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

WRITTEN CLOSING SUBMISSIONS OF THE FEDERAL REPUBLIC OF NIGERIA

A. INTRODUCTION

1. These are the written closing submissions of FRN. They are designed to be read alongside rather than to replace FRN's opening submissions, which the Court is respectfully asked to re-read.

2. In its opening submissions P&ID dismissed FRN's case as *"a conspiracy theory"* which had been cooked up by the *"sinister EFCC"*.[1] Lord Wolfson referred to FRN's position as *"legal Popperism"*.[2] These submissions are flippant in light of the evidence that has emerged. The last five weeks of cross-examination has revealed a sorry state of affairs. It has shown that Mr Cahill, Mr Quinn (until his death) and their companies have been up to their necks in corruption for years. They made millions through bribery in Nigeria and never stopped because if the bribes had dried up, they would have had to *"pack [their] bags"* and go home.[3] Nobody who sat through the factual evidence could have missed the stench of corruption emanating from their companies and the shady middlemen with which they dealt. The GSPA and the ensuing arbitration were no different: they, too, were tainted by dishonesty and corruption which has continued to this day. The idea that the Court should assist those behind this sorry story to enrich themselves to the tune of billions of dollars is repugnant, and would undermine the integrity of English arbitration and the Court's supervision of it.

3. The second sorry part of the story is P&ID's own lawyers. As with the corrupted officials and legal advisors of FRN, so too was the integrity of Mr Andrew and Mr Burke compromised. They were offered life-changing sums of money, contingent upon success in the claim, which induced them to look past evidence of blatant corruption (most obviously in the form of the FRN Privileged Documents) in the hope of reaching their promised pots of gold. They did so at the expense of their professional obligations. It is a cautionary tale of why lawyers are not, subject to tightly-defined exceptions, permitted to take personal stakes in their own cases: their judgment was blinded by the prospect of riches beyond the dreams of avarice.

4. The third sorry part of the story is Ms Taiga. She was corrupted by P&ID as she all but admitted under cross-examination. She needed, or wanted, money (whether for private medical treatment at Harley Street clinics or better accommodation for her daughter in London or other expenses, it matters not). P&ID and its associated companies were willing to oblige so long as Ms Taiga put the interests of her employer to one side when involved in the processes of awarding millions of dollars of contracts to them, and kept their secrets thereafter. Mr Cahill, Mr Andrew and Mr Burke's concern throughout these proceedings has been to maintain their manipulation and hold over her: their concern being that

[1] P&ID's opening submissions §§14.1-14.2 {AA/2/6}.
[2] {Day2/78:6}.
[3] In the words of Mr Murray: {Day12/36:21-22}.

her *"thinking and attitudes change when left to think alone"* {L/31/33}.

5. The fourth sorry part of the story is the funders. VR acquired a stake in the Awards in October 2017. It was presented with plausible and documented evidence by Mr McNaughton that Mr Quinn and Mr Cahill's companies were corrupt, but chose to look the other way and assigned somebody from *"Brendan's camp"* to deal with the situation,[4] which he duly did by paying Mr McNaughton off. Following the Cranston Judgment, VR, via PHL (whose directors are Mr Emile du Toit and Mr Jeffrey Johnson),[5] commenced an arbitration against Mr Cahill and Lismore positively alleging against them the very unlawful payments by P&ID which P&ID, whose current directors consist of Mr Andrew and the very same Mr du Toit and Mr Johnson,[6] are still denying in these proceeding.[7] The doublethink behind this position, and basis on which the statements of truth by P&ID have been given in these proceedings (which have been signed by P&ID's lawyers rather than any of its directors) is impossible to justify.[8] Mr Andrew and Mr Cahill were respectively at pains to identify that ultimate control of this litigation now rests with VR.[9] Mr Andrew's evidence was that Richard Deitz and Josh Nemser of VR are entitled to give instructions.[10] Thus, it appears that this litigation is being driven by individuals (i.e. Richard Deitz and Josh Nemser) who are not officers of P&ID, owe no duties to the company and have not themselves signed, or are otherwise accountable, for any statements of truth in these proceedings.[11] Any honest funder would by now have pulled out of this case. VR has instead chosen to hold their nose and follow the money in the knowledge that they can reclaim their investment from Mr Cahill, Lismore, and possibly others, if and when the enforcement proceedings fail. That is a thoroughly dishonourable position.

i. The overall story

6. The overall story that has unfolded over the course of trial is as follows:

   a. Mr Quinn's and Mr Cahill's companies, the ICIL group, made their millions through corruption in

[4] {H9/344}.

[5] {Day3/51:24} to {Day3/52:1}.

[6] {Day3/52:2-4}.

[7] {Day3/51:18-23}. For example, in PHL's Request for Arbitration, PHL unconditionally contends that payments to Grace Taiga, Vera Taiga, Mr Tijani and Mr Dikko as set out at §5.14 of the Request {Q1/28/13} were unlawful and all made on behalf of P&ID: see §6.2 {Q1/28/18}. In these proceedings P&ID denies any illegal payments (Defence §§24.2 {A1/2/17}) and denies the self-same payments were on behalf of P&ID: Defence §§27 {A1/2/15}, 36.2 {A1/2/19} and 40 {A1/2/19}.

[8] {Day3/52:12-16}. Mr Andrew was unable to explain how Messrs du Toit and Johnson are able to take such inconsistent positions: {Day3/53:22} to {Day3/54:1}.

[9] {Day5/80:18} to {Day5/80:23} and {Day7/167:3} to {Day7/167:10}.

[10] {Day3/60:15} to {Day3/61:7}.

[11] By contrast, it appears that the role of Messrs du Toit and Johnson as directors of P&ID is entirely token, as acknowledged by Mr Andrew at {Day3/60:8-12}. In a deposition in the US, Mr Johnson said he never met Mr Andrew {Q/55.1/15} lines 24-25, could not recall ever having a directors' meeting {Q/55.1/16} lines 1-5, does not know who Mr Cahill is {Q/55.1/53} lines 24-25, and does not know what the underlying controversy that led to the Award was {Q/55.1/18} lines 16-19.

Nigeria for many years. This included a corrupt relationship with officials at the Ministry of Defence (**"MoD"**) who received millions of dollars of bribes in return for awarding lucrative government contracts. Many of those contracts bore the signature of Grace Taiga, who herself received large payments, personally and through her daughter Ise (or Isha/Aisha), in the critical window between 2004 and 2005 when the contracts were awarded.

b. P&ID was appointed in 2006 by Tita Kuru to produce a set of designs for a gas processing plant to be located in Lagos. The project failed for various reasons, including P&ID's failure to secure a suitable source of gas.

c. P&ID hatched a plan to pass off Tita Kuru's designs and licences, worth some US$40 million, as its own in a campaign to win its own gas processing contract in Calabar. To that end P&ID began pushing its proposal at the Gas Investors' Roadshow in Abuja on 15 May 2008, which was attended by various officials including Dr Lukman. The day before the Roadshow Mr Quinn withdrew a holdall full of cash (NGN 10 million, equating to some US$84,000) which was labelled as a 'Dublin expense' and for which P&ID has provided no explanation. It was obviously used to pay bribes to officials who attended the Roadshow.

d. Still unbeknownst to Tita Kuru, P&ID pushed forward with its proposal to the MPR. Its main points of contact were Ms Taiga and Mr Tijani. The proposal was based on three big lies which were intended to give it an outward appearance of legitimacy and realism to outsiders, namely: (i) that P&ID had already completed the vast majority of the preparatory work for the project; (ii) that it had already secured finance; and (iii) that it had identified suitable gas sources by doing the necessary studies. None of these was true as P&ID, Ms Taiga and Mr Tijani knew or, in the case of the latter two individuals, did not care to find out. But they were included as recitals to the GSPA to give the appearance that it was a properly thought-through and legitimately obtained contract, rather than a try-on procured through bribes.

e. As P&ID intended, no serious due diligence or scrutiny was carried out by Mr Tijani or Ms Taiga, save for a two-page letter and a two-page response containing a series of unverified lies,[12] because they were in P&ID's pocket. Instead Ms Taiga advised that the contract should be executed in her memo to the Minister of 18 December 2009.[13] The terms of the GSPA were on a *"government lock-in basis in respect of gas supply"*,[14] such that FRN shouldered the risk of a suitable gas supply not being found and that P&ID acquired a valuable contractual right against FRN.

[12] {H1/457/1-4}.
[13] {H3/108/2}.
[14] Mr Hitchcock email to Mr Cahill dated 28 August 2009 {H2/362}.

f. Following the entry of the GSPA, P&ID wrote numerous letters to the government repeating its lies that 90% of the engineering designs had been completed, the technology licences had been acquired, and finance was in place. Simultaneously, within just a week of the GSPA being signed, Mr Cahill refused to sanction any expenditure on performing the project. This was because he knew from the outset that there were serious doubts about whether the GSPA would or could ever be performed.

g. When FRN failed to source or supply any gas, P&ID brought an arbitration claim for repudiatory breach of the GSPA. In so doing, it bore the burden of proving that it would and could have performed the contract.

h. By July 2012, Mr Andrew and Mr Burke (Mr Quinn's nephew) came on board. They had previously assisted Mr Quinn and Mr Cahill in relation to the IPCO litigation, which concerned the enforcement of a different arbitration award against FRN. The English High Court and Court of Appeal had held that the award was *prima facie* fraudulent,[15] but the case thereafter settled. It has transpired from disclosure given on 23 January 2023, after FRN had opened its case, that Mr Quinn and Mr Cahill used a corrupt agent, Dr Alimi, to *"spread around"* tens of thousands of dollars as part of his brief to settle the IPCO case.[16]

i. The only factual evidence served by P&ID in support of its claim was the statement of Mr Quinn. That statement perpetuated, in particular, two of P&ID's three big lies: that it had done the majority of preparatory work for the project and had obtained finance. It achieved the first lie by eliding the GSPA and Project Alpha, even though Mr Quinn knew that work done on the latter was of no relevance to the former. The Tribunal, P&ID's quantum experts (BRG) and FRN were all duped by this, as allegedly was Mr Andrew. Quinn 1 also held itself out as "*wish[ing] to explain how the GSPA came about*",[17] but falsely omitted to make any mention of the bribes paid.

j. P&ID was emboldened to tell the lies that it did because it continued to pay and promise bribes to the two main officials, Ms Taiga and Mr Tijani, throughout the arbitration to ensure that neither individual, contrary to their ongoing duties, informed FRN that the GSPA had been procured by bribery.

k. The other reason that P&ID felt able to serve Mr Quinn's false evidence is that it had real time access to FRN's privileged materials, many of which were obtained by P&ID's shady middleman and agent Mr Adebayo. P&ID has offered no sensible explanation for why these documents were

[15] *IPCO (Nigeria) Ltd v Nigerian National Petroleum Corp* [2014] 1 Lloyd's Rep. 625 [94] per Field J {Z1/103.2/18}; *IPCO (Nigeria) Ltd v Nigerian National Petroleum Corp* [2016] 1 Lloyd's Rep. 5 (CA) {Z1/120.1/23}.

