanced by honest representatives of FRN acting in FRN's best interests, would have resulted in a different outcome.[1134] This Court does not need to find that such defences would necessarily have been identified or have succeeded in the arbitration,[1135] it being sufficient that the outcome might well have been different in a counterfactual in which the individuals involved in FRN's defence all had undivided loyalty to the FRN.

b. That the outcome of the arbitration *"might well"* have been different absent the collusion can be also established as follows: it is FRN's case that the evidence demonstrates that Mr Shasore was amongst those with whom P&ID colluded,[1136] and that this is a cause (and an explanation for) Mr Shasore's failure to seek any disclosure from P&ID in the arbitration and to challenge any relevant aspect of Mr Quinn's false evidence.[1137] In response, P&ID's defence is that the reason for Mr Shasore's inaction was instead that *"The position of FRN's lawyers during the arbitration was generally that they had difficulty in obtaining instructions from FRN. P&ID's understanding (then as now) was that FRN recognised that it had no good defence to the claim, and that FRN's lawyers (including Mr*

[1132] See, by analogy, the acceptance in *UMS Holding Ltd v. Great Station Properties SA* [2017] EWHC 2398 (Comm), [2018] 1 All ER (Comm) 856 that irregularities can be considered together. As Mr Justice Teare held in that case at [129], *"I accept that when a number of irregularities within section 68 have been established it may be possible for them, when considered together, to amount to a substantial injustice in the sense of an 'extreme case where the tribunal has gone so wrong in its conduct of the arbitration that justice calls out for it to be corrected'…"*

[1133] SoC at paragraph 4(5) {A1/1/3}.

[1134] SoC at paragraphs 4(4) {A1/1/3}, 64(1) {A1/1/41}, 71 {A1/1/44}, 75 {A1/1/56}, 80(4) {A1/1/65} and 81 {A1/1/66}; Reply at paragraph 24 {A1/3/34} and 34(3) {A1/3/57}.

[1135] Albeit if the Court finds (as it should) that those defences were themselves concealed as a product of irregularities on the part of P&ID, the Court should proceed on the basis of a counterfactual in which the facts giving rise to those defences were fully revealed and known.

[1136] SoC at paragraphs 64(1) {A1/1/41}, 65-70 {A1/1/42-44}, 71-73 {A1/1/44-56}, 75 {A1/1/56}; Reply at paragraphs 24 {A1/3/34} and 34 {A1/3/56}.

[1137] SoC at paragraph 4(4) {A1/1/3}.

Shasore) were doing the best they could with limited instructions".[1138] But this is simply no answer to the case against P&ID: even if Mr Shasore's failure to seek disclosure from P&ID or to challenge Mr Quinn's evidence was not due to his having been corrupted (which is denied) and/or was not due to the perjured evidence and P&ID's continued concealment of its wrongdoing, then it is to be inferred that the reason for any such lack of instructions to Mr Shasore is that those responsible for providing instructions *had been* corrupted by P&ID.[1139] As set out above, the evidence establishes the corruption of individuals in the legal departments of the MPR and NNPC (including, at least, Ms Belgore, Ms Adelore and Mr Oguine),[1140] whose roles included providing instructions to the external lawyers.[1141]

c. But moreover, a particularly invidious aspect of the current case is that, whilst it is clear that collusion occurred, not least as apparent from P&ID's obtaining of the FRN Privileged Content, P&ID has continued to obfuscate and withhold from evidence in these proceedings a full and truthful picture of this collusion (including the arrangements in place, the full steps taken pursuant to these arrangements and the identities of all those involved). In light of this, the Court is entitled to draw inferences against P&ID, including as to the materiality of the impact of the collusion i.e, P&ID, the wrongdoer, has *"parted with relevant evidence"* or *"there are gaps in the evidence"* attributable to it. In this case there are egregious such gaps: P&ID has given no proper disclosure whatsoever, and called no evidence (whether from Mr Adebayo or anyone else) as to which individuals acting for FRN provided the FRN Privileged Content, the circumstances in which the FRN Privileged Content came to be obtained from each such individual, the requests that preceded the leaks, or the precise benefits given or promised in return.

481. Insofar as the illicit obtaining of the FRN Privileged Content is concerned, P&ID asserts that it did not obtain any information from FRN Privileged Documents which affected its conduct of the arbitration or influenced its outcome.[1142] Thus Mr Andrew asserts that the FRN Privileged Documents *"were sent to me unsolicited, and I did not pay much attention to them.*

[1138] Defence at paragraph 62 {A1/2/45}.
[1139] Reply at paragraph 34(3) {A1/3/57}.
[1140] SoC at paragraph 4(4) {A1/1/3} and Reply at paragraph 34 {A1/3/56}.
[1141] P&ID identifies at paragraph 61 of its Defence that *"it is admitted that FRN was represented by Mr Shasore for the jurisdiction and liability phases of the arbitration, and by Mr Ayorinde for the quantum phase of the arbitration. It is admitted that Ms Adelore and Mr Oguine were involved in the conduct of the arbitration and in providing instructions to FRN's external lawyers on behalf of the MPR and NNPC respectively, but it is denied (if it is alleged) that they had sole responsibility for the same"* {A1/2/43}.
[1142] Defence at paragraph 7.3A {A1/2/4}.

Nor did I deploy any of them in the arbitration".[1143] Mr Burke similarly asserts (*inter alia*) that "*At the time, I did not give much importance to the documents for various reasons…I do not recall discussing the content of the documents in detail with Seamus or with anyone else at P&ID… The documents seemed largely irrelevant. It did not occur to me at the time that they would give P&ID any advantage in the arbitration"*.[1144] Singing from the same hymn sheet, Mr Cahill asserts that the documents *"were of no significance"* and that *"the documents provided no tactical advantage to P&ID at all"*. [1145] This evidence is preposterous.

482. It is to be assumed, and is in any event clear, that the obtaining of a steady stream of FRN Privileged Content throughout the arbitration, which content P&ID had requested, was of value to P&ID: otherwise why run the risk of soliciting such material and why pay bribes in return for it and continue to do so in order to obtain more such content? P&ID's counterintuitive argument that the FRN Privileged Content had no relevance to the Awards must therefore be rejected.[1146]

483. Contrary to the attempts by P&ID and its witnesses to downplay the significance of the FRN Privileged Content,[1147] the documents were on their face highly material. The subject-matter of the FRN Privileged Documents included, amongst other things, advice of P&ID's commencement of the arbitration,[1148] advice on the merits of P&ID's claim,[1149] advice on FRN's selection of its counsel,[1150] advice on FRN's selection of expert witnesses,[1151] advice on FRN's approach to technical and quantum expert evidence,[1152] advice on and its strategy as regards settlement,[1153] internal requests for information to assist FRN's counsel to draft its pleadings,[1154] and advice relating to an application to set aside the Liability Award in England (including advice provided by FRN's English solicitor Mr Kamal Shah, a partner at Stephenson Harwood LLP).[1155] The evidence of P&ID's witnesses that the documents were of no significance and therefore attention was not paid to them at the time, lacks any

[1143] Andrew 5 at paragraph 56 {D/6/15}.
[1144] Burke 1 at paragraph 15 {D/1/5}.
[1145] Cahill 3 at paragraph 84 {D/5/30-31}.
[1146] Defence at paragraph 78H.2 {A1/2/65}.
[1147] The proper inference is that in fact further documents were also contemporaneously obtained, as well as privileged content orally shared and discussed, but that, insofar as documents evidencing these matters ever existed, they have been destroyed or withheld from disclosure: see Amended Reply at paragraph 37A(3) {A1/3/65}.
[1148] {I/49}, {I/63} and {I/95}.
[1149] {I/148}, {I/165}, {I/156}, {I/165}, {I/160}, {I/175}, {I/194}, {I/198} and {I/212}.
[1150] {I/63}, {I/134}, {I/162}, {I/179} and {I/231}.
[1151] {I/245/1-4}, {I/245/6-8} and {I/247}.
[1152] {I/224}.
[1153] {I/160/7}, {I/166}, {I/176}, {I/178}, {I/208}, {I/212} and {I/265}.
[1154] {I/106}, {I/110}, {I/117}, {I/124} and {I/206}.
[1155] {I/220}.

credibility.

484. Moreover, whilst P&ID has provided limited disclosure on this issue, there is clear evidence amongst that disclosure of the FRN Privileged Documents obtained being used to give insight to those acting on behalf of P&ID and to inform its strategy. The disclosure demonstrates that FRN Privileged Documents were, upon receipt, typically circulated onwards amongst those acting for P&ID, obviously to inform P&ID's decision-making.[1156] Indeed, when so circulating the FRN Privileged Documents, this was often done under a subject line *"Privileged and Confidential"*,[1157] expressly acknowledging that the circulation was considered as being done for the dominant purpose of the proceedings. This is a case in which instructions were being given, and decisions in relation to the conduct of the arbitration being taken, by those acting on behalf of P&ID unquestionably having the benefit (whether spoken or unspoken) of the improperly obtained privileged and confidential information, incompatibly with P&ID's obligation to arbitrate fairly and in good faith and inherently causing severe prejudice to FRN. Moreover, by way of example only, the disclosure also contains various express, contemporaneous acknowledgements of the relevance to P&ID of FRN Privileged Content it had obtained:

a. In an email dated 2 August 2013, Mr Cahill sent to Mr Andrew and Mr Burke a confidential and privileged list of questions prepared by FRN's legal counsel to enable it to prepare a defence.[1158] The body of the email stated that, *"The attached indicates the likely lines of defence. We can discuss when there is a little more leisure time"*.[1159]

b. In an email dated 7 August 2013, Mr Cahill sent to Mr Andrew and Mr Burke a confidential and privileged memo confirming that Mr Shasore had been instructed as FRN's counsel and seeking information for the preparation of FRN's Defence.[1160] The cover email stated, *"Please find attached briefing document which appears very encouraging"*.[1161]

c. In an email dated 15 August 2013, Mr Cahill sent to Mr Andrew and Mr Burke a report on the leaked content of a privileged meeting that had taken place within the MPR,

[1156] Numerous examples of prompt circulation of received documents amongst P&ID and its legal team exist, as set out in the FRN Privileged Documents Statement of Facts.
[1157] See FRN Privileged Documents Statement of Facts at paragraphs 10(1)(ii) {A5/1/8}, 14(1)(ii) {A5/1/11}, 15(1)(ii) {A5/1/12}, 16(1)(iii) {A5/1/13}, 17(1)(ii) {A5/1/14}, 19 {A5/1/15-16}, 20(1)(i) {A5/1/17}, 23(1)(iii)-(iv) {A5/1/20}, 31(1)(iii) {A5/1/27}, 58(1)(ii) and (v) {A5/1/54}, 59(1)(iii) and (vii) {A5/1/55-56}, and 60(1)(ix) and (xiii) {A5/1/58-59}.
[1158] {I/110}.
[1159] {I/112}.
[1160] {I/121}.
[1161] {I/120}.

stating: *"Latest information from our friend last night is that the Ministry will engage fully with the arbitration process. There is a considerable degree of confusion on the part of the Ministry and at a meeting held last Saturday to discuss the matter one of the senior officials was of the view that there was only an MOU between the parties. The suggestion was made at the meeting that the Ministry should offer to supply the gas to P&ID from other sources. Mick told our friend that we would consider anything but only in the context of the arbitration process. Presumably the offer will be made on a "without prejudice" basis as the offer would contradict the "frustration" defence. However, it would be interesting if we could find a way to use the advance knowledge of this offer to our advantage".*[1162]

d. In an email from Mr Burke to Mr Andrew dated 11 September 2013, sent just four minutes after receipt of an FRN Privileged Document suggesting that FRN might change its counsel representation from Mr Shasore to another advocate (Mr Alegeh),[1163] Mr Burke instructed Mr Andrew to *"call me"*.[1164] It is to be inferred that Mr Burke asked Mr Andrew to call him in order to discuss how this recently discovered privileged information might affect P&ID's position in, and/or the conduct of, the arbitration, and arrangements with Mr Shasore.

e. In an email dated 21 December 2015, when Mr Cahill sent to Mr Andrew and Mr Burke an FRN Privileged Document,[1165] he stated *"… attached 'brief' sent to President by an earlier Minister in connection with P&ID some time ago together with some notes which may help our first draft"*.[1166]

485. In light of evidence that is available, including the *prima facie* material nature of the FRN Privileged Content, the evidence of repeated circulation of FRN Privileged Documents amongst the senior individuals acting for P&ID, as well as the evidence of such documents prompting strategy discussions, together with the woefully incomplete disclosure and evidence offered by P&ID,[1167] this Court is entitled to find and infer that P&ID was making use of FRN Privileged Documents and other privileged and/or confidential information orally shared with it and those acting on its behalf to: (i) gain knowledge of what FRN was being advised and the steps it was planning on taking, (ii) obtain improper and unfair strategic and tactical advantage, and/or (iii) influence and/or seek to influence, via the

[1162] {I/122}.
[1163] {I/136}.
[1164] {I/135}.
[1165] {I/228}.
[1166] {I/227}.
[1167] Enabling adverse inferences to be drawn insofar as necessary. See Section G below.

corrupted individuals acting on behalf of FRN, the steps that FRN was or was not taking.[1168] That P&ID's obtaining of the FRN Privileged Content did provide it with a material tactical benefit in its conduct of the arbitration is also to be inferred in this case from the very fact that the FRN Privileged Content was being procured by P&ID and continued to be procured over a significant period of time, *i.e.* it was plainly perceived at the time to be advantageous for those acting on behalf of P&ID to have knowledge of the FRN Privileged Content.