[16] {H7/444.1}.

[17] Quinn 1 §6 {G/9/3}.

leaked by FRN's lawyers and has presented this Court with a conspiracy of silence. The obvious and correct inference is that they were obtained through corruption of FRN's legal advisors carried out by P&ID and Mr Adebayo, in the same vein as Dr Alimi's corrupt activities as settlement facilitator on the IPCO case. Mr Murray all but admitted in his oral evidence that the FRN Privileged Documents were procured by corruption,[18] and no P&ID witness proffered an otherwise honest explanation.

l. Mr Adebayo's role as P&ID's settlement facilitator carried every red flag in the book for corruption. In particular, he was given a war chest of more than 50% of the amount of any settlement, which was blatantly to be used to spend on bribes promised in chasing a compromise. Pending the anticipated settlement, P&ID kept Mr Adebayo in funds by wiring him hundreds of thousands of dollars, to which he had no contractual entitlement, including under sham invoices, and by contributing to his unparticularised 'budgets' for 'Nigerian operations' in 2014 and 2015.

m. Once FRN's lawyers had been corrupted there was no turning back. They were from that point in P&ID's pocket and FRN was deprived of their single-minded loyalty to which it was entitled. It is a fool's errand to seek to parse the lawyers' corrupt activity from their non-corrupt activity, and the law turns its face on such an exercise.[19] Nonetheless, there are clear signs that FRN's lawyers were not properly protecting its interests during the arbitration, including through their decision not to challenge a single material part of Mr Quinn's statement in the face of the Tribunal's Procedural Order No.9.

n. In a particularly extraordinary episode in late 2014 and early 2015, Mr Adebayo persuaded Ms Adelore, Mr Oguine and Mr Shasore to lobby their superiors relentlessly for a settlement of US$1.1 billion. This figure was concocted without any serious attempt to value P&ID's claim. Both Mr Cahill and Mr Andrew said in cross-examination that it was inconceivable that a settlement at that level could have been achieved, certainly before any finding on liability,[20] yet Mr Adebayo almost managed it, with Ms Adelore, Mr Shasore and Mr Oguine recommending (in privileged advice improperly shared immediately in draft with P&ID on 28 November 2014)[21] that FRN pay that sum. They were stymied only by the President refusing to sign-off on the proposed settlement in late May 2015.[22] It is no coincidence that huge amounts of cash were withdrawn by Mr Adebayo,

[18] §204 below.

[19] §228 below.

[20] Mr Andrew said it was his view that a settlement at this level was *"pie in the sky"*: {Day4/149:18} to {Day4/150:7}. Mr Cahill *"disagree[d] very strongly"* that settlement at US$1 billion was ever a realistic prospect: {Day10/20:19-20}.

[21] {I/195}, attaching {I/196}, addressed in the Privileged Documents SoF §36 {A5/1/32}.

[22] {I/216/7} (*"I cannot approve at this time"*).

and deposited by Ms Adelore and Mr Shasore, over the same period.[23]

o. Based upon Mr Quinn's false evidence, and P&ID's success in corrupting FRN's legal advisors and suppressing any defences based on bribery or the fact that it was unable or unwilling to perform the GSPA, the Tribunal held that FRN was liable for repudiatory breach of the GSPA and awarded P&ID some US$6 billion in damages plus interest based on the assumption, which the Tribunal held P&ID to have proven on the balance of probabilities,[24] that it would in fact have performed.

p. P&ID then sought to enforce the Awards in this jurisdiction. There was an enforcement battle before Butcher J, following which he ordered enforcement but granted permission to appeal.[25] Throughout those proceedings P&ID presented itself as a legitimate outfit and concealed the bribes, perjury and corruption of lawyers of which it was necessarily aware, as well as the FRN Privileged Documents it held and was still receiving.

q. Following discoveries of potential corruption by the EFCC in September 2019, FRN applied to set aside the Awards under s.68(2)(g) of the 1996 Act on 5 December 2019. In an audacious and dishonest attempt to shut down FRN's fraud challenge without a trial or disclosure, Mr Cahill, Mr Andrew and Ms Taiga all told bare-faced lies to Sir Ross Cranston. The lies of Mr Cahill and Ms Taiga included (i) initially, that the only payments to Ms Taiga had been from 2015 onwards; and (ii) when in May 2020 disclosure from the US revealed a payment of US$5,000 to Grace Taiga shortly before the GSPA was signed, that they were not aware of any payments made for the benefit of Ms Taiga by P&ID-related entities other than the limited few by that stage uncovered by FRN's own enquiries. The lies also included that of Mr Andrew holding himself out as *"bemused"* by the allegation of collusion whilst omitting any mention of the FRN Privileged Documents.

r. Despite these efforts to shut FRN out, Sir Ross Cranston granted what he described as an unprecedented extension of time. He held that there was a strong *prima facie* case that the Awards had been procured by fraud, and that FRN had acted reasonably in uncovering the fraud when it did. On the back of his judgment he released US$200 million of security which had previously been held in P&ID's favour {C/15}.

s. The case therefore progressed to trial. FRN has had to fight tooth and nail to extract proper disclosure from P&ID. Using the armoury of disclosure powers available in English proceedings and overseas, every fiercely contested pull of the thread revealed further extraordinary evidence of

[23] See FRN's chronology of deposits and withdrawals at {AA/1.2}.

[24] It held that the burden of proving that P&ID would have performed fell on P&ID, and that it had discharged that burden through Mr Quinn's evidence: Final Award §§44 {G/49/11} and 50-51 {G/49/13}.

[25] All FRN's rights are reserved in relation to this appeal, including as to the proper seat of the arbitration. Without prejudice to this, these proceedings proceed on the basis that the seat of the arbitration was England & Wales.

wrongdoing. A chronology of FRN's rolling discoveries is set out at Annex 1 of its opening submissions, which the Court is invited to read {AA/1/237}.

t. In January and September 2020 a whistleblower, Mr McNaughton, sent to VR and Mr Cahill a catalogue of corruption allegations which he said were relevant to the P&ID dispute. The allegations were plausible on their face because they were supported by contemporaneous documents which Mr McNaughton had taken from the office. Rather than carry out an investigation or get KK to contact Mr McNaughton to investigate, VR, Mr Andrew and Mr Burke looked away and despatched someone from *"Brendan's camp"* to deal with Mr McNaughton.[26] Mr Cahill engineered a settlement with Mr McNaughton which was dependent on P&ID's success in this claim, and promised a bonus for his refusal to speak to FRN's lawyers. As a result this Court has been deprived of Mr McNaughton's evidence on the corrupt activities of which he had first-hand knowledge.

u. The corruption and collusion did not stop. P&ID has continued to harvest FRN's privileged material through corrupt middlemen, including most recently the CBN memo, which even Mr Cahill was forced to admit must have been leaked with dishonest motives.[27]

7. Throughout these enforcement proceedings P&ID's case has been that the GSPA and the Awards are untainted by fraud or corruption of <u>any</u> kind and that Mr Quinn and Mr Cahill had <u>never</u> been involved in corruption. In his opening submissions Lord Wolfson submitted that the root cause of the Awards was, instead, FRN's failure to *"write a cheque"* for a better expert report on quantum.[28] This in itself is telling. P&ID's case is not that the Tribunal's award of US$6.597 billion was justified on its merits, but rather, that it and those behind it are chasing a windfall because FRN failed to engage an appropriate calibre of quantum expert. Leaving aside its unattractiveness, this argument does not survive a moment of scrutiny. The evidence has revealed that the Awards are tainted by corruption, dishonesty and deception by P&ID at every level: the GSPA was procured through bribes intended to curry favour with officials and paper over lies; Mr Quinn's evidence dishonestly perpetuated those lies and concealed the corruption; P&ID continued to pay bribes to the corrupted officials to maintain their silence; P&ID corrupted FRN's lawyers and, as a result, had an extraordinary and improper fly on the wall insight into what FRN knew and was being advised during the arbitration (and indeed thereafter).

ii. Routes to setting aside the Awards

8. The relevant law is summarised in FRN's opening submissions at §§220-272 {AA/1/88}. FRN sets

[26] {H9/344.3/1}.

[27] {Day10/112:8-15}; {Day10/116:7-11}.

[28] {Day2/5:7-10}. See similarly {Day2/158:19-23}, where Lord Wolfson submitted that the arbitration was lost because of the *"incompetent and sclerotic way in which everybody … approached the arbitration because they wouldn't write a cheque"*.

out below a routemap through its case, which comprises four grounds of challenge, each of which is readily established in light of the documentary and oral evidence at trial, including having regard as necessary to the principles set out at §§228-236 and §§492-498 of FRN's opening submissions. There is one particularly straightforward way through the case. If it is found that P&ID, itself or through Mr Adebayo, entered into a corrupt arrangement of whatever kind with one or more of FRN's lawyers during the arbitration, that is the end of the case. P&ID has no defence to that allegation other than it did not happen. Mr Andrew accepted in evidence that, if that was false, he could not properly continue the enforcement proceedings.[29] In the event of such a factual finding, therefore, the Awards must be set aside.