486. Further still, it is important not to lose sight of the fact that P&ID's contemporaneous knowledge of the content of the advice on the merits that FRN was receiving meant that P&ID knew that FRN remained in the dark as to the fact that: (a) the GSPA had been procured by bribery, and (b) the evidence of Mr Quinn was perjured.[1169] This knowledge was a cause of P&ID being able to pursue its claim in the arbitration in the way it did, and continue to have confidence to put forward and rely on the perjured statement of Mr Quinn.[1170]

487. Third, it is equally the case that, had FRN and the Tribunal known during the arbitration that P&ID, or persons acting on its behalf, had (i) been colluding with individuals involved in FRN's defence, and/or (ii) had been making use of improperly obtained privileged and confidential information belonging to FRN, the outcome of the arbitration would (and certainly, might) have been different, with the Tribunal instead dismissing P&ID's claim:[1171]

    a. As confirmed by the Court of Appeal in *Arrow Nominees Ltd v Blackledge* [2001] BCC 591 at [54], as a matter of procedure, a claim or defence can be struck out as an abuse of process where a litigant's conduct puts the fairness of a trial in jeopardy, or where it amounts to such an abuse of the process as to render further proceedings unsatisfactory. A litigant who has demonstrated that he is determined to pursue proceedings with the object of preventing a fair trial has forfeited his right to take part in a trial. His object is inimical to the process which he purports to invoke. Since abuse of process is a procedural power, the Tribunal would have applied English law.[1172] Here, whatever P&ID's bare denial,[1173] P&ID's conduct undermined the fairness of the arbitration and constituted an abuse of process, such that, had it been known at

[1168] SoC at paragraph 79J {A1/1/62}.
[1169] SoC at paragraph 79K {A1/1/62}.
[1170] Ibid.
[1171] SoC at paragraphs 79L {A1/1/63}, 80(5) {A1/1/65}, 81 {A1/1/66}, Reply at paragraph 32(2)(vii) {A1/3/46}.
[1172] See *Union of India v Reliance Industries Ltd* [2022] EWHC 1407 (Comm), [2022] 2 Lloyd's Rep 201 at [58].
[1173] Defence at paragraph 79.5 {A1/2/67}.

the time, P&ID's claim could, and would, have been dismissed on this basis.

b. Arbitrators have wide powers (including to order a form of strike-out or summary judgment, or debar a party from advancing a claim or further participating) where privileged documents have been illicitly obtained across party lines by those conducting an arbitration: in *Libananco v Turkey* (2007) ICSID Case No. ARB/06/8 an ICSID tribunal (comprising Sir Franklin Berman KCMG KC, Mr Michael Hwang SC, and Mr Henri Alvarez KC) identified at [78] that *"The Tribunal would express the principle as being that parties have an obligation to arbitrate fairly and in good faith and that an arbitral tribunal has the inherent jurisdiction to ensure that this obligation is complied with…".*

c. Further still, full knowledge of the illicit obtaining of FRN Privileged Content during the arbitration would have severely undermined P&ID's credibility with the Tribunal and/or in turn led, through the knowledge that P&ID was in collusion with FRN's representatives and officials before and during the arbitration, to the revelation that P&ID was not a legitimate business or entity which had legitimately entered into the GSPA. With its credibility and/or legitimacy so tainted, the overwhelming likelihood is that the Tribunal would not have accepted P&ID's case that it would have been willing or able to perform the contract or had suffered the alleged loss. Equally probable, in a counterfactual where P&ID had been honest and transparent as to the full extent of its bribe paying, this would also have revealed the bribes paid in connection with the entry of the GSPA, such that P&ID's claim would have been successfully defended as a matter of liability on the basis that the award of the GSPA too had been influenced by bribery.[1174]

488. Accordingly, whether on the basis that P&ID colluded with one or more individuals involved in FRN's defence, or on the ground that P&ID illicitly obtained and possessed FRN Privileged Content during the arbitration, or both, such matters constitute a serious irregularity for the purposes of s.68(2)(g) which caused substantial injustice to FRN.

v. Section 73: reasonable diligence

489. P&ID continues to maintain that: (a) there is no basis for the allegation that anyone representing FRN or involved in its defence colluded with P&ID in respect of the conduct of the arbitration[1175], and (b) it did not illicitly obtain FRN Privileged Documents or other

[1174] SoC at paragraphs 63A {A1/1/40}, 79I {A1/1/62}, 79L {A1/1/63}, 80(3) {A1/1/64} and 80(5) {A1/1/65}, 81 {A1/1/66}.
[1175] Defence at paragraph 55 {A1/2/35}.

FRN Privileged Content (although it enters a non-admission as to whether Mr Adebayo did so).[1176] Any suggestion that FRN *"should"* have discovered these matters during the arbitration would be at odds with P&ID's own position that there was nothing to discover.[1177]

490. As P&ID admits,[1178] P&ID disclosed in October 2021, when it came to provide its disclosure in these proceedings, that it had in its possession extensive documents over which FRN might have claims of privilege or confidentiality. This triggered a protracted process by which FRN sought, via correspondence and applications, further disclosure relating to this via these proceedings. Insofar as the Court accepts FRN's case that P&ID illicitly obtained FRN Privileged Content during the arbitration, it goes without saying that FRN had no reasonable grounds to suspect this irregularity, let alone that it *"should"* with reasonable diligence have discovered the facts and evidence, during the arbitration. To give some credit to P&ID, it does not appear to suggest otherwise.

491. Likewise, insofar as FRN's case that P&ID colluded more widely with individuals involved in its defence is concerned, FRN again had no grounds during the arbitration to suspect such a serious state of affairs, as P&ID seems to accept.[1179] Nor can it be said that any reasonable party in FRN's position *"should"* have in fact discovered the facts and evidence during the arbitration if suspicions had existed. Uncovering and proving the existence of the collusion, even assisted by all of the disclosure related armoury available to parties before the English Court, has been a labyrinthine process. Even now, those involved seek to deny wrongdoing, and the full picture of all those with whom P&ID colluded remains concealed. The idea that a party in FRN's position is expected for the purposes of s.73 to have investigated and discovered the collusion during the arbitration would be all the more perverse when those who have now been identified as having been corrupted remained acting on behalf of FRN during much of this period,[1180] with Mr Shasore remaining in place

[1176] Defence at paragraphs 70L {A1/2/58}, 78B {A1/2/64} and 78G {A1/2/65}.
[1177] Consistent with this, P&ID's case that FRN should have discovered the irregularities now relied upon is focused on the allegation that Mr Quinn provided false or misleading evidence as to P&ID's willingness and ability to perform the GSPA, not on allegations of bribery, collusion or sharing of FRN Privileged Content: see Defence at paragraphs 60 {A1/2/43}, 74 {A1/2/62}, 78 {A1/2/63} and 82 {A1/2/68}.
[1178] Defence at paragraph 78A {A1/2/63}, which admits SoC paragraph 79A {A1/1/58} save as identified.
[1179] Defence at paragraph 78 {A1/2/63}, admitting SoC paragraph 79 {A1/1/57}. As Sir Ross Cranston accepted in his Judgment at paragraph 258 {C/12/40}, it was only from September 2019 that a picture began to emerge suggesting that there had been corruption of FRN's representatives in the arbitration.
[1180] Ms Adelore remained posted to the MPR until some point in 2017 {J/68/1}. Ms Belgore remained at the MPR until some point in 2019 {J/12/1}. Mr Oguine remained at the NNPC until May 2015 {J/20/1}. Ms Aderemi remained at the MPR until at least December 2014 {J/14/2}.

as external counsel until mid-2016[1181] (and with the identities of others who had been corrupted still remaining unknown, but also quite possibly having remained in position throughout the arbitration and subsequent enforcement proceedings).

G. ABUSE OF PROCESS – SUPPRESSION & DESTRUCTION OF EVIDENCE

i. The relevant principles

492. It goes without saying that English law is experienced in addressing a situation where a wrongdoer seeks to withhold from the Court relevant evidence, including as to the details and extent of its wrongdoing. Various principles come into play, each of which are applicable in the current case.

493. First, the very absence or failure to retain contemporaneous documents that would be expected to have been generated and retained if the dealings had been above board and legitimate may be found to be indicative of such dealings having involved impropriety: *Boc Limited and Another v Youngman LLP* [2003] EWHC 776 (QB) at [40].

494. Second, if a 'wrongdoer' has parted with relevant evidence or there are gaps in relevant evidence attributable to the wrongdoer, the Court may make such inferences or assumptions against that party as are consistent with other available evidence (see paragraph 235 above for relevant authorities).

495. Third, where there is a case to answer on a relevant issue, the Court is entitled to draw adverse inferences from the absence or silence, without credible explanation, of a witness who might be expected to have material evidence to give on that issue. Ultimately, *"whether it is appropriate to draw an inference, and if it is appropriate to draw an inference the nature and extent of the inference, will depend on the facts of the particular case"*.[1182] As Lord Leggatt (with whom all the other members of the Court agreed) explained in *Royal Mail Group Ltd v Efobi* [2021] UKSC 33, [2021] 1 WLR 3893 at [41]:

> *"The question whether an adverse inference may be drawn from the absence of a witness is sometimes treated as a matter governed by legal criteria, for which the decision of the Court of Appeal in Wisniewski v Central Manchester Health Authority [1998] PIQR P324 is often cited as authority. Without intending to disparage the sensible statements made in that case, I think there is a risk of making overly legal and technical what really is or ought to be just a matter of ordinary rationality.*

[1181] Letter of Disengagement dated 27 June 2016 {H8/351}.
[1182] *Mackenzie v Alcoa Manufacturing (GB) Ltd* [2019] EWCA Civ 2110, [2020] PIQR P6 at [50].

So far as possible, tribunals should be free to draw, or to decline to draw, inferences from the facts of the case before them using their common sense without the need to consult law books when doing so. Whether any positive significance should be attached to the fact that a person has not given evidence depends entirely on the context and particular circumstances. Relevant considerations will naturally include such matters as whether the witness was available to give evidence, what relevant evidence it is reasonable to expect that the witness would have been able to give, what other relevant evidence there was bearing on the point(s) on which the witness could potentially have given relevant evidence, and the significance of those points in the context of the case as a whole. All these matters are inter-related and how these and any other relevant considerations should be assessed cannot be encapsulated in a set of legal rules."

496. Fourth, adverse inferences may also be drawn where documents are: (i) deliberately destroyed in anticipation of proceedings being commenced; or (ii) destroyed after proceedings have been commenced, whether deliberately or otherwise.[1183] As noted in *Documentary Evidence* (14th Ed, 2021) at paragraph 11-26, *"the adverse inferences principle can be used in cases of document destruction to draw an inference as to the contents of the documents destroyed"*. The same applies when documents exist (*i.e.*, have not been destroyed) but have not been disclosed,[1184] and is compounded when such failure entails there having been non-compliance by a party with a disclosure order.

497. Fifth, the decision of the Court of Appeal in *R v Kellett* [1976] 1 QB 372 at 388 and 391-392 confirms that a threat and/or financial inducement made for the purpose of persuading a potential witness to alter or withhold his evidence is unlawful.[1185] In *Versloot Dredging BV v HDI Gerling Industrie Versicherung AG* [2013] EWHC 581 (Comm) at [21]-[22], the Court confirmed that *"in determining whether or not there has been improper interference with a witness, the court will look at the reality of what has occurred",* but that *"[s]ome matters can, however, be specified. Threats or promises made in order to persuade a witness to decline to be interviewed would be improper"*.

498. Sixth, where a party's actions (whether in terms of failure to provide disclosure in breach of orders, document destruction, interference with witnesses or a combination of such type of matters) have rendered a fair trial impossible, a claim or defence may be struck out as an abuse of process. The applicable principles are set out in *Arrow Nominees v Blackledge* [2001] BCC 591 at [54], [56] and [70]-[74]. In short, a litigant *"who has demonstrated that he is determined*

[1183] see *Infabrics v Jaytex* [1985] FSR 75 at 81 and *Active Media Services Inc v Burmester Duncker & Joly Gmbh & Co KG* [2021] EWHC 232 (Comm) at [309]-[311].
[1184] *Davy v Croxen* [2015] EWHC 2372 (Ch) at [47]-[48].
[1185] See also *R v Toney* [1993] 1 WLR 364 at 370 and *Arlidge, Smith & Eady on Contempt* (5th Ed) at paragraph 11-276.

to pursue proceedings with the object of preventing a fair trial has forfeited his right to take part in a trial. His object is inimical to the process which he purports to invoke". The same approach was taken in *Masood v Zahoor* [2009] EWCA Civ 650, [2010] 1 WLR 746 at [71], where Mummery LJ said that *Arrow Nominees "is authority for the proposition that, where a claimant is guilty of misconduct in relation to proceedings which is so serious that it would be an affront to the court to permit him to continue to prosecute his claim, then the claim may be struck out for that reason"*. The Court also concluded at [72] that it is open to a Judge *"even at the conclusion of a hearing"* to dismiss a claim on the basis that a litigant had forfeited his right to have the claims determined. That principle was also confirmed in *Summers v Fairclough Homes Ltd* [2012] UKSC 26, [2012] 1 WLR 2004 at [41], [62] and [65]. The Court will consider whether a fair trial is possible and whether some other remedy will safeguard the position of the innocent party.[1186]

ii. Application to the case at hand

499. As will be explored further at trial, this is a remarkable case in which each of the above principles is engaged; P&ID has been demonstrably determined to conceal its wrongdoing and pursue both the arbitration and now these proceedings themselves with the object of preventing a fair trial.

Missing disclosure

500. The starting point is that there is overwhelming evidence that those acting for P&ID were conscious of the need to try to avoid committing to paper incriminating content and of the need to minimise any documentary record revealing their wrongdoing, (a) which is itself indicative of P&ID's dealings having knowingly involved impropriety; and (b) from which it can also be inferred that, where possible, obvious "smoking guns" were not committed to writing and the full extent of P&ID's wrongdoing will deliberately have not been documented.

501. Thus, for example, as set out at paragraph 289 above, the internal records of ICIL group companies, including P&ID, were deliberately drafted so as to obscure wrongdoing, including through the use of codewords, as contemporaneously acknowledged in Mr Murray's email to Mr Lloyd Quinn of 5 September 2007, where Mr Murray stated the need to have records that *"we can hold but can be instantly destroyed or is illegible to a stranger. I'm sure we can come up with something"*.[1187] More generally, whilst various internal accounting spreadsheets

[1186] *ED&F Man Capital Markets Ltd v Come Harvest Holdings Ltd* [2022] EWHC 229 at [125]-[137].
[1187] {H1/189/1}.

relating to payments made by P&ID and the other ICIL group companies have been disclosed in relation to the period up to 2012, virtually no such records have been disclosed for the period after 2012. Accordingly, it seems that either (a) such records were not created to avoid committing at all to paper incriminating payments made thereafter; or (b) the records that were made were destroyed or otherwise not disclosed despite falling within the disclosure issues.

502. Likewise, whilst there are the occasional and significant lapses and slips, the documents evidence that those acting on behalf of P&ID were careful, including when using WhatsApp, to tailor the content of their messages in light of the possible paper trail and to consciously seek to avoid committing incriminating content to paper. Thus, in a WhatsApp message from Ms Taiga to Mr Cahill dated 17 October 2019, Ms Taiga stated (*inter alia*) that *"…in the interest of a successful outcome on this matter, there is a strong requirement to be discreet and limit third party activities regarding our 'behind the scenes' liasons (sic). In particular financial relations…"*.[1188] By a WhatsApp message from Mr Cahill to Ms Taiga sent on 11 December 2020, Mr Cahill stated (*inter alia*) that *"I spoke at length this morning with Isha and we are on the case but pls be conscious that we must assume that all communications are monitored or will be the subject of discovery orders"*.[1189] More generally, the communications that have been disclosed contain multiple references to phone calls (of which there are no record of what was discussed),[1190] which is consistent with a desire to avoid committing communications to writing.[1191] This active awareness of the need to avoid incriminating paper trails is a general feature of P&ID's conduct.[1192]

[1188] {L/30/4}.

[1189] {L/30/224}.

[1190] See for e.g., an email from Ms Taiga to Mr Smyth dated 28 December 2009 in which Ms Taiga stated *"you can transfer the money to me directly without using physical cash… Please can you call me to discuss tomorrow please"* {H3/113/1}; an email from Mr Burke to Mr Andrew dated 11 September 2013 in which he attached an FRN Privileged Document concerning a change in counsel in the arbitration and instructed Mr Andrew to *"Call [him]"* {H6/72/1}; an email from Mr Hallett to Mr McNaughton dated 18 May 2020 concerning a purported settlement agreement (which FRN avers amounts to a perversion of the course of justice as described below) in which Mr Cahill stated *"this can be arranged… I would still like to discuss this issue with you on the phone"* {H9/454/1}; a WhatsApp message from Ms Taiga to Mr Cahill dated 24 July 2020 in which she stated *"I recall you mentioning and discussing another mode of transaction I beg call Ise for details"* {L/30/114}; an email from Mr Cahill to Mr McNaughton dated 6 October 2020 (days before a further payment to Mr McNaughton) in which Mr Cahill stated *"If we are to fully clarify this matter I believe we need to discuss this fully… I will phone you"* {H10/40/2}; a WhatsApp message from Mr Burke to Mr Andrew and Mr Cahill dated 19 December 2020 (shortly after Mr Cahill forwarded to the chat a series of messages about payments emanating from Ms Taiga) in which Mr Burke stated *"I've asked isha [Taiga] to take an internet access phone off [Grace Taiga] and give her a local phone. I will call her in the morning to put a stop to this"* {L/36/187}. KK accepted in correspondence that *"many discussions between Mr Adebayo and representatives of our client occurred by telephone"* {N8/4/321}.

[1191] See e.g. a WhatsApp message from Mr Cahill to Mr Hallett dated 23 January 2020 discussing methods of contacting Mr McNaughton in which Mr Cahill warned Mr Hallett that "*[his] email may be handed over if it goes ahead*" but that Mr Hallett should use *"email if no other way"* {L/29.2/10-11}; and a WhatsApp message from Mr Burke to Mr Andrew and Mr Cahill dated 19 December 2020 in which Mr Burke stated *"We should tell isha [Taiga] to provide grace with a local phone and take any phone that allows WhatsApp away from her"* {L/36/185}.

[1192] See, for example, {H10/32} and the response at {H10/31}.

503. Where incriminating documents did come into existence, P&ID was alive to the need to destroy them. Whilst it is to be inferred that this represented a general practice by those acting on behalf of P&ID, it was particularly evident and effective in relation to P&ID's receipt of FRN Privileged Content, where the vast majority of documents that would have disclosed the circumstances and sources from whom such content was obtained were contemporaneously destroyed by those acting on behalf of P&ID. Thus, for example, when Mr Murray sent to Mr Smyth an FRN Privileged Document[1193] by email with subject *"Defence notes"* on 2 August 2013, he wrote *"Please pass to Mick and Brendan immediately. Please also confirm received opened ok as I want to delete here"*;[1194] likewise, Mr Murray stated *"Please confirm clean receipt so that I can delete"* when circulating a further FRN Privileged Document[1195] on 26 August 2013.[1196] As explained above, P&ID's explanation in its Defence, that *"Mr Murray was concerned to delete emails he had received because he feared that the Nigerian authorities might raid P&ID's or ICIL's offices and/or bring prosecutions on trumped-up charges as retaliation for bringing the arbitration claim",*[1197] simply acknowledges that Mr Murray recognised that such documents would be incriminating if found.

504. Consistent with a desire to ensure that incriminating documents would be destroyed:

a. In May 2015, documents held in ICIL's Nigerian offices, which housed P&ID and its documents, were all deliberately burned by Mr Ebubeogu and other local staff on the instructions of Mr Nolan and Mr Murray. Thus, notwithstanding P&ID's engagement in the arbitration with FRN and the prospect of enforcement proceedings, as confirmed in an email chain between Mr Ebubeogu and Mr Smyth on 10 and 11 August 2016, *"all the files relating to P&ID were burnt"*.[1198]

b. In addition to the burning of documents, shredding also occurred, with Mr Smyth responding to Mr Cahill's WhatsApp question of *"What documents etc have we got on Butanisatio[n]?"* with the answer *"Very little as they were shredded as well"*.[1199]

c. Indeed, it is clear that P&ID has consistently sought to ensure that incriminating

[1193] Namely, an email from Ms Hakeem-Bakare (Twenty Marina Solicitors) requesting from Ms Belgore (Assistant Legal Adviser, MPR) the information required to establish FRN's defence that the GSPA was discharged by frustration {I/110}. The full original document is at {H5/485/1}.
[1194] {I/109}.
[1195] Namely, privileged and confidential minutes relating to requests for information to establish FRN's defence {I/124}.
[1196] {I/123}.
[1197] Defence at paragraph 78E(1) {A1/2/64}.
[1198] {H8/407/1}.
[1199] WhatsApp messages dated 25 June 2019 {L/6/465}.

documents are deleted, including after the actual commencement of these proceedings, with Mr Cahill sending a WhatsApp message to Mr Smyth on 9 December 2019, very shortly after the commencement of this claim on 5 December 2019, stating *"Pls remind me to check tomorrow if all Aisha etc communications have been deleted"*.[1200] Likewise, by a WhatsApp to Mr Cahill on 19 December 2020, Ms Ise Taiga (Ms Grace Taiga's daughter) stated *"If mummy's phone is seized for example it will be disastrous for all concerned. She has to stop communicating with you for now"*.[1201] By a WhatsApp message in response, Mr Cahill stated *"Jim [James Nolan] will have funds for you as discussed on Monday latest. I agree about the WhatsApp messages and she needs to delete all earlier messages urgently"*.[1202]

505. In addition to the overwhelming evidence of deliberate destruction of incriminating documents that would otherwise be available at this trial, P&ID has relied in these proceedings on artificial obstacles preventing proper disclosure and has failed to properly ensure documents from relevant custodians have been obtained. Thus, for example:

    a. In 2017, a restructuring of P&ID took place for the very purpose of raising finance to pursue these enforcement proceedings against FRN. This entailed P&ID, now a shell company with no activities other than pursuing this claim, changing ownership: prior to October 2017, Fiduserve Management Limited was the sole legal owner of P&ID (with the shares held on trust for Mr Cahill).[1203] Since October 2017, the shareholders of P&ID have been Mr Andrew's litigation funding outfit Lismore (75%) and PHL (25%).[1204] Further to this transaction, VR, at least purportedly, acquired a 51% controlling interest in P&ID,[1205] albeit in WhatsApp communications with Ms Taiga, Mr Cahill has identified that P&ID in fact remains his company.[1206] However, what matters for present purposes is that P&ID has since artificially maintained that those who previously acted for it (including Mr Cahill, Mr Smyth, Mr Murray, Mr Adam Quinn, Mr Hallett, and Mr Andrew), as well as other ICIL group companies controlled

[1200] {L/6/537}. All who were encompassed within the term *"Aisha etc"* is unclear. It seems from the context that the reference to Aisha was to Aisha Kuzhazi, Mr Kuchazi's wife (see {L/6/436} and {L/6/505}), and indeed no WhatsApp or email communications with her have been disclosed by P&ID.
[1201] {L/29/305}.
[1202] {L/29/306}.
[1203] Andrew 5 at paragraph 29 {D/6/7}.
[1204] Shareholders' Deed between (*inter alios*) Lismore and PHL {H9/74/11}.
[1205] Andrew 5 at paragraph 29 {D/6/7}.
[1206] By a WhatsApp message dated 5 February 2020, Ms Grace Taiga asked Mr Cahill *"Is it true you sold P&ID? What is the matter? Is there anything I should know"*. Mr Cahill immediately responded *"Pls don't worry. I have not sold P&ID. We simply arranged financing to make sure we can win which we are doing…"* {L/30/32}.

by Mr Cahill, are all now *"third party custodians"* such that their documents are not within P&ID's control and P&ID is said to be dependent on voluntary provision of documents by such individuals and entities.[1207] This has been used to justify P&ID's solicitors on the record in these proceedings not having the expected oversight of the gathering of their documents.[1208] Further, it has been used to justify Mr Cahill's refusing to provide certain documents within his control to P&ID.[1209]

b. Insofar as documents held by Mr Adebayo are concerned (*i.e.,* documents which would evidence his relationship with P&ID, how and from whom he obtained FRN Privileged Content on behalf of P&ID, and what payments he made on P&ID's behalf to government officials and individuals involved in FRN's defence), P&ID has failed to provide <u>any</u> disclosure of such documents. Rather, P&ID has insisted that Mr Adebayo was not its agent and that his documents are not within its control.[1210] This is plainly wrong, but it is in any event telling that Mr Adebayo, who stands to personally receive approx. US$825 million if P&ID were to be permitted to enforce the Awards, has refused to voluntarily provide his documents notwithstanding his significant interest in the proceedings. Those acting for P&ID plainly recognise that Mr Adebayo's documents, if available, would be incriminating, as reflected by Mr Smyth's email to Mr Cahill dated 14 September 2019 in which he stated, *"I assume Tunji*

[1207] In KK's second letter dated 19 August 2022 it was said that: *"we are instructed that no agreements or arrangements have been put in place to ensure that our client has the right to obtain documents from third parties and/or former representatives of our client."* {O/385} See further the fourth letter from KK to MdR dated 3 February 2022 where it was said *"To the extent that your client is suggesting that our client is a "Quinn and Cahill company" (as you put it) and therefore has control of the documents of other such companies (or individuals who are or have been associated with or otherwise had dealings with any such company), this is not accepted. As confirmed at paragraph 18 of our first letter of 31 December 2021, VR Advisory acquired a controlling shareholder interest in our client in October 2017 and P&ID has therefore not been controlled by Mr Cahill since, at least, that date (Mr Quinn having died in 2015)."* {O/222}. See also P&ID's Disclosure Certificate dated 29 October 2021 at p.2 {N1/3/324-342}; and the letter from KK to MdR dated 8 April 2021 at paragraph 12, listing such individuals as third-party custodians {O/87/3}. In the case of documents held by Mr Cahill and Lismore, P&ID's assertions that their documents are not within its control are notwithstanding clause 5.8 of the Shareholders Agreement {H9/74/14}: and clause 4.1.1 of the Litigation Management Agreement {H8/468/6}, which in any event give P&ID powers to obtain documents.