9. **Bribery**:

   a. P&ID corruptly made and promised payments to Ms Taiga, Mr Tijani, Dr Lukman and other officials at the MPR in connection with the conclusion of the GSPA. These bribes were intended to ensure favour was shown to P&ID and to push the contract through without any due diligence.

   b. Had the bribes been known to FRN and the Tribunal at the time of the arbitration, they would have provided a defence to P&ID's claim at the liability stage, as appears to be common ground: §§128-129 below.

   c. However, P&ID successfully suppressed this defence by continuing to bribe the two key officials, Ms Taiga and Mr Tijani, throughout the arbitration, so that they kept quiet about it, and by itself concealing the bribery (including through Mr Quinn's false account of the legitimate circumstances in which the GSPA came about). Contrary to their duties under Nigerian law, none of those who knew about the bribery reported it.

   d. It is contrary to English public policy to enforce an award obtained in circumstances where a claimant has successfully and dishonestly concealed a defence.

   e. *Honeywell* and *National Iranian Oil* have nothing to say about such a situation, because in both of those cases, the matters going to the potential defence of bribery were known at the time of the arbitration. They do not in any event stand for a blanket principle that an award based on a contract procured by bribery, which is dishonestly and successfully concealed, will never contravene English public policy: §§130-138 below.

   f. The Awards must moreover be set aside because, on the particular facts of this case, Mr Quinn dishonestly gave false and/or misleading evidence in his witness statement where he purported to give an account of the legitimate circumstances of how the GSPA came about, but suppressed the

[29] {Day4/27:11-13}. Repeated at {Day4/96:6-8}.

key fact that it had been procured by a campaign of bribes.

10. **Perjury:**

a. Mr Quinn's evidence was perjured insofar as it said that P&ID had reached an advanced state of preparedness for the GSPA, had obtained finance and had secured a plot of land. P&ID admitted for the first time in its opening submissions that this was false.

b. The perjury was plainly material to the Awards. It was the only evidence that P&ID adduced to discharge its burden of proof that it could and would have performed. Accordingly, it was also the only evidence that the Tribunal cited in support of its finding to that effect.[30] Had that evidence been excised, P&ID would have had no evidence with which to discharge its burden of proof. In addition to the Tribunal, Mr Andrew (allegedly) and P&ID's own experts, BRG, were duped into believing that P&ID had reached an advanced state of preparedness for the project, as was P&ID's counsel at the hearing before Sir Ross Cranston, Mr Mill KC.

c. P&ID is not permitted to rely on new, allegedly honest evidence to fill the void left by its struck-through dishonest evidence.[31] Even if it were, the expert evidence advanced at trial showed that P&ID could and would not have performed, given its complete lack of progress to take any meaningful steps towards performance, and P&ID's finance expert's acceptance that any financier would view payments to government officials as a red flag raising a serious risk to any investment in the project. In truth, no financier would have funded the project and it is common ground that P&ID could not have done so on its own.

d. FRN's perjury case is not barred under s.73 for the reasons at §§169-177 below.

11. **Corruption of FRN's lawyers:**

a. In light of the wall of silence presented by P&ID, the Court can and should infer (i) that P&ID obtained the FRN Privileged Documents as the result of corrupt arrangements between P&ID and/or its agents on the one hand and members of FRN's legal team on the other, and (ii) that the documents identified in the FRN Privileged Documents SoF and in the confidential bundle were provided to P&ID without authority. That is in any event the only plausible explanation for the leaking of the Documents.

b. It is not for FRN to prove the precise nature of these corrupt arrangement(s), including the exact reward(s) which the lawyers stood to gain or the way(s) in which their conduct of the arbitration

[30] Final Award §§50-51 {G/49/13-14}.

[31] §167 below.

was affected. Once one or more lawyers were corrupted, FRN was deprived of the loyal representation to which it was entitled.

c. Nonetheless, FRN is able to point to a flurry of suspicious cash deposits by some of its lawyers at critical moments in the arbitration, and conduct by them which was obviously contrary to FRN's interests. There is also compelling evidence of a direct payment by Mr Quinn to Mr Dikko in the initial months of the arbitration and incontrovertible evidence of a payment by P&ID's settlement agent, Mr Adebayo, to Ms Belgore, an MPR lawyer, in December 2014.

d. FRN need not identify the exact lawyers who were corrupted: it is not open to a party who has corrupted another's agent to rely on the fact that his or her identity has been concealed. Nonetheless it is clear, and this Court should find, that the corrupted lawyers included Mr Dikko, Ms Adelore, Ms Belgore, Mr Oguine and Mr Shasore.

e. If it is found that P&ID entered into a corrupt arrangement, of whatever kind, with one or more of FRN's lawyers, that is the end of these enforcement proceedings. P&ID rightly have not pleaded and are not running a case on materiality or s.73 of the 1996 Act. As Mr Andrew accepted in his evidence, the effect of such a finding would be 'game over' for P&ID.[32]

12. **Receipt of the FRN Privileged Documents:**

a. The receipt of the FRN Privileged Documents reflects a corrupt arrangement with FRN's lawyers, based on which the Awards must be set aside: see above. But P&ID's receipt of those Documents is also a ground for setting aside the Awards in its own right.

b. P&ID does not dispute that, if the Documents were obtained improperly (as the Court should find they plainly were), that would be a fraud and/or breach of public policy for the purpose of s.68 of the 1996 Act.

c. P&ID's only defence is to assert that the receipt of the Documents did not cause substantial injustice because they gave P&ID no relevant advantage in the arbitration. That is incorrect:

   i. First, as a matter of law, some irregularities are so pernicious and pervasive that substantial injustice can be inferred. This is such an irregularity on the facts of this case.[33]

   ii. Secondly, and in any event, the receipt of the FRN Privileged Documents did give P&ID an advantage in the arbitration. It gave the company and those behind it a fly-on-the-wall insight into FRN's strategy and, equally importantly, gave it comfort that FRN had not uncovered

[32] {Day4/27:11-13}. Repeated at {Day4/96:6-8}.

[33] See the authorities cited at FRN's opening submissions §§247-250 {AA/1/95} and 477-478 {AA/1/207}.

the two defences that P&ID through Mr Quinn's evidence wished to suppress: that P&ID had done nothing to show that it would have been ready and able to perform the contract; and that the GSPA had been procured by bribes.

13. Despite the prominence given to the points in P&ID's opening submissions, it is clear from the above roadmap that none of FRN's grounds depend on the GSPA being a sham or unperformable.[34] FRN does allege that P&ID told lies both before, in and after the GSPA, including about the availability of a suitable gas source, in order to give the contract an outward veneer of respectability. Those lies are not evidence of bribery *per se*, but the need to make sure they were not probed at the time of entry into the GSPA answers P&ID's point that it had no motivation to bribe officials. That being so, the Court need not actually determine that the GSPA was a sham, or unperformable because of the absence of a suitable gas source or for any other reason, to dispose of FRN's four set-aside grounds. P&ID's fixation on these two points is a diversionary tactic.

B. THE FACTUAL AND EXPERT WITNESSES

14. P&ID's witnesses were a thoroughly dishonest and venal cabal, motivated to lie by the prospect of immense riches, with each and every witness called by P&ID having – it transpires – a massive financial interest in the outcome of these proceedings. The lies that they have told, both in the evidence before Sir Ross Cranston and at this trial, mean that the Court cannot be confident of the truth in anything they say, with their evidence frequently flying in the face of the contemporaneous documents.[35] The previous co-ordinated lying before Sir Ross Cranston is particularly significant in revealing the willingness of P&ID's witnesses, under oath, to conceal from this Court matters which are or might be unhelpful. In FRN's submission the evidence of all of P&ID's witnesses, where contrary to FRN's case, can be afforded no weight.

15. The dishonesty of P&ID's witnesses is also of the utmost relevance to assessing the allegations against it in these proceedings, which involve those same individuals committing serially dishonest acts. The witnesses' dishonest performances in these proceedings is of a piece with the corrupt and dishonest conduct of which they are accused. It is, itself, evidence that the allegations are true.

16. **Mr Cahill**, it transpires, has been embroiled in corruption so deeply and for so long that he has lost his moral compass. He gave unabashed evidence about handing over hundreds of thousands of dollars to officials, purportedly for 'inspection visits' and 'training camps', without invoices, receipts or

[34] Lord Wolfson criticised the latter as a *"fundamentally new case"*: {Day2/17:21-23}.

[35] In *Armagas Ltd v Mundogas S.A.* [1985] 1 Lloyd's Rep 1 (*The Ocean Frost),* at [57] Goff LJ provided guidance that: "*Speaking from my own experience, I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities"* {Z1/20/57}.

checking whether the money was spent for those purposes (*"I am not going to go there … Frankly, I don't know"*).[36] He had no qualms about his company receiving documents from officials seeking to *"ingratiate"* themselves *"in the hope ultimately of receiving some benefit"*.[37] He saw no problem with Mr Quinn paying a couple of thousand dollars in cash to the senior lawyer on the other side of a multi-billion arbitration, Mr Dikko, if the payment was motivated by *"home town pride"*.[38] He admitted to personally sending a quarter of a million dollars of cash from Ireland to the Nigerian Minister of Police in connection with a contract awarded to one of his companies, without batting an eyelid,[39] and to coaching one of the witnesses who gave evidence before Sir Ross Cranston, Vera Taiga, but sought to brush it off with an apology to the Court.[40]

17. Mr Cahill lied and lied and lied to the Court. He lied to Sir Ross Cranston in an attempt to dispose of this challenge without disclosure or a trial.[41] He lied to this Court that "PR" payments to ministers, officials and their wives were not bribes, contrary to the obvious reality.[42] He lied that he and Mr Quinn had never before been involved in paying a bribe to win work.[43] He lied that he had never sent money to Dr Alimi in response to his request for US$50,000 to *"spread around"* the places he would be going.[44] He lied that he had not asked Mr Smyth to prepare a schedule of payments to Ms Taiga in September 2019.[45] The list goes on and on. Mr Cahill also showed a cavalier approach to the processes of this Court. He routinely departed from his written evidence (for example in relation to the meaning of "PR" and "Dublin expenses");[46] he repeatedly attempted to pin the blame for falsities in his witness evidence on P&ID's former solicitors, KK;[47] he disowned P&ID's own case (for example its admission that Mr Quinn's evidence was false);[48] and he went behind its experts' agreed positions.[49] Finally, much of Mr Cahill's evidence consisted of pre-prepared speeches, such as his monologue about Ms Taiga being mistreated in custody, which was brought out at every opportunity including when he had been asked about events that took place years before her arrest.[50] His evidence was a performance rather

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[36] {Day6/160:1-2}; {Day6/177:21-23}.
[37] {Day10/38:3-10}.
[38] Cahill 1 §147 {E/17/41}; {Day10/196:12-14}.
[39] See e.g. {Day6/175:2-3}.
[40] §66 below.
[41] §§63-64 below.
[42] §§46-51 below.
[43] {Day6/148:2-19}.
[44] §44.a below.
[45] {Day5/156:1} to {Day5/157:25}.
[46] See e.g. {Day7/1:19} to {Day7/3:15}.
[47] See e.g. §64 below.
[48] {Day9/152:11-16}.
[49] For example, in relation to the time at which the Project Alpha drawings became irrelevant: {Day9/46:19-25}.
[50] For example, Mr Cahill sought to justify a payment to Ms Taiga in January 2012 as being related to her *"notorious"* arrest in 2019: {Day7/143:4-25}.

than an attempt to tell the truth and assist the Court.

18. **Mr Andrew** was presented by P&ID to Sir Ross Cranston as a *"thoroughly respectable, highly regarded and senior lawyer both solicitor and barrister"*.[51] Unfortunately that charade has crumbled to reveal the true Mr Andrew: he was an evasive and dishonest witness. His motivation to lie is not in doubt. He has assumed a stake of billions of dollars in the very awards which he litigated as a solicitor, and his company Lismore is being sued by PHL.[52] His overwhelming incentive to win this case and make himself wealthy beyond imagination has clouded his judgment and integrity. Mr Andrew withheld incriminating evidence before Sir Ross Cranston.[53] He lied about when he first obtained a financial interest in the outcome of the arbitration.[54] He lied about the undocumented 'ethics' conversation that he allegedly held with Mr Burke about the FRN Privileged Documents,[55] and about the undocumented conversation(s) where he was allegedly assured that there was "*nothing untoward"* about the obtaining of the Documents,[56] which evidence he falsely sought to embellish orally.[57] Fundamentally, he lied in his professed belief that those Documents had been obtained legitimately.[58] The truth is that Mr Andrew had several billion reasons to withhold from this Court what he knew about how the Documents had been obtained and indeed to withhold from FRN and the Tribunal during the arbitration, in breach of his professional duties, the fact that such documents were being provided to P&ID. His *modus operandi* was purportedly 'see no evil, hear no evil, speak no evil', albeit the reality is that he must have been well aware that P&ID's middlemen were corrupting members of FRN's legal team, and obtaining documents as a result.[59] Unlike Mr Cahill, Mr Andrew was at least on occasion willing to accept obvious realities. For example, he correctly accepted that the receipt of the FRN

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[51] Cranston Transcript internal p.139, lines 1-4 {C/11.4/36}.

[52] {Day3/51:14} to {Day3/56:8}.

[53] For example, he said that he was "*frankly bemused*" at the allegation that FRN's lawyers were corrupted: Andrew 3 §7 {E/18/2}, whilst failing to tell the Court that P&ID had been supplied with the FRN Privileged Documents during the arbitration or since: {Day3/148:8} - {Day3/149:7}. Mr Andrew also accepted that a message he received from Ise Taiga on 25 September 2019 (to the effect that Mick Quinn sent money to Grace) {H9/262.17} "*necessarily told him*" there had been pre-2015 payments. His evidence was that this WhatsApp "*probably*" prompted a discussion with Mr Cahill. Yet he incredibly maintained he *"can't recall being aware of any previous payments when [he] did [his] witness statement in April 2020*" {Day3/82:20} to {Day3/83:19}.

[54] In July 2014, Mr Andrew's wholly-owned subsidiaries OLF 1 and 2 each obtained a 10% interest in the proceeds of the claim in consideration for Mr Andrew providing *"valuable assistance in relation to the arbitration"* and agreeing "*to continue to do so*": {Day3/18:8} to {Day3/20:7}; recital (8) {H9/61/3}. Mr Andrew's suggestion that the agreements were ineffective "*very shortly after they were executed*" because they were conditional on obtaining back-to-back funding which was not forthcoming was incredible {Day3/23:21}. The agreements say nothing about funding {Day3/28:21}.

[55] {Day4/137:10} to {Day4/137:22}. If such conversations had taken place, it is inconceivable that they would not have been documented, with Mr Andrew accepting the importance of documenting important conversations {Day4/11:1-4}.

[56] Andrew 5 §60 {D/6/16}.

[57] There is no mention at Andrew 5 §60 {D/6/16} of him being told that the Documents had been provided via settlement discussions: see {Day3/151:23} to {Day3/153:11}. This was accordingly further invention: see {Day4/159:14} to {Day4/161:8}. Indeed, the suggestion that Mr Andrew had been told this was utterly inconsistent with paragraph 11(a) of KK's letter dated 30 December 2021 {O/195/4} that *"Mr Cahill does not know how or from whom the three said individuals obtained FRN Privileged Documents"*: see {Day4/19:15} to {Day4/20:9}.

[58] §198.a below.

[59] As was put to Mr Andrew at {Day4/86:10-21}, {Day4/38:5-10} and {Day4/161:22} to {Day4/162:3}.

Privileged Documents from Mr Adebayo without an explanation raised a red flag for corruption,[60] that Adam Quinn's message to Mr Cahill about Dr Alimi *"spreading around"* tens of thousands of dollars as part of his brief to settle the IPCO litigation was indicative of bribery;[61] and, throwing Mr Cahill and Mr Quinn under the bus, that they had misled him about P&ID's state of preparedness to perform the GSPA.[62] Seeking to salvage P&ID's case on perjury, he falsely volunteered that Mr Cahill had only realised the truth during the Tita Kuru arbitration,[63] only to be forced to backtrack during subsequent examination.[64]

19. **Mr Burke** was similarly dishonest and utterly cavalier with his professional duties. He acted without written retainers,[65] and took a stake worth hundreds of millions of dollars in the success of this litigation, some US$850 million to be precise, without any written agreement to receive such a fee.[66] He already received at least US $1.175m pursuant to this arrangement.[67] In reality the 'arrangement' was another manifestation of Mr Quinn's and Mr Cahill's *modus operandi*: promises of life-changing sums of money, contingent upon success, intended to compromise the integrity, and in Mr Burke's case commitment to professional duties, of the promisee.

20. Mr Burke maintained that the BSB Rules did not apply to him because he was advising a family member.[68] In fact, as he subsequently accepted, his client was not Mr Quinn (who died part way through the arbitration) but P&ID.[69] In any event, Mr Burke was far from giving informal advice over the dinner table. He conducted a multi-billion dollar arbitration on behalf of a BVI company, P&ID, and was *"closely involved"* in every step of that litigation.[70] Mr Burke's suggestion that the involvement of his uncle in the company (until his death in February 2015) somehow absolved him of his professional and ethical duties, in particular the rules against taking a financial interest in one's own case, was absurd and unbefitting. Equally concerningly, Mr Burke accepted that there was a conflict of interest between his

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[60] E.g. {Day4/13:7-14}.

[61] {Day4/163:6-16}, referring to {H7/444.1}.

[62] {Day5/74:14-15}: *"I accept that what they [Mr Quinn and Mr Cahill] told me in 2013 and 2014 was not correct"*.

[63] {Day3/65:13-17}.

[64] {Day5/55:4} to {Day5/74:15}.

[65] {Day13/11:19} to {Day13/12:8}, but Mr Burke accepted that a written retainer is required for any direct access work {Day13/29:17} to {Day13/30/17}.

[66] Barristers may only enter into legal fee agreements {Day13/30:21} to {Day13/31:22}. Mr Burke accepted that at common law, taking a financial interest in a client's claim is unlawful, and a damages-based agreement is strictly controlled, including being in writing and setting out reasons for the amount {Day13/33:7} to {Day13/34:23}, none of which he sought to comply with: {Day13/38:12-14} and {Day13/52:1-6}. Mr Burke also accepted that a barrister cannot dodge these rules by dressing up an interest as a vague expectation {Day13/45:8-17}, and that barristers are not entitled to accept more than *de minimis* gifts from their clients {Day13/43:25} to {Day13/44:2}.

[67] {Day13/12:19-21} and {Day13/18:6-24}. That fee bore no resemblance or relationship to what Mr Burke spent in terms of time {Day13/12:2} to {Day13/13:18} and {Day13/16:16-19}, meaning that Cherryman 2 §7(c) was false {N1/12/4}.

[68] See e.g. {Day13/44:17-22} and {Day13/49:17-19}.

[69] {Day13/55:21} to {Day13/56:7}.

[70] Andrew 5 §18 {D/6/5}.

personal stake in P&ID's claim and the interests of his purported other clients[71] such as Grace, Ise and Vera Taiga (*"I can see the obvious conflict"*),[72] all of whom he acted for without any written retainer.[73] The significance of Mr Burke's disregard for his professional obligations is that the Court cannot rely on his honesty because of his professional standing. This is a man who has everything on the line and has shown a readiness to compromise himself to protect and further his own interests. Mr Burke agreed that he had entered into an arrangement which would lead, if successful, to phenomenal riches, but insisted that this *"never ever clouded [his] professional judgment"*.[74] Unfortunately for Mr Burke that is untrue. He received numerous emails attaching FRN Privileged Documents (not *"a few"* as he falsely stated),[75] with no explanation as to their provenance, but failed to return them or alert FRN, in breach of his professional duties.

21. In a telling incident as to his general honesty, Mr Burke was caught embellishing a story about his receipt of an FRN Privileged Document, saying that he *"vividly"* recalled receiving it and sending it on to Mr Andrew in the halls of the Old Bailey.[76] In fact, the incoming and outgoing messages were both sent after 7pm, well after the Old Bailey's opening hours. This was a deliberate and false embellishment, which tells the Court all it needs to know about Mr Burke's character and reliability as a witness. Finally, Mr Burke repeatedly shifted the blame for omissions in his witness statement to P&ID's lawyers,[77] KK, and sought to falsely embellish his written evidence in other respects.[78] His three statements were, on his account, hamstrung by the questions asked of him by KK. This was a ridiculous and unbecoming position for a man of more than 40 years of experience as a barrister. More concerningly, it reveals that Mr Burke has not given a full and frank account of the issues that he covered in his written evidence.