[1208] In its fourth letter dated 3 February 2022, KK stated at paragraph 3 that any document collection from such individuals *"was done on the basis of an ad hoc request and not pursuant to a standing consent"* and that "*no concession [was] made as to control by P&ID over such individuals or any documents*", and suggested at paragraph 4 that VR's acquisition of shares in P&ID meant that documents of companies associated with Mr Quinn and Mr Cahill may no longer be available to P&ID {O/222/1-2}. In its second letter dated 19 April 2022, KK stated that "*Mr Cahill does not act on behalf of our client. The fact that he has given evidence in proceedings involving our client is irrelevant to the question of control, as is the fact that Mr Cahill has a financial interest in the outcome of the instant proceedings"* {O/296/1}. KK took similar points in relation to Mr Nolan {O/377.1}, Ms Taiga's daughter Omafuvwe {O/204}, and Ms Taiga herself {O/216}.

[1209] See for example, QE's third letter dated 14 November 2022 at paragraph 8(a)-(b), where it was said that Mr Cahill was refusing to request that his iPhone X (used in the period from February 2019 to December 2021) be made available from the Irish Gardai for the purpose of being searched for these proceedings {O/569/2-3}.

[1210] In its letter dated 15 March 2022, KK stated that *"On the basis that Mr Adebayo was merely a contractual counterparty of our client's and was not an employee or agent of our client, our client considers it unlikely that Mr Adebayo holds or held any undisclosed documents within our client's control and which may be relevant to any issues in this case"* {O/269/2}.

has deleted all emails between us from his phone".[1211]

c. Similarly, P&ID agreed to seek disclosure from Ms Taiga and her family.[1212] However, despite having been able to serve two witness statements from Ms Grace Taiga in relation to the interlocutory hearing before Sir Ross Cranston and having served witness statements from her for trial, the documents of Ms Taiga and her daughters have not been provided or searched by P&ID for the purposes of disclosure in these proceedings.[1213] P&ID maintains that such documents are not within its control,[1214] but the reality is that the other disclosure shows Ms Taiga and her family to have been acting in concert with those acting on behalf of P&ID, and supporting P&ID in its claim. The proper inference is that such disclosure has not been provided because, if properly provided, it would be incriminating, as evidenced by Mr Cahill's agreement that it would be "*disastrous for all concerned*" if Ms Taiga's messages were disclosed and Mr Cahill's instruction to Ms Ise Taiga that *"[Grace Taiga] needs to delete all earlier messages urgently"*.[1215]

d. Further still, in an extraordinary episode even by the standards of this litigation, by an email dated 20 January 2020 to Mr Johnson (of VR and one of P&ID's current directors),[1216] Mr McNaughton (a former employee of companies within the ICIL group) identified that he had documents, and was willing to testify, that those behind P&ID had repeatedly engaged in corruption in Nigeria. It has now been admitted that this email was provided to P&ID's solicitors of the record, then KK, the same day.[1217] Notwithstanding the contents of Mr McNaughton's email being shared with and known to all of P&ID's current directors (*i.e.*, Mr Johnson, Mr du Toit, and Mr

---

1211 {H9/233/1}.
1212 {O/204}and {O/216}.
1213 {O/273}.
1214 In its letter dated 29 December 2021, KK stated that "*P&ID is neither obligated nor able to obtain and search documents in the possession of any member of the Taiga Family*" {O/191/1}. See too KK's third letter dated 31 December 2021 {O/198}.
1215 {L/29/305-306}. Whilst limited disclosure of WhatsApp communications between Ms Taiga and Mr Cahill and Mr Smyth have thus far been disclosed in these proceedings based on copies retained by Mr Cahill and Mr Smyth, these appear not to be a complete record of these communications between these individuals and Ms Grace Taiga (let alone between Ms Taiga and those acting for P&ID more generally) {L/30/2}, {L/30/18}, {L/30/53}, {L/30/158}, {L/30/168}, {L/30/198}, {L/30/203}, {L/26/3-4}, {L/26/13} and {L/23}. Ms Taiga's copies of her relevant WhatsApp communications (which would include, it is to be presumed, relevant messages with her daughters; with Mr Adebayo; and with other individuals discussing matters relevant to these proceedings, quite apart from communications with Mr Cahill and Mr Smyth which have not been fully retained in their hands), have not been disclosed, nor have her other relevant documents nor those of Ms Vera Taiga, Ms Ise Taiga and Ms Oma Taiga.
1216 {H9/328}.
1217 See MdR's Letter dated 15 September 2022 {O/413}. In their fifth letter dated 21 September 2022, KK accepted at paragraph 3 that *"members of the Case Team were made aware of Mr McNaughton's 20 January 2020 email that same day"* {O/435/2}.

Andrew)[1218] and known to its solicitors of record, Mr McNaughton was not identified by P&ID as a potential custodian when it came to P&ID preparing its Disclosure Review Document in advance of the April 2021 CMC, nor were any documents sought by KK from him. Indeed, KK elected to take no steps to contact Mr McNaughton at the time,[1219] on the absurd and restrictive basis that they pre-determined (without asking Mr McNaughton whether he would provide such documents) that such documents were not within P&ID's control.[1220] When FRN subsequently discovered Mr McNaughton's emails within the disclosure provided by P&ID on 29 October 2021 and obtained an order that P&ID was to approach Mr McNaughton to obtain and provide inspection of the documents held by him,[1221] it was then too late. In the interim (as set out in further detail below), those acting for P&ID had procured that Mr McNaughton would not provide documents or evidence. Thus, Mr McNaughton responded to KK's letter by email dated 18 February 2022 stating that, *"I received your email and as at this time I will not be sending you any of the information I have in my possession Brendan Cahill is well aware of some of the information in my possession"*.[1222]

506. Quite apart from the above specific failings, the Court should proceed on the basis that the disclosure that has been provided by P&ID is generally far from complete. The reasons for this will be explored at trial, but, for example:

    a. Whilst further WhatsApp threads continue to belatedly emerge as a result of FRN's disclosure applications in these proceedings, it is clear that there are very significant gaps in what has been retained and made available by way of disclosure in these proceedings. For example, it seems that the WhatsApp messages that have hitherto been disclosed emanated primarily from Mr Smyth's laptop, which happened to contain some iTunes backups for Mr Smyth's iPhone and Mr Cahill's iPhone 8 and iPad.[1223] As a result, the only threads that were disclosed are ones to which either Mr Smyth or Mr Cahill were themselves a party and which happened to have been backed-

[1218] {Q/56/57}.
[1219] KK's fifth letter dated 21 September 2022 at paragraph 4 {O/435/2}.
[1220] In its fifth letter dated 21 September 2022, KK asserted at paragraph 1 that "*Our client's obligation is to give disclosure of documents within its control. Assuming for the sake of argument that Mr McNaughton was in fact "potentially prepared to provide" our client with documents that he considered relevant (as you put it), this does not result in our client having control of those documents: even if Mr McNaughton might be a custodian of "relevant" documents, we have no reason to believe that he is a custodian of our client's documents, relevant or otherwise*" {O/435/1}.
[1221] See paragraph 8 of the Order made by Mr Justice Foxton ("**Foxton Order**") dated 7 February 2022 {C/22/5} and paragraph 1(b) of Annex One thereto {C/22/6}.
[1222] {H10/120/1}.
[1223] {O/544}.

up. Whilst Mr Nolan's phone was searched for any disclosable non-WhatsApp messages (e.g. SMS), none were found,[1224] and no WhatsApp messages at all have thus far been disclosed on the basis that P&ID maintains it is not allegedly able to access them due to encryption.[1225]

b. In any event, there does not appear by any means to be a complete record of relevant WhatsApp threads involving even Mr Cahill and Mr Smyth, with the WhatsApps threads that have been disclosed suggesting the existence of other WhatsApp threads that have either not been retained or not been disclosed. Thus, just for example, (i) whilst WhatsApp messages between Mr Smyth and Ms Taiga arranging payments to Ms Taiga on 5 April 2012 and on 9 September 2015 have been disclosed,[1226] the abrupt start, end and lack of context of the messages sent on 5 April 2012 suggest that they were not the first time WhatsApp had been used between these individuals; (ii) likewise, the abrupt start of the WhatsApp chain between Mr Cahill and Mr Adebayo[1227] suggests that the thread that has been disclosed followed earlier WhatsApp communications that have not; (iii) by an email dated 16 May 2020,[1228] Mr Cahill referred to a WhatsApp communication with *"Isaac"* (presumably Mr Isaac Ebubeogu) but no corresponding WhatsApp message or thread has been disclosed.

c. Moreover, it is plain that, in addition to WhatsApp, Mr Cahill was in fact using both SMS/text messages[1229] and Signal messenger[1230] to communicate, but only very limited SMS messages, and no Signal messages, involving Mr Cahill have been disclosed by P&ID.[1231] Mr Cahill has refused to request that his iPhone X – on which he used SMS and Signal messenger – be made available by the Irish Gardai for the purpose of being searched for disclosure in these proceedings.[1232] It is noteworthy that it was originally said by P&ID's lawyers on instruction that Mr Cahill had not used any messaging

---

[1224] {O/434}.
[1225] {O/413.1}.
[1226] {L/15/1-2} and {L/23}.
[1227] {L/25}.
[1228] {H9/448}.
[1229] In its fifth letter dated 24 June 2022, KK confirmed at paragraph 5(a) that "*Mr Cahill has used SMS since he acquired his first mobile phone – he cannot recall the date*" {O/338/5}. Moreover, it is plain that Mr Cahill was using text messages to communicate in relation to matters relevant to this case. Thus, for example, in a WhatsApp message dated 11 November 2016 Mr Cahill stated "*Early morning text followed by call from Tunji [Adebayo]. Nigerian 3rd man travelled to London Wed and is still there. Presumably objective is to finalise matters or to do Christmas shopping*" {L/6/226}. Likewise, in an email from Mr McNaughton to Mr Hallett dated 6 February 2020, Mr McNaughton referred to having sent text messages to Mr Cahill {H9/355/1}, but no disclosure of these text messages has been provided.
[1230] {L/25.7/104} and {L/22/169}.
[1231] See {O/542/2} and {O/685}.
[1232] {O/569/3}.

platforms other than text messages and WhatsApp, only for this to be disproved by the subsequent disclosure of WhatsApp messages by chance indicating that this was false as Mr Cahill was shown also to have been using Signal messenger.[1233]

507. Consistent with all of the above, P&D's recent disclosure unquestionably reveals that those acting on behalf of P&ID have actively failed to disclose damaging facts and matters to this Court at previous hearings. Thus, for example, notwithstanding that Mr Cahill had compiled information on various payments to Ms Taiga – including those pre-dating the GSPA – by 2 September 2019,[1234] (i) Mr Cahill's first witness statement dated 27 April 2020 deliberately gave the false impression that payments for the benefit of Ms Taiga had only taken place from 2015.[1235] This mimicked what P&ID was falsely publicly holding out, with its website stating: "*The donations sent by Mr. Cahill to Grace occurred years after she retired from government service…It is patently obvious that this had no connection with P&ID's GSPA, and the Nigerian Government's characterization of it as a bribe from P&ID is absurd and offensive*;"[1236] (ii) in Mr Cahill's second witness statement dated 1 July 2020, Mr Cahill then falsely claimed that he had been unaware of the payments of US$4,969.50 and US$5,000 to Ms Vera Taiga on 30 December 2009 and 31 January 2012 respectively until Nigeria obtained disclosure from the banks in the US, whilst omitting any mention of other payments for the benefit of Ms Grace Taiga of which he and P&ID were fully aware.[1237] Further, it appears that those acting for P&ID sought to conceal, even from their own lawyers in these proceedings, other incriminating facts prior to the Cranston hearing. Thus, for example, P&ID's disclosure of WhatsApp communications reveal that, shortly before Mr Cahill's reply evidence for the extension of time hearing was filed, Mr Cahill messaged Mr Andrew and Mr Burke on 22 June 2020 stating, *"One last item. Kobre are looking for the full list of 'benevolent payments'. I think we are agreed that this item could open new and unwelcome lines of enquiry. Let's consider our response"* [emphasis added].[1238] In response, Mr Andrew replied two minutes later, *"Yes we don't want to go there. I would say that the list you [p]ut together is probably the best you can do as it is not something that is susceptible to a word search in the records"* [emphasis added]. This appears to have been implemented, with Mr Cahill sharing his response to KK with Mr Smyth the next day, stating

[1233] In its fifth letter of 24 June 2022, KK stated at paragraph 5(a) that Mr Cahill had not used any other messaging platforms than SMS and WhatsApp {O/338/5}.
[1234] {H9/216} attaching {H9/217}.
[1235] Cahill 1 at paragraphs 99 & 102-105 {E/17/29}.
[1236] {H9/278/5}.
[1237] Cahill 2 at paragraphs 24-25 {E/22/8}.
[1238] {L/33/123}.