22. **Ms Taiga** is also a dishonest person, as evidenced by her lies before Sir Ross Cranston.[79] She was, like many of the witnesses, in self-preservation mode, although she was also no doubt motivated by her expectation of receiving a share of the proceeds should P&ID succeed in its claim.[80] Ms Taiga was ultimately unable to dispute, however, the fundamentals of the case made against her: that Mr Quinn

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[71] Cherryman 2 §10 {N1/12/4}.

[72] {Day14/89:19}.

[73] {Day14/87:5-16} and {Day14/87:22} to {Day14/88:22}.

[74] {Day13/61:22-23}.

[75] Burke 1 §14 {D/1/5}, which Burke accepted was incorrect: {Day13/116:5-13}.

[76] {Day13/157:20-22}.

[77] See e.g. {Day13/110:19-20} ("*The statement was prepared by Kobre*"); {Day13/114:15-20} ("*they would ask me questions, draft a statement and I would sign it*"), {Day13/146:17-20} ("*I rely on experienced commercial solicitors. I didn't draft my own statement. If this is what they wanted to submit to the court, I signed it*"); {Day13/180:8-9}.

[78] See, for example, {Day13/104:9} to {Day13/106:16}, {Day13/108:18-25}, {Day13/110:1-11}, {Day13/119:6-17} and {Day13/127:21} to {Day13/127:5}, {Day13/140:20-25} and {Day13/210:1-25}.

[79] See §§63-65 below.

[80] See §87 below.

and Mr Cahill's companies paid her large sums of money, and that they did so to ingratiate themselves and in return for being viewed favourably.[81] When asked whether this was improper, Ms Taiga's revealing response was *"I was not in the mood to know what is right or wrong"*.[82] The reality is that Ms Taiga has continued to dishonestly withhold the full picture as to the bribes she received, her role and the reasons for these bribes.

23. **Mr Murray** was another witness who was, at least initially, prepared to say black was white. He was presented with a raft of documents showing that he and Mr Cahill's and Mr Quinn's businesses were involved in bribery on an industrial scale. Mr Murray came up with a series of evolving and increasingly ridiculous excuses for these documents, most obviously as to the meaning of the terms "Dublin expense" and "PR". When things got tough, he had no hesitation in throwing others under the bus. He described Lloyd Quinn's idea for recording Dublin expenses confidentially, under a telephone number system, as a *"crackpot"* scheme;[83] and yet he connived in the very same scheme. He accused the group's accountant, Mr Nworgu, of cooking the books without acknowledging that his aim in doing so was to strip out records of bribes from the accounts, and that Mr Murray knew that that is exactly what he was up to.[84] Most concerningly, Mr Murray began his evidence by affirming his written evidence that he was not aware of any ICIL company ever paying a bribe. Yet by the end of his evidence, he had caved and accepted on multiple occasions that the documents showed that ICIL companies <u>were</u> involved in bribery.[85] Ultimately, the tenor of Mr Murray's evidence is summarised in the epithet: *"It might have been less than honest but it is the way we behaved"*.[86] That is regrettably true but a gross understatement. Yet Mr Murray would hope to receive millions in the event that P&ID succeeds: an expectation that he hid from the Court until asked about it at the close of his evidence.[87]

24. **Mr Lawlor** was unable to give a single straight answer and did not give helpful evidence. He spent almost half an hour obfuscating around a simple question of whether or not P&ID had finance *"in place"*. The answer was plainly 'no', but he could not bring himself to say it.[88] Most of Mr Lawlor's evidence was uncorroborated bluff that everything would have been alright on the night, if only FRN

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[81] See §69 below.

[82] {Day15/140:6-9}.

[83] {Day11/156:1} to {Day11/158:25}, referring to {H1/279}.

[84] Mr Murray said *"That was his aim, not my aim"* {Day11/128:23}.

[85] For example he accepted that Lloyd Quinn's concern with his 'Dublin expenses' system was to hide the fact that he was involved in a bribery operation {Day11/100:10-21}; he accepted that the payment to the Finance Minister's wife at {H10/21} sheet 1, row 42, was a bribe (*"Yes, that is how it looks"* ({Day11/150:2-17}), he accepted that his email to a joint venture partner about *"being bombarded with people ref the PR"* was a reference to bribes {Day11/161:6-19}, he accepted that the PR payments in various spreadsheets *"plainly do include payments which at least appear to be bribes"* {Day12/4:6-13}, he accepted that 'charitable' payments made to officials were intended at least in part to *"ingratiate"* the ICIL companies with those officials {Day12/8:4-9}; he said that he *"wouldn't be surprised"* if the payments to the Police Minister's wife were bribes {Day12/49:14-15}.

[86] {Day12/130:25} to {Day12/131:1}; {Day12/132:16-17} (*"In business, I may be less than thoroughly honest in your words"*).

[87] {Day12/151:14} (*"I would hope so in that instance"*).

[88] See e.g. {Day14/154:19} to {Day14/159:6}.

had supplied some gas. He too admitted in cross-examination to having *"joked"* with Mr Cahill about receiving a share of any recovery, a suggestion that he accepted Mr Cahill had not dismissed.[89]

25. **Mr Kuchazi**: It was almost impossible to extract meaningful evidence out of Mr Kuchazi. This appeared to be a deliberate act to obstruct the cross-examination:[90] there was no suggestion from P&ID in advance that Mr Kuchazi was not compos mentis. If it was not an act, that would raise serious questions about whether, and if so how, he had any meaningful input into preparing his lawyered witness statements which bore very little resemblance to how he presented his oral evidence. The limited oral evidence that Mr Kuchazi was able to give was untrue. For example, he denied in his oral evidence having ever received salary payments from P&ID, yet his own witness statement said just that.[91] He was unable to come up with any sensible explanation for the fact that he stands to receive hundreds of millions of dollars in the event that P&ID succeeds, save that he was a *"contact man"*.[92] Likewise he claimed to have no recollection at all of how confidential, as well as privileged, documents had come into his possession. In a rare moment of lucidity, Mr Kuchazi enthusiastically confirmed that he still expects to receive 3% of any recovery made by P&ID.[93]

26. **Mr Nolan** was unable to attend for cross-examination because of alleged mental health issues. The Court must consider the consequences of his absence. Much of Mr Nolan's evidence consisted of attempts to explain the eye-watering sums of cash that flowed out of the ICIL group bank accounts at the relevant period. The importance of that issue has receded in light of (i) the Dublin expense records, which show where much of that cash was going (i.e. on bribes) and (ii) P&ID's election to accept Mr Ojike's expert report, which explains that large-scale cash usage is and was not normal for a company such as P&ID, and that any expenditure made in cash would be properly documented.[94] To the extent that any part of Mr Nolan's evidence remains relevant, it can be afforded no weight unless corroborated by the contemporaneous documents. Even on the face of his statements, Mr Nolan has been caught in many of the same lies as Mr Cahill and Mr Murray, such as his steadfast denials of involvement in bribery and his attempt to distance P&ID from the packets of cash he delivered to Ise Taiga while she was dressed as a Muslim.[95] Moreover, in testing Mr Nolan's honesty and integrity, it is telling that recent disclosure reveals that it was he who sent the CBN memo to Mr Cahill on 7 September 2019, subsequently covering his tracks by deleting the relevant messages from

[89] {Day14/199:18} to {Day14/200:24}.
[90] {Day17/10:4-5} (*"Q: You understand what I am saying to you, don't you? A: No, I don't understand"*).
[91] {Day17/23:2-20}; Kuchazi 2 §7 {D/3/3}.
[92] Kuchazi 2 §5 {D/3/2}.
[93] {Day17/65:22} to {Day17/66:11}.
[94] Ojike 1 §§2.2.1 {F3/1/8}.
[95] Nolan 4 §11 {D/25/4}, referring to the WhatsApp messages at {L/29/283-286}.

his WhatsApp thread with Mr Cahill.[96] None of this was volunteered by Mr Nolan in his witness statements served well before his recent medical episode.

27. **The experts:** P&ID's experts were partisan. They had a tendency to slip into advocacy when presented with hard questions about their client's dubious conduct. For example, Mr Dimitroff fumbled around a simple question about whether an honest financier would work with a company where there was material to suggest that it had been engaged in dishonesty and corruption. The obvious answer was 'no' but Mr Dimitroff prevaricated, no doubt knowing that such a response would be damaging to P&ID in light of the way in which the factual evidence had come out during this trial. Likewise, P&ID's Nigerian law expert appeared to have been cajoled into adopting extreme and unsustainable positions on the alleged 'Customary Gift Giving Exception' in his written reports, and into refusing to accept that Nigerian law would be the same as English law in relation to the civil consequences of a bribe, only for P&ID to abandon those points at the stage of the oral examination, and electing not to challenge large swathes of Professor Ojukwu's evidence on Nigerian law.[97] P&ID also elected at a late stage not to cross-examine FRN's expert on the use of cash in the Nigerian economy and withdrew its own expert on that topic the night before he was due to give evidence. The unchallenged areas of FRN's expert evidence must now be accepted, with the consequences explained below.

iii. P&ID's missing witnesses

28. There have been three empty chairs at P&ID's table throughout these proceedings: Mr Adebayo, Mr Adam Quinn and Mr Smyth. Each could have given evidence on issues of central importance. Two of the three missing witnesses, Mr Adebayo and Adam Quinn, stand to gain unfathomable riches if P&ID succeeds; their failure to present themselves for evidence is inexcusable. Mr Smyth's stake in the claim is less clear, but it seems likely that he will, like Mr Murray, 'get what he is given'.[98] He was at one stage recorded as the recipient of a "commitment" of US$5 million.[99] In any event he remains an employee of Mr Cahill and could have given evidence.[100] There is moreover a fourth missing witness, Mr McNaughton, who has been wrongfully induced not to give evidence. His position is addressed in Section F below.

29. Where there is a case to answer on an issue, the Court is entitled to draw adverse inferences from the absence or silence without good reason of a witness who could otherwise have given material evidence.

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[96] The WhatsApps are at {H9/227.03}, {H9/227.04}, {H9/227.05} and {H9/227.06}.

[97] {Day21/11:12-14} (Mr Milner KC: "*I am perfectly prepared to proceed on the basis that we don't challenge what Professor Ojukwu says about paragraph 6(3)*"); {Day21/20:13-19} (Mr Milner KC: "*we will not be disputing what Professor Ojukwu has said [on the civil law of bribery in terms of the effect of a bribe on a contract]*").

[98] Mr Murray at {Day12/150:19}.

[99] {H9/76/5} where *"Ken"* is referenced.

[100] {Day5/168:23} to {Day5/169:2}.

Whether it is appropriate to draw such an inference will require judgment based on *"common sense"* and will depend on entirely on the circumstances of the individual case: *Royal Mail Group Ltd v Efobi* [2021] UKSC 33, [2021] 1 WLR 3893 per Lord Leggatt at [41] {Z1/157/14}. FRN will be asking the Court to draw adverse inferences as set out below.

30. **The absent Mr Adebayo**: There is a shroud of mystery around Mr Adebayo. He has (i) allegedly refused to tell P&ID from whom or how he obtained the FRN Privileged Documents; alternatively allegedly claimed (per Mr Burke) that he did not know, (ii) refused to provide access to his documents, and (iii) apparently refused to give evidence. Yet he stands to make just short of US$1 billion personally if this enforcement action succeeds.[101] Nor is Mr Adebayo a stranger who has disappeared into the abyss. Mr Burke speaks with him on a weekly basis and Mr Andrew spoke to him just a week or two before the trial.[102]

31. P&ID buried its attempted justification for Mr Adebayo's absence in a single subparagraph at the end of its 300-page opening submissions. It asserts that Mr Adebayo's refusal to give evidence was *"understandable"* because it would expose him to *"personal and professional risks which do not need spelling out"*.[103] That purported explanation, which does not appear in any of P&ID's witness statements and had not been previously suggested in correspondence or at any stage of these proceedings hitherto, is woefully insufficient and to be rejected. The explanation is in fact nonsensical: (i) both Grace Taiga and Mr Kuchazi gave evidence at trial, despite being in Nigeria; (ii) the mere fact of giving evidence would not have placed Mr Adebayo at risk. Even the most capricious prosecutor could not use his testimony against him, were it to reveal him as an innocent man; and (iii) in any event, Mr Adebayo has been publicly exposed by these proceedings to have been a key individual, who stands to receive some US$825m if P&ID succeeds and was involved in corrupt dealings. If Mr Adebayo had an innocent explanation for any of this, it was in his interests to attend and be vindicated by this Court.

32. By contrast, the closest the oral evidence came to the truth was Mr Cahill's explanation that Mr Adebayo did not want to be exposed to having to name which individuals acting for FRN *"had helped him"*.[104] The truth is that giving evidence would further cement P&ID's loss of this claim, to Mr Adebayo's personal detriment: if his evidence was honestly given, it would involve him admitting having paid and promised bribes to officials and lawyers acting for FRN, and naming those corrupted individuals.

33. But moreover, P&ID has not addressed at all Mr Adebayo's failure to provide his documents. When

[101] Mr Andrew confirmed that "*10% of what Lismore receives will go to Mr Adebayo*" {Day3/170:13-14}.
[102] Mr Burke: {Day14/42:15-22}; Mr Andrew: {Day3/50:19-21}.
[103] P&ID's opening submissions §1038.5 {AA/2/295}.
[104] {Day10/28:21} to {Day10/29:3}.

asked why these had not been provided Mr Andrew said *"I don't know"*.[105] The truth is that Mr Adebayo's documents have been withheld under a false pretext. When asked to disclose them around a year ago, P&ID's solicitors maintained that P&ID's failure to do so was justified *"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"*.[106] This is a fiction which unravelled in the course of trial. Mr Andrew accepted that Mr Adebayo was, of course, P&ID's *"man on the ground in Nigeria"* and that he *"represented P&ID's interests"* there.[107] P&ID's case that he is an arm's length counterparty, as opposed to its agent, and that this justifies his absence as a disclosure custodian, has been shown at trial to be manifestly false.

34. The absence of Mr Adebayo and his documents permits the Court to draw the strongest of adverse inferences. The main inference that FRN invites the Court to make is that, on behalf of P&ID, Mr Adebayo corrupted members of FRN's legal team, including Ms Adelore, Mr Shasore, Mr Oguine, and Ms Belgore, as well as other officials during and after the arbitration, and obtained the FRN Privileged Documents from some or all of the corrupted lawyers: see Section E below.

35. **The absent Adam Quinn:** Mr Andrew confirmed that Adam Quinn is alive and well and stands to make in the order of US$2-3 billion if P&ID succeeds in this case.[108] He has been identified by P&ID as someone who acted on its behalf.[109] He was involved in receiving and circulating FRN Privileged Documents. Mr Andrew rightly agreed that he would have been able to give relevant evidence on the provenance of those Documents, but could not offer a reason for why he had not been tendered as a witness.[110] The likelihood is that P&ID saw him as a liability and refrained from calling him for this reason. Adam Quinn was the intermediary for Dr Alimi's request for US$50,000 to *"spread around"* the places he was visiting, and for passing on confidential and privileged documents harvested by Dr Alimi from the IPCO litigation.[111] He was therefore plainly privy to the group's corrupt activities. Indeed he was personally involved in the delivery of 'Dublin expenses', including in concert with Mr Adebayo.[112] He was also privy to P&ID's corrupt relationship with Ms Taiga: he authorised her to use his car and identified her as *"our legal adviser"* on the relevant form.[113]

36. The main inferences to draw from Adam Quinn's absence are that (a) Grace Taiga received bribes from Mr Quinn and Mr Cahill companies, including from P&ID; (b) there is no legitimate explanation

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[105] {Day4/102:21}.

[106] KK letter dated 15 March 2022 §4 {O/269/1-2}, emphasis added.

[107] See {Day4/147:15-20}, {Day4/148:18-21}, {Day4/155:17-18} and {Day5/24:1-2}.

[108] {Day3/50:17-21} and {Day4/9:4-7}.

[109] RFI Response dated 17 May 2022 §3A {A2/11/3}.

[110] FRN Privileged Documents SoF §23 {A5/1/19}; 43(2) {A5/1/40} and {Day4/101:20} to {Day4/102:2}.

[111] {H7/444.1}; {H8/452.1}.

[112] He was also involved in the Dublin expenses 'telephone numbers' system: {H1/187} and {H1/218.1}. For the Dublin expenses involving Mr Adebayo see e.g. {H6/159} line 57.

[113] {H5/176}.

for the receipt of the FRN Privileged Documents, which came from members of FRN's legal team corrupted by those acting for P&ID, and Adam Quinn would have knowledge of the lawyers who had been corrupted; (c) Adam Quinn has no innocent explanation for his involvement in paying 'Dublin expenses', including in concert with Mr Adebayo.

37. **The absent Mr Smyth:** Mr Smyth was presented as Mr Cahill's PA, but in fact is a director, alongside Mr Cahill, of ICIL Ireland.[114] He is alive and well.[115] He occupied a central role in the trial as the author of a number of important documents and his absence was also exploited by Mr Cahill to incredibly claim that payments were made by Mr Smyth without his knowledge.[116] Most conspicuously, Mr Smyth produced a schedule of payments to Ms Taiga in September 2019 which labelled one payment as "PR" and another as "Gas Contract" {H9/217}. Mr Cahill suggested that this was a mistake and that Mr Smyth was unfamiliar with the purpose of the payments.[117] This was untrue but in any event Mr Smyth was not there to explain his position. Mr Cahill sought to orally excuse Mr Smyth's absence on the basis that he was *"a gentle person, he always acted on my instructions, he made payments and everything else that I would instruct him to do and therefore I saw no reason to put him through this type of ordeal"*.[118] That, of course, is not a proper excuse for depriving the Court of important probative evidence. The proper inference is that Mr Smyth, if truthful, would have confirmed that bribery and illegality was the *modus operandi* of those behind P&ID, including that bribes were paid to Grace Taiga in connection with the entry of the GSPA.

iv. FRN's allegedly missing witnesses

38. P&ID has sought to make forensic hay of the fact that FRN has not called any witnesses. FRN's reasons for not doing so are set out at §22 of its opening submissions {AA/1/21}. The key point is that the main witnesses who might otherwise have been expected to give first-hand evidence for FRN, in particular about the award of the GSPA, have been corrupted by P&ID. FRN cannot be expected to accept their self-serving denials as its own evidence.

39. Despite making the point repeatedly that FRN has not called its own witnesses, only two are mentioned with any specificity in P&ID's opening submissions: Mr Ajumogobia and Mr Malami.[119]

40. FRN's position on Mr Malami is explained at §22(e) of its opening submissions {AA/1/22}. Mr Malami was only involved from the quantum stage of the arbitration and could therefore only give

[114] See e.g. ICIL's recent corporate records {P/36/4}.
[115] {Day5/168:25}.
[116] {Day6/81:3-6}.
[117] {Day6/116:16} to {Day6/117:4}.
[118] {Day6/74:1-8}.
[119] P&ID's opening submissions §56 {AA/2/24}.

first-hand evidence from that point onwards. It would not have been permissible for Mr Malami simply to take the Court through the documents of how the arbitration unfolded. His evidence, then, would have needed to be about his subjective views on how he believed FRN ought to have conducted the arbitration at the quantum stage. But the question of whether FRN acted with *"reasonable diligence"* at that stage boils down to a legal point (i.e. whether the truth of Mr Quinn's evidence had been baked in by reason of the Tribunal's Procedural Order No.9) and in any event turns on an objective enquiry. One can see why P&ID would have liked the opportunity to try and score some political points with Mr Malami for the press, as they tried to achieve through their opening submissions, but he could not have given any relevant evidence.