"Hi Nate,[1239] *Many thanks, understood. The problem is that I have already conducted the exercise of looking through the records to find all of the 'charitable' payments I could spot. I daresay I could do a more thorough trawl but I think this is pretty much it".*[1240] In consequence, even P&ID's own solicitors were provided with an incomplete list of payments.[1241]

Missing witnesses and interference with witnesses

508. P&ID has more generally failed to call a number of witnesses that it can be legitimately expected to have called if their evidence would have supported P&ID's case, the absence of whom is telling. This will be explored at trial, but it includes:

a. Mr Adebayo – Mr Adebayo is entitled to receive over US$825 million were P&ID to be successful in this action and remains close to, and in business with, Mr Cahill, Mr Andrew and Mr Burke.[1242] It is FRN's case that Mr Adebayo acted as P&ID's agent, paid bribes and colluded with individuals involved in FRN's Defence and current and former Nigerian officials, and was involved in the illicit obtaining of FRN Privileged Content for P&ID. Indeed, P&ID has itself identified Mr Adebayo as particularly involved in obtaining the FRN Privileged Documents.[1243] His absence, and the failure to search his documents, is stark, as is the absence of evidence from his assistant Mr Shonibare.

b. Mr Smyth – Mr Smyth remains a director of ICIL.[1244] He was involved in making and recording payments on behalf of P&ID including to Ms Taiga,[1245] and Ms Adelore,[1246]

[1239] Presumed to be a reference to Nathaniel Barber, a lawyer at KK.
[1240] {L/22/209}.
[1241] Also, compare the table at {H9/217} and the table provided to KK at {D/27/13}, albeit there was no justification for the information in either table to be withheld by P&ID from FRN and the Court at the Cranston hearing.
[1242] See for e.g. WhatsApp messages between Mr Adebayo and Mr Cahill dated 24 July 2018 discussing the appointment of a PR company and the enforcement of the Awards {L/25/80}; WhatsApp messages from Mr Burke to Mr Andrew and Mr Cahill on 18 September 2019 in which Mr Burke stated "*Ok Tunji released no further appointment. Will call if want him back quizzed about graces medical expenses for 3rd time*" {H9/243}, 7 December 2019 in which Mr Burke stated "*Good chat with Tunji. He believes shashore will fight to clear his name and come on board*" {L/31/3}; on 22 January 2020 in which Mr Burke stated "*Tunji texted from Dubai. We will not get feedback from dele until pres back home as this has to be discussed at the highest level!! Quite encouraging*") {L/31/99}; on 30 January 2020 in which Mr Burke referred to recent communications between Grace Taiga and Mr Adebayo {L/31/138}; on 19 July 2020 in which Mr Burke referred to "*news from Tunji which we need to discuss [on a call]*") {L/34/8}; on 20 July 2020 in which Mr Burke stated "*Tunji wants conference call with us*" {L/34/10}; and a WhatsApp message from Mr Cahill to Mr Burke and Mr Andrew on 29 July 2020 in which Mr Cahill stated "*Trevor might contact Tunji this morning… We need advance notice if there is an approach coming from Mishcon*") {L/34/46}.
[1243] KK's second letter dated 30 December 2021 at paragraph 11 {O/195/4}.
[1243] https://ie.globaldatabase.com/company/industrial-consultants-internati" {O/195/4}.
[1244] https://ie.globaldatabase.com/company/industrial-consultants-international-limited
[1245] See for e.g. {H9/77}.
[1246] On 18 December 2015, Ms Adelore received a payment of NGN 200,000 into her Zenith bank account labelled "*smith*" {M/35/76}. FRN avers this was a bribe paid by Mr Smyth, who also went by Mr Smith.

and in obtaining FRN Privileged Content, and was party to communications regarding document destruction.[1247] It is to be inferred that he has not been called because his evidence, if given truthfully, would be incriminating to P&ID.

c. Mr Adam Quinn – Mr Michael Quinn's son, who was involved (*inter alia*) in the obtaining and dissemination of FRN Privileged Documents, and who could be expected to have relevant knowledge of his father's conduct.

d. Mr Hallett – Mr Hallett has been directly implicated in procuring that damaging evidence be withheld from these proceedings (as to which see below) and been used as a courier for transferring cash to be used for covert payments.[1248]

e. Mr McNaughton – as addressed below, it has emerged from P&ID's disclosure in these proceedings and subsequent disclosure applications pursued by FRN, that Mr McNaughton had knowledge of various illegal activities during his time working for ICIL group companies, and has been made and offered payments tied to him not disseminating incriminating evidence against those behind P&ID. Likewise, Mr Godwin Odama had not been called or disclosure from him provided, despite Mr McNaughton having identified Mr Odama as someone who could testify on the meaning and use of "Dublin expenses" within the records of the ICIL group companies.

509. Further, P&ID has also not called evidence from those individuals, other than Ms Taiga, who are alleged to have received sums and colluded with P&ID. In particular, P&ID could, but has not, provided explanations from Mr Shasore or Ms Adelore for the large cash deposits into their accounts in 2014-2015, during the critical period of the arbitration, or from Ms Vera Taiga and Ms Ise Taiga as to the arrangements and reasons for the payments received by them on behalf of their mother.

510. Moreover, as has been revealed by documents within P&ID's disclosure in these proceedings, P&ID's actions have gone beyond failing to call relevant witnesses and can be shown to have extended to unlawfully using threats and financial inducements to persuade a relevant witness (Mr McNaughton) to withhold evidence. This conduct has deprived this Court of relevant evidence that would have been adverse to P&ID's case. It is particularly

[1247] {H8/407/1}.

[1248] Thus, for example, by WhatsApp message on 17 October 2019 Mr Cahill explained to Mr Andrew and Mr Burke, "…*We pay David Hallett an old associate who will then bring cash to a specialist bureau de change. A nominated party accepts the money and a nominated party in Abuja releases an equivalent amount in Naira to Mohammed's wife.*" {L/28/150}.

significant not only because of its seriousness in and of itself as a perversion of justice, but because: (a) it further evidences the willingness of individuals acting on behalf of P&ID to act unconscionably in P&ID's dispute with FRN; and (b) reinforces that this Court should proceed on the basis that those acting on behalf of P&ID will have deliberately and generally withheld and concealed other incriminating evidence too.

511. The evidence that has now emerged in relation to Mr McNaughton can be summarised as follows:

a. Mr McNaughton, an employee of various ICIL group companies, was based in the Abuja office of ICIL Nigeria between 2001 and 2014, which is where P&ID was also based. Having been dissatisfied with his treatment, he became a whistle-blower, identifying in correspondence that he had been party or otherwise had knowledge of various illegal activities during his time working for ICIL group companies,[1249] including illegal payments to Nigerian officials. Mr McNaughton stated, on a number of occasions, his willingness in connection with the current proceedings to: (i) give witness evidence of his knowledge of the corruption and illegal activities carried out by individuals who were behind and who had acted on behalf of P&ID;[1250] and (ii) provide copies of documents he held.[1251] In Mr McNaughton's email to Mr Johnson (a current director of P&ID and member of VR Advisory) of 20 January 2020, Mr McNaughton further identified that, in addition to being personally willing to give evidence, he was in touch with Mr Odama, an accountant to ICIL group companies, who could be arranged to provide further witness evidence of corruption.[1252]

b. Following the receipt by VR Advisory of Mr McNaughton's email of 20 January 2020, this email was forwarded to Mr Andrew, who forwarded it to Mr Burke and Mr Cahill. Mr Cahill sent it to Mr Murray and Mr Hallett. The email was also sent to KK on the same day.

c. The strategy of Mr Cahill, assisted by Mr Hallett, was to procure that Mr McNaughton did not give evidence, or arrange for documents or evidence to be otherwise provided, which would be damaging to P&ID's case against FRN. These actions were for the

[1249] See Mr McNaughton's emails dated 29 September 2014 {H6/473} and {H6/474}, 20 January 2020 {H9/328} and 29 September 2020 {H10/19}.
[1250] In his email of 20 January 2020, Mr McNaughton stated that *"If required I Wii (sic) be a witness and if necessary I will undergo a polygraph test on any statement I have made"* {H9/328/6}.
[1251] See his emails of 29 September 2014 {H6/474/1-2} and 29 September 2020 {H10/19/1}.
[1252] In his email of 20 January 2020, Mr McNaughton stated that "*Godwin Odama … who I am in touch with is willing to testify on the above statements about … Dublin expenses*" {H9/328/5}.

benefit of P&ID in these proceedings and are attributable to P&ID,[1253] with the documentary evidence also demonstrating that Mr Andrew (a current director of P&ID) was also aware of the situation and steps being taken,[1254] as was Mr Burke.[1255] More generally, it is clear that both Mr Andrew (a current director of P&ID) and Richard Deitz of VR (representing the VR directors of P&ID) understood and tasked Mr Cahill with addressing the Mr McNaughton situation on behalf of P&ID.[1256]

d. As Mr Hallett set out in an email to Mr Cahill dated 3 March 2020, the intention was to persuade Mr McNaughton to "*[do] all that [he] can to assist in ... realisation of the award. He should forget taking any action that interferes with the main event which is getting money"* and that "*The aim ...is...to keep him onside so that he takes no action that has the potential to be seized upon by the opposition...". i.e.*, the clear evidence that the actions taken in relation to Mr McNaughton were linked to these proceedings.[1257]

e. By email from Mr Cahill to Mr McNaughton dated 11 March 2020, Mr McNaughton was threatened with legal action and the withdrawal of an offer to make a payment to him if he continued to express the allegations made in his email of 20 January 2020. Such payment to Mr McNaughton was clearly understood to be tied to Mr McNaughton not disseminating incriminating evidence.[1258] It seems that this was initially going to be achieved by an undertaking from Mr McNaughton,[1259] but, in the event, the same outcome was achieved by structuring a settlement agreement with Mr McNaughton (dated 10 April 2020, but in fact entered into in or around July 2020) so as to provide that Mr McNaughton was to be paid £97,000 (plus up to a further £60,000 depending on any tax liability) by ICIL but only upon P&ID receiving

---

[1253] Mr Cahill continues to act on behalf of P&ID and his interests remain aligned with it. See, for example, an email from Mr Cahill to Mr McNaughton dated 18 June 2020 in which Mr Cahill described P&ID as "*we*", explained how he was "*dealing with ongoing issues with the case*", how he was working on behalf of P&ID to "*conclude an agreement with one or other of the potential funders*", and how he was "*negotiating a settlement*" in respect of the Tita Kuru Arbitration on behalf of P&ID {H9/485/1-2}; and a WhatsApp from Mr Cahill to Ms Taiga dated 5 February 2020 in which Mr Cahill reassured Ms Taiga that the agreement with VR did not mean he had relinquished control of P&ID, stating "*Pls don't worry. I have not sold P&ID. We simply arranged financing to make sure we can win which we are doing*" {L/31/148}. See similarly {H9/104}, {H9/492}, {H10/10} and {H10/18}.

[1254] See, for example, a WhatsApp message from Mr Smyth to Mr Cahill dated 30 September 2020 {L/20/399}. See similarly {H9/388} and {H9/344}.

[1255] On 22 January 2020, Mr Burke asked Mr Cahill and Mr Andrew for an "*update on our approach to McNaughton*" and suggested "*Let us all talk later*" {L/31/97}. On 30 September 2020, Mr Cahill asked Mr Smyth to "*Pls circulate all McNaughton rubbish to Seamus and Trevor but check verbally first as they may not want it. Explain my position today*" {L/20/398}.

[1256] {H9/344}.

[1257] {H9/370/1}.

[1258] {H9/377/1}.

[1259] In an email dated 27 March 2020, Mr McNaughton referenced that he would *"make a legal undertaking not to disseminate any information on ICIL work practise or activities by any individual working for ICIL*" {H9/402/1}.

payment from FRN pursuant to P&ID's claim.[1260]

f. In addition, following Mr McNaughton's email of 20 January 2020, those acting for P&ID were concerned about the identification in writing by Mr McNaughton of Mr Odama as having incriminating information concerning the activities of ICIL group companies. Mr Hallett thus stated by email to Mr Cahill on 7 February 2002 *"… My concern is that I think Bernie copied Godwin with his mail that he sent to VR Capital. I don't like having it floating around out there. I suggest that you arrange to pay him monthly (NI00,000= £210/month) Jim paid him up to last September"*.[1261] Mr Odama was subsequently paid NGN 100,000 from Ms Bello (one of ICIL's accountants) on or around 12 February 2020, with Babcock making further payments to him of (i) NGN 500,000 on 14 April 2020, (ii) NGN 520,000 on 14 April 2020, (iii) NGN 100,000 on 20 April 2020, (iv) NGN 230,000 on 23 April 2020, (v) NGN 50,000 on 4 May 2020, (vi) NGN 100,000 on 4 May 2020, (vii) NGN 90,000 on 5 May 2020, (viii) NGN 150,000 on 8 May 2020, and (ix) NGN 550,000 on 12 May 2020 {M/43.7}. It is to be inferred that these payments were made on behalf of P&ID, and intended to procure that Mr Odama did not provide any incriminating documents or witness evidence contrary to P&ID's interests. Consistent with this, a message from Mr McNaughton to Mr Cahill dated 15 May 2020 identified that Mr Odama had been in recent contact with Mr Nolan's Nigerian lawyer and *"The Lawyer advised Godwin to destroy all records"*.[1262] Whilst the lawyer being referred to is not identified, it seems that the individual referenced may be a Mr Paul Erokoro, who it appears from WhatsApp messages between Mr Smyth and Mr Cahill has since been promised between US $1.5m-$1.7m from any recovery that P&ID makes against FRN.[1263] Mr Cahill's alleged ignorance of some (but not all) of the payments to Mr Odama around the time of the request to *"destroy all records"* is implausible and will be explored at trial.[1264]

g. Following P&ID's defeat in the hearing before Sir Ross Cranston, Mr Cahill paid Mr McNaughton £10,000 to procure his continued silence pending further payment pursuant to the 10 April 2020 agreement.[1265] Further to, and consistent with this, (i) by an email dated 1 January 2022, Mr Hallett informed Mr McNaughton that Mr

[1260] Settlement Agreement dated 10 April 2020 between Mr McNaughton and ICIL {H9/418}.
[1261] {H9/354}.
[1262] {H9/447.1/2}.
[1263] {L/20/488}.
[1264] Cahill 6 at paragraphs 9-10 {D/26/3-4}.
[1265] {H10/45/1}.