41. The reference to Mr Ajumogobia is puzzling. He is at best a bit-part figure. He was the Minister of State for Petroleum Resources at the time of the GSPA. At its highest P&ID's case appears to be that he saw an advanced draft of the GSPA, based on a letter written after the GSPA.[120] That is not the correct interpretation of the letter, which says nothing about Mr Ajumogobia having seen the contract before the date on which it was signed, but in any event the relevance of that to the question of whether the GSPA was procured by bribes paid to named officials such as Ms Taiga and Mr Tijani is marginal at best.

C. BRIBERY

i. Mr Cahill's and Mr Quinn's track record of bribery

42. The disclosure and evidence at trial has demonstrated that Mr Cahill, Mr Quinn and their companies were up to their necks in bribery. Traces of corrupt payments appear across P&ID's spreadsheets and other internal documents recording large, round-figure cash payments to Nigerian officials, often under the codewords "PR" and "Dublin expense". Mr Cahill and Mr Murray came up with a series of increasingly silly excuses to explain them away which did them no credit at all.

43. The relevance of this track record of bribery is four-fold. First, it is directly probative of the meaning of the terms "PR" and "Dublin expense", which are labels used to describe certain payments connected with the GSPA. Second, it is directly probative of the evidence given by Mr Cahill and Mr Murray that they have never been involved in a bribe to win a contract in Nigeria.[121] Third, in deciding whether FRN's various allegations are 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.[122] Fourth, it is

[120] See P&ID's opening submissions §45 {AA/2/18} referring to {H3/259}, a letter dated 16 February 2010.

[121] See Murray 2 §39 {D/4/18}; Murray 3 §11 {D/10/4}; Cahill cross-examination {Day6/148:16-19} (*"Is it your evidence that … you have never paid or been party to paying a bribe to win a contract in Nigeria? A: That is my evidence. Yes"*).

[122] See the relevant principles in FRN's opening submissions at §§228-233 {AA/1/90}.

'similar fact' evidence which supports the (already overwhelming) evidence of corruption in connection with the GSPA and the arbitration.[123] The fact that Mr Quinn and Mr Cahill were running an industrial bribery operation not only makes FRN's allegations of corruption in relation to the GSPA more likely, it makes the suggestion that they broke the habit of a lifetime for this specific project positively unlikely.

44. The Court and the witnesses were shown a large number of emails and spreadsheets which reveal bribery on a breathtaking scale. FRN will not refer to every single document in these closing submissions. The following are some of the lowlights. They are all devastating to P&ID's case that it, Mr Quinn and Mr Cahill have never been involved in corruption:

    a. On 5 December 2015 Lloyd Quinn sent a message to Mr Cahill informing him that *"Don [Etim] called & said Alimi has requested $50k to spread around the places he will be going for us … To show good will for the Xmass etc"*.[124] When presented with this document Mr Cahill and Mr Andrew had no option but to accept that this was on its face a message about bribes.[125] Mr Cahill's reaction was to tell a lie: he said that *"the point that is important is this: the money was not sent"*.[126] In fact, a sum of just under US$50,000 was sent to the *"Doctor – IPCO"* (i.e. Dr Alimi) four days later, on 9 December 2015 from a Cayman bank account.[127] This is similar fact evidence of the strongest kind: Dr Alimi occupied the same role as settlement facilitator in the IPCO case as Mr Adebayo did in the P&ID case.[128] Mr Andrew admitted that, having seen the documents, the situation was *"alarming"*.[129]

    b. On 14 August 2007 Gerry Nash (one of Mr Cahill's 'friends' on his Commitments list) sent to Mr Cahill an email updating him on a *"PR saga"* involving two middlemen named Prof and Uzo. The email, which is at {H1/176}, is extraordinary. It recounts Prof and Uzo making *"outlandish promises"* to officials and exceeding their *"budget"* of US$650,000, with the consequence that Mr Nash restricted them to being able to draw a total of only US$150,000 from ICIL's bank accounts *"to split any way they like"* going forwards. Mr Cahill admitted that this was an email about bribes.[130] His reaction again was to tell a lie: he said that Prof and Uzo *"had nothing to do with us"* and that, if Uzo

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[123] The test for the admissibility of similar fact evidence is whether it is *"potentially probative of an issue in the action"*: *O'Brien v Chief Constable of South Wales* [2005] 2 AC 534 at [53] {Z1/49/21}. In *Red 12 Trading Ltd v HMRC* [2009] EWHC 2563, [2010] STC 589 Christopher Clarke J held that *"the character of an individual transaction may be discerned from material other than the bare facts of the transaction itself, including circumstantial and 'similar fact' evidence"* ([109] at {Z1/68/32}).

[124] {H7/444.1}.

[125] See Mr Andrew at {Day4/163:6-16}; {Day5/8:6}; and Mr Cahill at {Day7/61:9-11}, accepting that this was a *"patent reference to paying of bribes"*.

[126] {Day7/62:9-10}.

[127] Spreadsheet entitled *"Eastwise Cayman"*, "Bank" tab, row 286 {H9/472}. Dr Alimi's title ("Doctor") is referred to in several documents. See e.g. {L/6/139}; {H8/8.1}; {L/6/144}; {H7/478.1}.

[128] Mr Andrew said that Dr Alimi *"had a brief to settle the IPCO case"* {Day4/163:19}.

[129] {Day5/11:1}.

[130] {Day7/47:18} to {Day7/48:8}.

saw paying bribes as a *"contribution to making the project a success, c'est la vie"*.[131] Yet it is clear on the face of the email that the bribes were being funded by cash drawn from ICIL's bank accounts. That is why Mr Nash was troubled by the overspend and felt the need to report it to Mr Cahill. This is, again, similar fact evidence of the strongest kind. It is evidence of Mr Cahill's companies using middlemen to distribute bribes in Nigeria, as Mr Adebayo did in this case.

c. By email on 29 September 2020 Mr McNaughton set out that the term "PR" was used to refer to bribes, before the term "Dublin expenses" was used instead, and sent Mr Cahill two spreadsheets which, he said, reflected a number *"PR payments (Bribes)"* to officials {H10/19}. These spreadsheets, which are genuine contemporaneous documents, list a series of large round-figure payments to officials from a range of Ministries and their family members, including for example to the Finance Minister's wife.[132] The payments are patently bribes (as Mr Murray all but admitted)[133] and therefore corroborate the allegation in Mr McNaughton's email. Mr Cahill was unable to offer any evidence to the contrary save in respect of payments specifically to MoD officials, which are addressed separately below. Mr Andrew told Mr Smyth that he was *"very concerned"* about Mr McNaughton's allegations but did not want to be sent the documents by email, preferring to see them in person.[134] In his oral evidence Mr Andrew, a current director of P&ID, falsely said that he *"didn't want to be the one who had to deal with all of this when it was a Kobre & Kim issue"*,[135] when in fact KK never sought to engage with Mr McNaughton;[136] yet Mr Cahill told the Court that he had discussed the McNaughton allegations *"in detail"* with Mr Andrew (although later said that he *"didn't frankly study the bulk of the documents because I saw it as a pointless and irrelevant exercise"*).[137] The reality is that Mr Andrew, Mr Burke and VR[138] closed their eyes to the clear further evidence of corruption and instead despatched someone from Mr Cahill's *"camp"* to deal with the Mr McNaughton situation {H9/344.3/1}. Ultimately, it was accepted that *"not a single person actually sought to get from the horse's mouth any further information to test whether [the allegations were] true or false"*.[139] This is a sorry story. No honest lawyer or funder would have done anything other than carry out a full investigation of Mr McNaughton's allegations, which on their face were evidence of corruption on an industrial scale.

d. A spreadsheet headed *"PR Expenses on Police Project"* identifies that Mr Quinn and Mr Cahill's

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131 {Day7/50:8-9}; {Day7/51:1-2}.

132 The spreadsheets are at {H10/20} and {H10/21}. The specific payment to the Finance Minister's wife is at {H10/21}, sheet 1, row 42.

133 {Day11/150:2-18}; {Day11/151:15-21} ("*I am not familiar with the spreadsheets, but I am not disputing that that may be the case*").

134 Mr Andrew WhatsApp to Mr Smyth dated 30 September 2020 {L/20/399}.

135 {Day5/120:14-16}.

136 {O/435/2}.

137 {Day10/183:7-13}; {Day7/6:24} to {Day7/7:3}.

138 Mr Andrew accepted that the Mr McNaughton material was provided to VR: {Day5/121:21-23}.

139 {Day5/123:22} to {Day5/124:3}.

companies paid NGN 69 million (approximately US$500,000) to officials between January and September 2005 {H10/82.1}. According to the note at the foot of the document, this included a payment of NGN 32 million (around US$250,000) made directly to the Minister by Mr Cahill from Dublin. Mr Cahill tried to explain this away as a cost of operating the contract, but admitted that *"Frankly I don't know"* if it was actually used for that purpose.[140] These were naked bribes.

e. On 19 July 2007 Mr Nash sent to Mr Cahill a *"List of PR payments"* in a spreadsheet named *"Brown envelopes"*.[141] Mr Cahill sought to explain this away as a joke, but the joke appeared to be that the officials listed asked for bribes as payments for sitting in *"unnecessary"* meetings.[142]

45. It remains to be seen whether, in light of these and the many other documents presented to the witnesses, P&ID and its lawyers will continue to stand behind Mr Cahill's evidence that he and his companies were never involved in the payment of a single bribe.