Cahill, *"[is] asking you to make no comment [to FRN's lawyers] while working out a satisfactory solution for settlement of your back pay"*;[1266] (ii) by an email dated 29 March 2022, Mr Hallett informed Mr McNaughton that, *"I also mentioned [to Mr Cahill] that you were being bothered by [FRN's lawyers] and he said that all being well, he should be in a position to discuss a bonus on top of what is already agreed and he owes you. Personally I think that fending off their approaches merits a bonus anyway..."*.[1267]

h. Mr Andrew and Mr Burke's professed ignorance of Mr Cahill's arrangements with Mr McNaughton is incredible and will be explored with them at trial.[1268]

i. Regrettably, P&ID's actions have successfully deprived FRN and this Court of the evidence that Mr McNaughton had previously identified himself as willing and able to volunteer or obtain: (i) FRN obtained an Order that P&ID was to approach Mr McNaughton to obtain and provide inspection of the documents held by Mr McNaughton,[1269] but Mr McNaughton refused to provide his documents to KK in February 2022;[1270] (ii) no documents or witness evidence have been produced from Mr Odama; and (iii) Mr McNaughton himself refused to respond to MdR when approached as a potential witness, in response to which Mr Burke congratulated Mr Cahill ("*well done you*") following an offer by Mr Cahill of a bonus of £10,000 for Mr McNaughton's silence.[1271]

512. As will be explored at trial, P&ID's actions, as set out above, collectively demonstrate that it has been determined to pursue these proceedings with the object of preventing a fair trial. In these circumstances, this is a case in which the Court may properly determine that P&ID's defence ought to be struck out as an abuse of process. In the alternative, it is appropriate for the Court to draw the strongest of adverse inferences that the content of the missing evidence (both documentary and witness evidence) would be adverse to P&ID's case, and would further support FRN's case, including:

a. that corrupt payments were made or promised by or on behalf of P&ID to Nigerian officials in connection with the entry of the GSPA, and that these bribes were

---

[1266] {H10/112/1}.
[1267] {H10/125}.
[1268] Andrew 8 at paragraph 11 {D/22/4}; Burke 2 at paragraphs 6-7 {D/15/2}.
[1269] Foxton Order dated 7 February 2022 at paragraph 8 {C/22/5} and paragraph 1(b) of Annex One {C/22/6}.
[1270] On 18 February 2022, Mr McNaughton responded to KK's letter stating "*I received your email and as at this time I will not be sending you any of the information I have in my possession Brendan Cahill is well aware of some of the information in my possession*" {H10/120/1}.
[1271] {H10/44.1}.

intentionally covered up and concealed throughout the arbitral process, including through the further payment of bribes;

b. that corrupt payments were made or promised by or on behalf of P&ID to individuals involved in P&D's defence during the arbitration, and that the intention of this was to cause those individuals to take actions or refrain from taking actions in P&ID's interests;

c. that such corrupt payments include the payments to specific individuals that P&ID have been able to identify, as well as further payments (both to those individuals and other individuals) which remain concealed;

d. that FRN Privileged Content was knowingly illicitly obtained from individuals involved in FRN's defence of the arbitration, including Mr Dikko, Ms Adelore, Ms Belgore, Ms Aderemi, Mr Oguine, and Mr Shasore, as one of the products of the corruption of those individuals by those acting for P&ID;

e. that Mr Adebayo, acting as P&ID's agent at all times, paid bribes on behalf of P&ID to current or former public officials and individuals involved in FRN's defence, and corrupted individuals to impede FRN's defence and obtain FRN Privileged Content;

f. that FRN Privileged Content was a cause of, and assisted, P&ID in pursuing its claim in the arbitration; and

g. that the intention and effect of the payments made or promised to the individuals involved in FRN's defence of the arbitration was to assist P&ID and impede FRN's defence.

H. FRN's SECTION 67 JURISDICTION CHALLENGE

513. FRN challenges the Awards under s.67 of the 1996 Act on the ground that the Tribunal lacked substantive jurisdiction. In particular, FRN alleges that the arbitration agreement at Article 20 of the GSPA was, itself, procured by fraud. It is therefore null and void under Nigerian law, which is the governing law of the arbitration agreement, and/or under English law. As a result:

a. the Tribunal's Award on Jurisdiction must be set aside pursuant to s.67(1)(a); and

b. all the Tribunal's Awards should be set aside pursuant to s.67(1)(b).

514. An arbitration agreement found to have been procured by fraud or bribery will be vitiated

as a matter of Nigerian law.[1272] Because of the principle of separability, which is recognised in Nigerian law, the circumstances vitiating the main contract may, but will not necessarily, also vitiate the arbitration agreement contained within it. Thus, if, for example, there is a nexus between the bribery which vitiates the main contract and the agreement to or terms of the arbitration agreement itself, that will be sufficient to vitiate the arbitration agreement as well.[1273]

515. In the present case, P&ID bribed Ms Taiga to ensure that the GSPA was pushed through on the terms that P&ID wanted, including with a London arbitration clause, which set P&ID's contract apart from every other contract concluded under the AGDP.[1274] Ms Taiga did not push back on the inclusion of a London arbitration clause, despite it being contrary to government policy,[1275] because she had been bribed. This is accordingly an additional ground on which the Awards fall to be set aside.

I. CONCLUSION AND RELIEF SOUGHT

516. For the reasons above, the Awards must be set aside under s.68(2)(g) and/or s.67 of the 1996 Act and/or FRN's s.66 application to enforce the Final Award must be dismissed.

517. P&ID contends that, even if one or more of FRN's fraud grounds succeed, the appropriate remedy is remittal rather than a set aside.[1276] In *Secretary of State for the Home Department v Raytheon Systems Ltd* [2015] EWHC 311 (TCC) Akenhead J said at [4] that:

> "*What the court needs to do in deciding whether to remit or set aside is to consider all the circumstances and background facts relating to the dispute, the award, the arbitrators and the overall desirability of remission and setting aside, as well as the ramifications, both in terms of costs, time and justice, of doing either. A review of "appropriateness" encompasses a pragmatic consideration of all the circumstances and relevant facts to determine what it is best to do but it necessarily covers the interests of justice as between the parties.*"

518. P&ID has not given its reasons for contending that remittal is the appropriate remedy, and FRN reserves the right to respond in due course. For the purpose of these written opening submissions, it bears emphasis that:

[1272] Ojukwu 1 at paragraph 4.1.4 {F4/1/9} at paragraph 6.10 {F4/1/21}.
[1273] Ojukwu 1 at paragraphs 9.7-9.8 {F4/1/56}.
[1274] {H4/29/13-14}; {H3/295/17-18};{H3/325/19-20};{H3/409/13};{H3;476/20-21} and {H4/405/13-14}.
[1275] Ojukwu 1 at paragraphs 9.9-9.13 {F4/1/57} and {F4/1/60}.
[1276] Defence at paragraph 81.2 {A1/2/68}. Both remedies are available as potential remedies for an irregularity under s.68(3) of the 1996 Act.

a. If one or more of FRN's grounds succeeds, P&ID has *ex hypothesi* been guilty of a very serious fraud practised on FRN. That in itself is a strong reason to set aside the Awards rather than give P&ID another bite of the cherry. As Akenhead J said in *Raytheon*, *"the more serious the irregularity the more likely it is that setting aside may be the appropriate remedy. There are shades of irregularity"* ([16]). This case is at the most serious end of the spectrum.

b. If the case were remitted, it would be on the basis that P&ID is not entitled to adduce fresh evidence or raise new points.[1277] It follows that the Tribunal would have to re-consider the claim on the basis of the same perjured evidence, in addition to this Court's findings of fraud. That would be a pointless exercise. The obvious result would be that the claim is dismissed.

c. There has been a significant delay between the handing down of the Final Award on 31 January 2017 and the present set-aside hearing. As Sir Ross Cranston found, the blame for that delay lies with P&ID, which concealed its wrongdoing from FRN.[1278] It was held in *Ascot Commodities NV v Olam International Ltd* [2002] CLC 277 that a delay of just 12 months was sufficient to justify the setting aside of an award rather than remittal. The position is *a fortiori* in this case.

d. It would plainly be contrary to public policy to remit for further consideration what the Court has found to be a fraudulent claim. As Sir Ross Cranston found, neither public policy nor the integrity of the arbitration system is furthered by lending assistance to proven fraudsters:

"*Not only is the integrity of the arbitration system threatened, but that of the court as well, since to enforce an award in such circumstances would implicate it in the fraudulent scheme.*"[1279]

519. Accordingly, FRN asks the Court to set aside the Awards.

MARK HOWARD KC
PHILIP RICHES KC
TOM FORD
TOM PASCOE
SEBASTIAN MELLAB
9 January 2023

[1277] *Van der Giessen-der-Noord v Imtech Marine* [2009] 1 Lloyd's Rep 273 at [113]-[115].
[1278] Cranston Judgment at [276] {C/12/43}.
[1279] Cranston Judgment at [273] {C/12/43}.

ANNEX ONE: UNCOVERING THE FRAUDS

1. This annex sets out the events that led FRN to uncover the fraud and P&ID's efforts to conceal it. Section A covers events preceding the Cranston Judgment. Section B covers events post-dating that Judgment.

A. Events preceding the Cranston Judgment

2. Sir Ross Cranston found that FRN had not acted unreasonably in uncovering the evidence of fraud when it did, *i.e.*, from late-2019 onwards. In particular, he found that:

    1) FRN had acted reasonably in not uncovering the fraud which it now alleges in the period between the Liability Award and the Final Award: *"at the time it took part or continued to take part in the arbitration, it did not know and could not with reasonable diligence have discovered the grounds it now advances"* ([233] and [239] {C/12/37}).

    2) As regards the period between the Final Award and late 2019, there was likewise no trigger which would have put a reasonable person on notice of the need to investigate fraud during this (or any other) period ([231]-[233] {C/12/36-37}).

3. The Judge noted that, on 26 June 2018, the President had directed the MPR and MOJ to support an investigation by the EFCC of the GSPA ([91]-[93] {C/12/15}). The EFCC subsequently researched open and closed sources and requested information from government agencies, with further such requests in January 2019 ([94] {C/12/15}).

4. Sir Ross Cranston found that "*the picture began to emerge*" in September 2019 when the EFCC conducted various interviews ([258] {C/12/40}):

    1) On 11 September 2019, Ms Taiga gave a statement;[1280]

    2) On 13 September 2019, Mr Oguine stated he had received a US$100,000 'loan' from Mr Shasore;[1281]

    3) On 24 December 2019, Mr Shasore stated he made gifts of US$100,000 to Ms Adelore and Mr Oguine (having sought to conceal these payments from the EFCC in his previous five witness statements);[1282]

    4) On 12 January 2020, Mr Tijani accepted he had received bribes and overlooked

[1280] Cranston Judgment at [99] {C/12/16}.
[1281] Cranston Judgment at [102] {C/12/16}.
[1282] Cranston Judgment at [104] {C/12/16}.

shortcomings in P&ID's bid;[1283]

5) On 6 and 7 May Ms Adelore accepted she had received a US$100,000 payment from Mr Shasore;[1284]

6) In parallel, the EFCC obtained bank statements: on 2 October 2019, it uncovered payments from P&ID-related companies to Ms Taiga in 2017;[1285] in early November 2019, payments totalling $30,000 from Lurgi to Mr Tijani in 2014 and 2015;[1286] and on 2 March 2020, payments to Ms Taiga's daughter in 2019.[1287]

5. In March 2020, FRN applied to the New York Court under section 1782 to obtain discovery of bank accounts at ten different banks. As Sir Ross Cranston noted, P&ID applied to limit the use of the information obtained so that it could not be deployed in these English proceedings ([111] {C/12/17} and [198] {C/12/32}). This was no doubt because P&ID knew the discovery would reveal further evidence of corruption, as it in fact did: two payments in 2009 and 2012 to Ms Taiga's daughter Vera were uncovered. Sir Ross Cranston found that the first of these payments was *"especially significant, since it was 11 days before the GSPA was signed"* and noted that neither Ms Taiga nor Mr Cahill had hitherto mentioned either of them.[1288] Indeed, they had emphasised that any payments post-dated the GSPA and Ms Taiga's retirement.[1289]

6. On 5 June 2020, P&ID refused to respond to an RFI asking it to list all payments to Ms Taiga and Mr Tijani on the ground that it was *"disproportionate and [sought] an overly broad range of material"* {A2/1.1/1}.

B. Events following the Cranston Judgment

7. On 6 November 2020, P&ID served a Defence which averred to the existence of advanced *"engineering design work"*, a *"significant proportion"* of which was said to be relevant to the GSPA.[1290] P&ID's submission to Sir Ross Cranston had been that its failure to volunteer the material at an interlocutory stage provided no basis to conclude it did not exist.[1291] Despite

[1283] EFCC Witness Statement of Taofiq Tijani dated 12 January 2020 (transcript) at p. 6 {J/102/2}.
[1284] Cranston Judgment at [105] {C/12/17}.
[1285] Cranston Judgment at [107] {C/12/17}.
[1286] Cranston Judgment at [109] {C/12/17}.
[1287] Cranston Judgment at [107] {C/12/17}.
[1288] Cranston Judgment at [198] {C/12/32}.
[1289] Cahill 1 at paragraphs 99 {E/17/29} and 112 {E/17/32} referring to payments made *"from 2015"*, *"many years after the GSPA"*; Taiga 1 at paragraph 13 {E/16/4}, referring to payments made *"after [her] retirement"*.
[1290] Defence at paragraphs 57.2.1, 57.2.2 {A1/2/38}, 57.3.1 and 57.4.2 {A1/2/40}.
[1291] Transcript of Hearing before Sir Ross Cranston Day 2 at p.117, lines 8-19 {C/11.4/31}.

now referring to the material in its pleading, P&ID failed to provide it as initial disclosure, prompting FRN to seek it in correspondence.[1292] When P&ID provided the material on 8 December 2020,[1293] it transpired that it related to Project Alpha and was of very little relevance to the GSPA (as is now common ground).[1294]

8. On 11 December 2020, P&ID responded to a narrower RFI inviting it to particularise all payments to Ms Taiga following her release from custody in Nigeria. P&ID identified two further payments.[1295] This was incomplete: FRN has identified yet further transactions.[1296]

9. On 8 January 2021, FRN brought a section 1782 discovery application before the New York courts against VR in support of the English proceedings,[1297] supplementing an extant application commenced against VR on 12 May 2020 in support of Nigerian criminal proceedings.[1298] As set out at paragraphs 37 and 38 37below, FRN's second application against VR revealed the existence of an arbitration between P&ID's shareholders in which VR is alleging dishonesty against Mr Andrew and Mr Cahill, and is seeking a return of its investment on the basis that P&ID made unlawful payments to Nigerian officials.

10. On 13 April 2021, FRN filed *Norwich Pharmacal* applications in the Cayman Islands against various banks and corporate services providers (identified by FRN's section 1782 application). The disclosure pursuant to the Order dated 24 June 2021 included Butterfield Bank statements showing a US$1.175 million payment from Lismore to Mr Burke personally (*i.e.*, not through his Chambers).[1299]

11. On 16 April 2021, FRN filed *Norwich Pharmacal* applications in Cyprus against Trea Secretarial and Bank of Cyprus. The target companies, which were members of the ICIL group, were identified by FRN's section 1782 applications and a Bloomberg investigation.[1300] The Bank of Cyprus application was opposed and heard on 7 July 2021, with the Cyprus Court ordering disclosure on 22 October 2021. The documents obtained revealed the opacity of the ICIL group companies and (as set out at paragraph 30 below) corrupt payments to senior officials in the Ministry of Defence and Nigerian Police Force over many

[1292] MdR letter dated 13 November 2020 {O/46}.
[1293] See {O/53.3} and {O/53.2}.
[1294] Engineering Experts' Joint Memorandum at paragraph 5.1 para 38 {F1/3/6}.
[1295] P&ID Response dated 11 December 2020 to FRN's RFI dated 20 May 2020 {A2/2}.
[1296] See the payments reflected in the (yellow) re-re-re-amendments to SoC at paragraph 23 {A1/1/17-18}.
[1297] {Q/19.1}.
[1298] {Q/9.1}.
[1299] Bank Statement of Lismore {M/5.01/2-3}.
[1300] Bloomberg article dated 4 September 2019 {H9/225}.

years.

12. On 29 October 202l, P&ID provided disclosure in these proceedings. Model E disclosure had been ordered in relation to the corruption of Nigerian officials and FRN's lawyers.[1301]

FRN Privileged Documents

13. On 29 October 2021, KK explained for the first time that it had identified as part of its disclosure exercise extensive documents potentially privileged to FRN.[1302] KK repeatedly refused to explain (i) when and how these documents came to be in P&ID's control and (ii) when KK first identified their existence.[1303] It sought to justify this position on the ground that FRN had itself disclosed many of the documents on 29 October, such that privilege had been waived for the purpose of these proceedings.[1304] This was a deliberate diversion.

14. While maintaining the irrelevance of the documents sought, KK eventually agreed on 26 November 2021 to search for documents evidencing how privileged content was obtained and any discussion/sharing of it. The implicit recognition was that no such search had been conducted to date. Given the inadequacy of the proposed search parameters, FRN brought an application on 2 December,[1305] which resulted in paragraph 3 of the Foxton Order {C/22/3}.

15. On 16 December 2021, P&ID belatedly disclosed the cover emails to which privileged content was attached, revealing document destruction and (for the first time) the sharing and use of privileged content during the arbitration by Mr Cahill, Mr Andrew and Mr Burke. Had FRN not made its 2 December application, these cover emails would never have come to light.

16. Although P&ID maintained on 30 December 2021 that it had no *"grounds to consider that it is likely that P&ID, its custodians and associated persons or associated entities have further FRN Privileged Documents under their control"*,[1306] subsequent disclosures have revealed the existence of yet further documents in P&ID's hands.[1307] In particular, the searches pursuant to the Foxton Order revealed on 16 March 2022 yet more illicitly obtained privileged content and its

[1301] Order of Butcher J dated 10 May 2021 {C/21}.
[1302] KK letter dated 29 October 2021 {O/135}.
[1303] MdR letter dated 2 November 2021 {O/140}; KK letter dated 3 November 2021 {O/142}; and KK letter dated 9 November 2021 {O/153}.
[1304] KK letter dated 9 November 2021 {O/153}.
[1305] KK letter dated 1 December 2021 {O/174/1}; FRN Application dated 2 December 2021 {N1/1/1}.
[1306] KK letter 30 December 2021 at paragraph 16 {O/195/5}.
[1307] See for e.g., the documents at {I/231}, {I/238}, {I/242}, {I/240} and {I/244} (disclosed on 7 February 2022) and the documents at {I/179} and {I/216} (disclosed on 18 February 2022).

sharing across party lines by Mr Ukiri, Mr Shasore's associate.[1308]

Mr Andrew and Mr Burke

17. The revelations surrounding the FRN Privileged Documents shone a light on the role of Mr Andrew and Mr Burke. At MdR's request,[1309] KK confirmed that the only data sources searched for Mr Andrew and Mr Burke were (respectively) an MS Outlook subfolder ending in February 2017 (necessarily excluding documents arising from Mr Andrew's directorship of P&ID) and a client file.[1310] It later transpired that Mr Andrew and Mr Burke were sitting on a very large cache of relevant, undisclosed instantaneous communications (largely via WhatsApp messenger). Disclosure of these WhatsApp messages has continued right up to trial.

18. Pursuant to the Foxton Order, P&ID was ordered to provide clarity as to the role of Mr Burke,[1311] who it transpired was Mr Quinn's nephew.[1312] P&ID confirmed that Mr Burke acted for it without a written retainer and that a c. US$1.175 million payment from Lismore (identified via disclosure in the Cayman Islands[1313]) for legal services provided to P&ID was not recorded as professional fees with his Chambers.[1314]

Mr Adebayo

19. Mr Adebayo was not mentioned before Sir Ross Cranston or in P&ID's Disclosure Certificate dated 29 October 2021 {B/11}. Despite eventually identifying Mr Adebayo as the only living person who obtained FRN Privileged Documents,[1315] P&ID confirmed it had made no attempt to collect his documents,[1316] and maintained that he was a mere *"contractual counterparty"*.[1317] This prompted FRN to seek disclosure of documents relating to Mr Adebayo's role on 7 January 2022.[1318] Many of the limited communications involving Mr Adebayo that have been disclosed have been withheld from inspection purportedly on the

[1308] See for e.g., {I/179}, {I/271} and {I/271.1}.
[1309] KK letter dated 10 November 2021 {O/155/1}.
[1310] KK letter dated 26 November 2021 at paragraph 6 {O/170/3} and paragraph 10 {O/170/4}.
[1311] Foxton Order at paragraph 7(a) {C/22/4}.
[1312] KK letter dated 31 December 2021 at paragraph 18 {O/197/4}.
[1313] Bank Statement of Lismore {M/5.01}.
[1314] Cherryman 2 at paragraphs 7-8 {E/27/2-3}.
[1315] KK letter dated 30 December 2021 at paragraph 11(a) {O/195/4}.
[1316] KK letter dated 26 November 2021 at paragraph 7 {O/170/4}. At MdR's request, KK subsequently made a feeble (and unsuccessful) attempt to collect documents from Mr Adebayo: KK letter dated 18 May 2022 {O/319}.
[1317] KK letter dated 30 December 2021 at paragraph 27 {O/195/8}; KK letter 15 March 2022 at paragraph 4 {O/269/2}.
[1318] Akhtar 8 at paragraph 14 {N1/6/7}; Foxton Order at paragraph 6 {C/22/3}.

basis of privilege.[1319]

20. Pursuant to the Foxton Order, P&ID disclosed on 16 February 2022 a series of opaque agreements (at least one of which was witnessed by Mr Andrew) entitling Mr Adebayo to hundreds of millions of dollars out of the proceeds of the Awards purportedly in return for his facilitation of settlement negotiations and 'advice' on enforcement.[1320]

21. Following concerns expressed by MdR,[1321] KK agreed to further searches.[1322] It nonetheless asserted that there was "*no basis*" for the suggestion that Mr Adebayo remained in regular contact with P&ID or its associated individuals.[1323] On 1 June 2022, FRN applied for an Order that P&ID search for documents evidencing communications between Mr Adebayo and P&ID and/or its associated individuals.[1324] Pursuant to the agreed relief (as well as the wider WhatsApp relief in the Jacobs Order), FRN uncovered evidence of document destruction by Mr Adebayo,[1325] and a close continuing relationship between Mr Andrew, Mr Burke, Mr Cahill and Mr Adebayo, showing KK's earlier representation to have been false.[1326]

22. As further evidence of Mr Adebayo's role emerged, FRN identified from various sources (including Cyprus banking disclosure) large, round-figured payments to Mr Adebayo from P&ID-related companies for which there was no contractual basis, some of which were papered over by false invoices, as described in the main body of these opening submissions. FRN was able to tie such payments to Mr Adebayo's role on behalf of P&ID after obtaining documents identifying them as "*P&ID Costs*".[1327] FRN has also identified Mr Adebayo's name on Ms Taiga's and Ms Belgore's bank statements.

Financial Interest in the Awards

23. In parallel, FRN sought to identify those with an interest in P&ID's claim. A number of

---

[1319] All FRN's rights are reserved as to the maintainability of these claims to privilege, including in circumstances where there appears to be evident cherry-picking in this regard.
[1320] KK letter dated 16 February 2022 at paragraph 1 {O/239/1}.
[1321] MdR letter dated 28 February 2022 at paragraphs 1-4 {O/253/1}.
[1322] KK letter dated 15 March 2022 at paragraph 2 {O/269/1}. The searches KK agreed to conduct are set out in MdR letter dated 5 May 2022 at paragraph 6 {O/315/2}.
[1323] KK letter dated 23 May 2022 at paragraph 2{O/322/1}.
[1324] Akhtar 10 at paragraph 39 {N3/2/16}, resulting in the Order of Jacobs J dated 19 July 2022 at paragraph 3 {C/29/2}.
[1325] WhatsApp message from Mr Smyth to Mr Cahill dated 12 August 2022 ("*I assume Tunji has deleted all emails between us from his phone*") {H9/233/1}.
[1326] WhatsApp thread between Mr Adebayo and Mr Cahill from 10 February 2016 to 5 September 2020 {L/25}. In addition, Mr Andrew, Mr Burke and Mr Cahill collectively hold an indirect 5% interest in Mr Adebayo's company, GFD.
[1327] P&ID Spreadsheets {H7/323} and {H9/50}.

'*commitments*' documents disclosed on 29 October 2021 identified that at least Mr Andrew, Mr Burke, Mr Adebayo and Ms Taiga had a formal or informal interest in the outcome of P&ID's claim.[1328] FRN applied for an Order that P&ID search for documents evidencing who had an interest in the Awards.[1329] The documents disclosed revealed that Mr Adebayo, Mr Andrew and Mr Burke were each entitled to US$825 million and Mr Cahill to US$2.47 billion.[1330]

Bernard McNaughton

24. On 29 October 2021, P&ID disclosed three letters from Mr McNaughton (a former employee of ICIL group companies) in which he identified he had documents proving, and was willing to testify, that those behind P&ID had engaged in corruption.[1331] As transpired from FRN's section 1782 application against VR, the contents of one such letter, dated 20 January 2020, were shared with the KK case team that same day.[1332] Yet KK failed to identify Mr McNaughton as a custodian in its Disclosure Review Document[1333] or at the 15 April 2021 CMC.

25. On 7 January 2022, FRN applied for an Order that P&ID conduct further searches and request documents from Mr McNaughton.[1334] On 21 February 2022, KK asserted that Mr McNaughton was now refusing to provide any of the documents in his possession.[1335] KK twice rejected MdR's request for inspection of Mr McNaughton's response,[1336] before finally disclosing its revelatory terms on 19 April 2022.[1337] P&ID's disclosure under the Foxton Order revealed that Mr McNaughton's refusal was the result of an agreement dated 10 April 2020 procured by Mr Cahill and Mr Hallett under which Mr McNaughton was to be paid a sum on P&ID's success in this litigation. At MdR's request, KK confirmed it knew of this

[1328] P&ID confirmed that the documents "*appear to be workings…of potential divisions of the proceeds of the sale to VR Capital of an interest in P&ID*" in KK's letter dated 31 December 2021 at paragraph 37 {O/197/7-8}.
[1329] Akhtar 8 at paragraphs 10-13 {N1/5/5-7} resulting in paragraph 5 of the Foxton Order {C/22/3}.
[1330] Letter from Mr Andrew and Mr Goodsir-Cullen to Mr Cahill dated 25 January 2019 {H9/159}.
[1331] Letters from Mr McNaughton to Mr Cahill dated 29 September 2014 {H6/474}, to Mr Johnson of VR dated 20 January 2020 {H9/328} and to Mr Cahill dated 29 September 2020 {H10/19}.
[1332] MdR fifth letter dated 15 September 2022 {O/418/1}. KK fifth letter dated 21 September 2022 at paragraph 3 {O/435/2}.
[1333] {B/8/12-50}.
[1334] Akhtar 8 at paragraph 34 {N1/6/13}, as reflected in paragraphs 4(e), 8 and Annex One of the Foxton Order {C/22/3-6}.
[1335] KK letter dated 21 February 2022 {O/244}. On 21 March 2022, MdR independently wrote to Mr McNaughton seeking documents relevant to these proceedings {H10/122.01}. No response was received.
[1336] KK letter dated 7 March 2022 {O/260} and KK second letter dated 16 March 2022 {O/272}.
[1337] KK third letter dated 19 April 2022 {O/297}; email from Mr McNaughton to KK dated 18 February 2022 {H10/120/1}.

agreement as early as 15 October 2021 but deemed it irrelevant at the time.[1338]

26. MdR immediately pushed for further disclosure in relation to Mr McNaughton on 13 and 23 April 2022,[1339] pursuant to which more incriminating documents were disclosed on 16 May 2022. These included emails from Mr McNaughton attaching documents substantiating his allegations of corruption,[1340] and evidence that Mr McNaughton received a £10,000 payment.[1341]

27. These discoveries prompted FRN to apply on 1 June 2022 for an Order requiring KK to collect documents from Mr Andrew, Mr Burke, Mr Cahill, Mr Hallett, Mr Smyth and Mr Murray for further searches.[1342] The results, disclosed on 12 August 2022, exposed the behind-the-scenes plans of Mr Cahill and Mr Hallett to persuade Mr McNaughton that there was *"only one way that either of us can get settlement and this is by doing all that we can to assist…in realisation of the award"*.[1343]

28. Following further belated (and still incomplete) collections, P&ID disclosed on 23 November 2022 documents proving that Mr Burke was aware of the arrangement struck with Mr McNaughton,[1344] and that Mr Odama (a former ICIL accountant identified by Mr McNaughton as willing to provide adverse evidence) had been told by Mr Nolan's lawyer, Mr Erokoro, "*to destroy all records*".[1345] Mr Erokoro has been promised a US$1.7 million 'bullet' payment out of the Awards, if they are successfully enforced {L/20/488}.

PR and Dublin Expenses

29. Mr McNaughton's letters alleged that the ICIL group companies used the terms "*PR*" and "*Dublin expenses*" as codewords for bribes. This unlocked a morass of enigmatic spreadsheets filled with coded transactions and prompted FRN to include in the Foxton Order a provision requiring KK to apply the keywords "*PR*", "*Marketing*" and "*Dublin expenses*" to its universe of documents.[1346] Pursuant to these searches, P&ID disclosed on 16 March 2022

[1338] KK third letter dated 19 April 2022 {O/297/1}. KK letter dated 26 April 2022 at paragraph 3 ("*Upon reading the agreement we considered that it simply recorded a promise by ICIL to pay Mr McNaughton a sum of money in the event of a settlement of P&ID's claim, and was not relevant to any of the issues for disclosure*") {O/306/1}.
[1339] MdR second letter dated 13 April 2022 at paragraph 4(c)-(d) {O/292/4} and 23 April 2022.
[1340] Mr McNaughton's email to Mr Cahill dated 29 September 2020 {H10/22} and attachments {H10/23} and {H10/24}.
[1341] Mr McNaughton's email to Mr Cahill dated 9 October 2020 {H10/44/1}.
[1342] Akhtar 10 at paragraph 25 {N3/2/13}. P&ID only agreed to make the collections on 24 June {O/338} and to have the documents reviewed by KK on 7 July {O/344}, resulting in Jacobs Order at paragraph 1 {C/29/2}.
[1343] Mr Hallett's email to Mr Cahill dated 3 March 2020 {H9/370/1}.
[1344] Upon learning of the £10,000 payment, Mr Burke told Mr Cahill "*Well done you*" {H10/44.1}.
[1345] Mr McNaughton's email to Mr Cahill dated 15 May 2020 {H9/447.1/2}.
[1346] Akhtar 9 at paragraph 27 {N1/9/12}.

further spreadsheets[1347] and communications putting it beyond doubt that the codewords referred to bribes.[1348] On 19 October 2022, having discovered grounds that "*dash*" may also have been used as a codeword for large bribes, MdR requested that further searches be conducted.[1349] This revealed further incriminating material.[1350]

Historic Corruption

30. Mr McNaughton's letters revealed that those behind P&ID had a track record of corrupting officials at the Ministry of Police and the MoD. This confirmed the emerging picture of historic corruption by P&ID-related companies which FRN obtained from the Cyprus disclosure. In particular, on 17 December 2021, the Bank of Cyprus disclosed statements revealing payments from ICIL group companies[1351] to Nigerian officials who signed lucrative contracts with those companies: Bribery Statement of Facts Section C {A5/2/52-6159}.

31. On 16 March 2022, P&ID disclosed the "*PR*" documents under the Foxton Order, revealing transactions marked "*MOD*" and "*Bozimo*" coinciding with Mr Bozimo's mandate as the Minister of Police Affairs.[1352] This revealed further payments to or for the benefit of Mr Bozimo.[1353]

WhatsApp Disclosure

32. As FRN reviewed P&ID's disclosure, it became apparent that P&ID's custodians employed WhatsApp far more frequently than the meagre 174 messages initially disclosed would suggest. As transpired in correspondence, KK had broken down WhatsApp threads into individual messages and uploaded these to its review platform as standalone documents.[1354] Only those individual messages responsive to keywords (entirely divorced from their conversational context) were reviewed by KK for disclosure purposes. P&ID did not (and still has not) provided clarity as to which potentially relevant threads exist: the onus has always been on FRN painstakingly to surmise the same from the messages disclosed by

[1347] See {H3/492.1} and {H2/277.1}.
[1348] See references to stripping out "*Dublin/marketing expenditures*" from P&ID's accounts to conceal them {H6/86}. and recording them in a manner which "*can be instantly destroyed or is illegible to a stranger*" {H1/189}.
[1349] MdR second letter dated 19 October 2022 {O/508}.
[1350] QE letter dated 21 November 2022 {O/593}.
[1351] Bank of Cyprus Statements of Kristholm {M/56} and {M/57}, and Marshpearl {M/54}, {M/55} and {M/99}.
[1352] P&ID Spreadsheets {H1/100.3}, {H1/74.2}, {H1/111.2} and {H9/150}.
[1353] Bank of Cyprus Statements {M/99} and {M/57/30}.
[1354] KK second letter dated 4 March at paragraph 5 {N8/4/211}, KK letter dated 15 March 2022 at paragraph 21 {O/269/5}.

P&ID.[1355]

33. On 1 June 2022, FRN applied for an Order requiring P&ID to disclose the full WhatsApp threads of which relevant messages formed part.[1356] While P&ID initially refused on proportionality grounds,[1357] it conceded (some five weeks after the application was issued) in respect of all but one thread, a group chat between Mr Andrew, Mr Burke and Mr Cahill.[1358] On 15 July 2022, Jacobs J held that P&ID had not adopted *"a satisfactory approach, particularly in a case where model E disclosure has been ordered"*[1359] and ordered in respect of that group chat a review of all messages in 14 days either side of keyword-responsive messages and the full lines of conversation of which they formed part.[1360]

34. On 29 July 2022, P&ID (without explanation) disclosed a flurry of WhatsApp messages which reflect the fact that Ms Taiga has a financial interest in the Awards.[1361] At MdR's request, KK explained that these documents had initially been deemed privileged, but that a different view had been taken during its re-review pursuant to the Jacobs Order.[1362]

35. Pursuant to paragraphs 4 and 5 of the Jacobs Order, KK disclosed two tranches of WhatsApp threads on 31 August and 14 September 2022. Despite extensive redactions, the threads contained important evidence on matters such as payments to Mr Adebayo in exchange for privileged content;[1363] Ms Taiga's identification with the 'P&ID camp';[1364] further document destruction;[1365] previously unidentified payments to the Taiga family,[1366] and the strategy behind making such payments.[1367] The threads also revealed that, contrary to KK's representation that P&ID's obtaining of privileged content had ceased,[1368] P&ID

[1355] FRN eventually applied on 1 June 2022 for an Order that P&ID list the threads of which keyword-responsive messages formed part. The list which P&ID eventually produced on 5 August was incomplete {O/407/2}.
[1356] Akhtar 10 at paragraph 44 {N3/2/19}.
[1357] KK fifth letter dated 24 June 2022 at paragraph 8 {O/338/6}.
[1358] KK letter dated 7 July 2022 at paragraph 8 {O/344/2}.
[1359] Judgment of Jacobs J at [10]-[11] {C/28.1/4}.
[1360] Jacobs Order at paragraph 5 {C/29/3}.
[1361] See the examples listed in MdR Letter dated 4 August 2022 at paragraph 2 {O/364/1-2}.
[1362] MdR Letter dated 4 August 2022 at paragraph 3 {O/364/2-3}; KK second letter dated 10 August 2022 at paragraph 1 {O/373/1-2}.
[1363] Mr Cahill's message to Mr Adebayo dated 27 February 2017 {L/25/19}.
[1364] Ms Taiga's message to Mr Cahill dated 23 July 2015 "*Good news about our matter…I did not receive the funds you promised*" {L/18/6}.
[1365] Mr Cahill's message to Ms Ise Taiga dated 19 December 2020 ("*[Grace Taiga] needs to delete all earlier messages urgently*") {L/29/305-306}.
[1366] Ms Ise Taiga's WhatsApp messages to Mr Cahill dated 15 December 2020 {L/29/283}.
[1367] Mr Cahill's WhatsApp message to Mr Andrew and Mr Burke dated 18 December 2019 ("*We need to hold their hands all the time…Their thinking and attitudes change when left to think alone*") {L/31/33}.
[1368] KK letter dated 5 February 2022 ("*We have sought and received confirmation from our client that FRN Privileged Documents are no longer being sent to it. Our review of P&ID's documents during the disclosure process shows that such receipt of such documents was last in 2017*") {O/225/2}.

was in fact continuing to obtain such content. The threads further implicate Mr Andrew and Mr Burke, revealing their knowledge of concealed payments to the Taiga family,[1369] as well as revealing the deliberate decision by P&ID not to mention certain 'benevolent' payments in Mr Cahill's witness statement or at the hearing before Sir Ross Cranston, including payments to Ms Taiga.[1370] Moreover, these threads have evidenced yet further relevant threads in P&ID's possession involving (*inter alia*) Mr Cahill, Mr Andrew and Mr Burke, the existence of which has been withheld by P&ID. These threads have still not been disclosed by P&ID, with FRN having been forced to now apply for an Order that inspection be provided.

WhatsApp Re-review

36. As the Court is aware from the disclosure hearing on 22 November 2022, it became apparent during FRN's review of P&ID's belated WhatsApp disclosure that KK adopted an incorrect approach to privilege and irrelevance redactions. Whilst denying any inadequacies in P&ID's approach,[1371] QE accepted to re-review the WhatsApp redactions by 9 December 2022.[1372] The re-review has revealed many significant messages which were previously (incorrectly) withheld. FRN continues to identify improper redactions applied by P&ID in the WhatsApp disclosure provided.

Shareholders' Arbitration

37. In August 2022, a privilege log produced in response to FRN's second section 1782 application against VR revealed that VR's shareholding vehicle had started an arbitration against Lismore and Mr Cahill.[1373] MdR asked P&ID on 2, 12, 20 and 26 September 2022 to disclose documents arising from the arbitration.[1374] On 29 September 2022, P&ID refused disclosure on grounds of irrelevance,[1375] but conceded (some six weeks after FRN's request) when FRN brought an application.[1376] The documents P&ID disclosed on 11 November were heavily and improperly redacted for irrelevance.

38. Meanwhile, VR vehemently resisted disclosure of the same documents in the US, and

[1369] Group chat between Mr Andrew, Mr Burke and Mr Cahill {L/31/77-80}.
[1370] {L/33/123}.
[1371] QE letter dated 7 October 2022 at paragraph 3 {O/480/1-2}.
[1372] QE second letter dated 12 October 2022 at paragraph 5 {O/487/2}.
[1373] {Q/36.1} attaching {Q/36.2}.
[1374] MdR second letter dated 2 September 2022 {O/391}; MdR fifth letter dated 12 September {O/407.1}; MdR second letter dated 20 September {O/430/1-2}; and MdR second letter dated 26 September 2022 {O/449/1-2}.
[1375] KK letter dated 29 September 2022 {O/458}.
[1376] QE letter 15 October 2022 at paragraph 4 {O/496/2}.

wrongly sought to apply redactions. On 12 December 2022, Magistrate Judge Figueredo ordered VR to produce to FRN the unredacted versions.[1377] VR's application for a stay was denied on 20 December 2022, with the Magistrate Judge observing that *"Nigeria has been seeking these documents for months; and the VR Respondents appear to be attempting to delay production of the documents so as to prevent Nigeria from using them in the English Proceeding*". [1378] VR finally produced the unredacted versions on 20 December 2022. The documents reveal that VR, having worked with Mr Andrew and Mr Cahill for many years, is bringing claims against Lismore and Mr Cahill for fraudulent misrepresentations and breach of warranty including (*inter alia*) in relation to the existence of unlawful payments to Nigerian officials.

[1377] {Q/55}.
[1378] {Q/70}.