Meaning of "PR" and "Dublin expenses"

46. Mr Cahill and Mr Murray gave wildly different accounts of the meaning of "Dublin expenses" and "PR". These were externally inconsistent with each other and internally inconsistent with their own written evidence. Their various positions were:

a. According to Mr Cahill's third statement, PR was a term used to mean *"carry-around money that Jim Nolan and Mick would have on them, for example, to pay for meeting expenses such as business lunches and dinners, and in case they were stopped by an armed robber"*.[143]

b. According to Mr Cahill's sixth statement, Dublin expenses and PR were terms *"used as a matter of convenience where the recording clerk was unsure of the actual purpose of the payment"*.[144]

c. But in his oral evidence, Mr Cahill:

i. described PR payments generically as *"round sums"* which *"became the matter of some controversy between Dublin and our Abuja office in relation to the fact that they were round sums"*.[145] He sought to explain the PR payments made specifically to MoD officials (but not others) by reference to the operating costs of certain contracts, which is addressed below; and

ii. disowned his definition of Dublin expenses as payments which the recording clerk did not

[140] {Day6/177:20-22}.
[141] {H1/156}.
[142] {Day7/43:7} to {Day7/45:25}.
[143] Cahill 3 §62 {D/5/22}.
[144] Cahill 6 §27 {D/26/9}.
[145] {Day6/160:5-9}. See similarly {Day7/2:7-11}.

know how to code, but sought to play this down as a *"discrepancy"* with his written evidence without offering any clear alternative definition.[146]

d. According to Mr Murray's second statement, PR was a term used for *"miscellaneous entries, which included ESTACODE expenses, PR and benevolent or humanitarian gifts"*.[147] According to his fifth statement, "Dublin expense" meant expenses which *"arose out of opportunistic research"*.[148] But in his oral evidence he said that Dublin expense meant all *"off-budget items"*.[149] He subsequently described Dublin expenses as *"high volume, low value"* transactions.[150]

47. Aside from being riddled with inconsistencies, none of these seven explanations stack up. The root problem with each of them is that PR and Dublin expense payments were cash sums paid to individuals, not expenditure on business items. Nor do any of the seven different descriptions explain why the payments were recorded on secret, anonymised lists (as *"high value transactions where confidentiality is required"*).[151] Nor why Dublin expenses were accounted for separately from the companies' genuine operating expenses.[152] Nor why they were not simply recorded as the expenditures they were alleged to be (e.g. for travel).[153] Nor why unbudgeted expenditures would be recorded differently from budgeted ones. Nor why Dublin expense payments needed to be stripped out of the companies' accounts in anticipation of a tax audit, on the purported basis that they were not tax-deductible expenditures {H6/86}. If these had been legitimate company expenses, as opposed to bribes, they would have been properly recorded with receipts,[154] and tax deductible.[155] They would also have been straightforward to explain.

48. In fact, a slip by Mr Murray means that the Court need not look far to conclusively determine that PR and Dublin expense payments are bribes. Mr Murray, in his second witness statement, told the Court that he had not been involved in bribery other than *"dashing"*, which he explained was a reference to low-level bribes.[156] In fact, disclosure subsequently obtained by FRN shows that Mr Murray and others

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[146] {Day8/48:10-11}. At one point Mr Cahill appeared to say that Dublin expenses, like PR, were payments for inspection visits or troop training camps: {Day6/160:19-22}.

[147] Murray 2 §40 {D/4/19}.

[148] Murray 5 §7.2 {D/24/3}.

[149] {Day11/68:12-15}.

[150] {Day11/127:9-10}.

[151] {H1/237}.

[152] Spreadsheet entitled "*MONTHLY REQUEST*" {H1/345.2} rows 16 and 17.

[153] In fact, travel expenses were recorded very clearly as such in the group's records. See e.g. Mr Murray's evidence at {Day12/12:21-24} where he accepted that hotel, accommodation etc. payments are recorded separately in the Mr McNaughton spreadsheet at {H10/21}. The group's records are full of overt references to payments for travel expenses, hotel bookings etc.

[154] Ojike 1 §2.4.1 {F3/1/9} and §5.3.2 {F3/1/22}.

[155] Unsurprisingly, for the purpose of Nigerian Corporate Income Tax, amounts can be deducted if they are wholly, exclusively, necessarily and reasonably incurred for the business or trade: see s24 of the Nigeria Companies Income Tax Act {F7/5/45}.

[156] Murray 2 §39 {D/4/18}.

in the group used the word *"dash"* to include very large bribes.[157] Mr Murray described one of his Dublin expense spreadsheets as a schedule of *"dash"*.[158] It is therefore clear beyond doubt that Dublin expenses are synonymous with dash which, on Mr Murray's own evidence, is a word for bribe.

49. In any event, even a small sample of the documents shows that PR and Dublin expenses mean bribes:[159]

    a. In his email of 29 September 2020 Mr McNaughton, having been involved in the ICIL business for many years, said that the word *"PR"* meant bribes and was subsequently changed to *"Dublin expense"* at the insistence of Lloyd Quinn.[160] That was true, and is entirely consistent with the documentary record.

    b. Mr Nash used the term *"PR"* in his email to Mr Cahill about the Prof and Uzo *"saga"* on 14 August 2007. Mr Cahill accepts that this was a reference to bribes.[161] He was unable to explain why the term was used in this way in the email but meant something else in other documents.[162]

    c. Mr Murray accepted that the reference to "PR" in Lloyd Quinn's email referring to *"clearing up on the PR"* by *"pick[ing] a company not associated with us here and open[ing] a Nigerian account"* could only be explained on the basis that PR payments were illegitimate ones.[163]

    d. Mr Murray accepted that the reference to "PR" in his own email to Edith Aguele dated 26 February 2014, where he said that he was being *"bombarded with people ref the PR"* and needed to *"compile a list as it would be best not to put on email"*, was a reference to bribes.[164]

    e. Mr Murray accepted that PR payments recorded across multiple spreadsheets *"plainly do include payments which appear at least to be bribes"*.[165] Mr Murray also said that *"I wouldn't be surprised"* if the payments to Mrs Bozimo, the Police Minister's wife, were bribes.[166]

    f. In their email exchange of September 2007 Mr Murray referred Lloyd Quinn to the need to record

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157 See e.g. {H1/309.1}, {H1/327.1}, {H2/238.1}, {H3/284.4.1}, {H4/66.1}, {H5/300.1}, {H7/146} and {H1/111.3}.

158 {H1/134.1} and the attachment entitled "*Dublin exps jan mar 07*" at {H1/134.3}.

159 To the extent that further documentary references are required to make the point see, in respect of "*PR*": {H1/31}, Dublin costs tab which records PR payments as *"invisibles"*; {H1/280} which refers to a memo on PR which was sent only to Lloyd Quinn for *"security reasons"*; {H2/436} where Mr Cahill asks in respect of the Bonga Audit *"Is PR a factor?"*; and in respect of Dublin expenses {H1/135.4} (cash slips for Dublin expense payments to the Director of Joint Services at the MoD and to "*Min MOD Ambassador*"); {H1/345.2} rows 16 and 17 which distinguish between *"running expenses"* and *"D/Expenses"*.

160 {H10/19} §7.

161 {Day7/47:18} to {Day7/48:8}.

162 {Day7/47:22} to {Day7/48:19}.

163 {Day11/156:4-9}, referring to the email at {H1/279}.

164 {H6/268}.

165 {Day12/4:6-13}.

166 {Day12/49:14-15}.

Dublin expenses in a coded list which *"can be instantly destroyed or is illegible to a stranger"*.[167] Mr Murray accepted that the new 'Dublin expenses' system was intended to record secret bribes (*"That is what Lloyd seems to be talking about"*).[168]

g. Mr Murray said in his email of January 2008 that *"Dublin expenses are high value transactions where confidentiality is required"*.[169] The reason confidentiality was required, of course, is that these were illegal payments.

h. In his email of 20 September 2013 an ICIL accountant, Mr Nworgu, referred to the need to *"eliminate the incidence of Dublin/marketing expenditures from the accounts"* in anticipation of a tax audit {H6/86}. That was obviously because they are bribes.

50. The fact that PR and Dublin expense transactions were bribes is moreover supported by the fact that they were all, or almost all, payments in cash. In this respect, the content of the reports of FRN's expert on the use of cash in the Nigerian economy, Mr Ojike, was unchallenged. The Court should therefore proceed on the basis of Mr Ojike's evidence that: (a) companies, ministries, departments and agencies of government were all required to comply with the Money Laundering (Prohibition) Act 2004 limits, which prevented cash payments being made in excess of NGN 500,000 to individuals and NGN 2,000,000 to companies, without exemption;[170] (b) legitimate businesses would adhere to the Money Laundering (Prohibition) Act 2004 limits;[171] (c) it was and is not common for legitimate businesses operating in the formal sector to use cash for business activities;[172] (d) the suggestion that suppliers and contractors preferred to be paid in cash and that expenses such as office expenses, salaries, bonuses, and costs associated would typically be paid in cash is incorrect;[173] and (e) where cash was used for any payments, there should have been detailed receipts and records to evidence those payments.[174]

51. What is the significance of all of this? First, the correct meaning of "PR" and "Dublin expense" payments is bribes. That is important because some of the payments which FRN alleges to have been bribes paid in connection with the GSPA bear those labels, as explained below. Secondly, the decoding of the terms show Mr Quinn, Mr Cahill and their companies to have been serial bribers. Dublin

[167] {H1/189}.
[168] {Day11/89:10-15}.
[169] {H1/237}.
[170] Ojike 1 §4.2.3 {F3/1/17}.
[171] Ojike 1 §2.3.1 {F3/1/8}.
[172] Ojike 1 §2.2.1 {F3/1/8}, Ojike 2 §2.3.17 {F3/4/13} and §2.3.30 {F3/4/17}.
[173] Ojike 1 §3.3.9 {F3/1/15}.
[174] Ojike 1 §2.4.1 {F3/1/9} and §5.3.2 {F3/1/22}.

expense payments of more than US$10 million were incurred in 2008-2012 alone.[175] Mr Quinn and Mr Cahill's companies often spent greater sums on PR or Dublin expenses than on their actual operating costs.[176] Third, a large part of the bribery operation was conducted in cash. It is common ground that Dublin expense and PR payments are exclusively or predominantly cash payments.[177] Finally, Mr Cahill and Mr Murray have brazenly lied to the Court about the meaning of the terms and in their evidence that they have never been involved in the payment of a single bribe to obtain business in Nigeria, and that they are not aware of any such bribes having been paid. Such lies cast a long shadow over the credibility of the entirety of their evidence.

'Inspection visits' and 'operating costs'

52. Mr Cahill and Mr Murray said that a subset of the PR payments related to the costs of servicing certain contracts with the Ministry of Defence, such as the costs of inspection visits or training troops. This was a ridiculous excuse. Mr Cahill accepted that there was no contractual obligation to provide these services,[178] no invoices or receipts in respect of them,[179] and no documentary record of the expenditures.[180] Most fundamentally, the payments were made in large, round-figure sums directly to Ministers and officials. The idea that Mr Quinn, Mr Cahill and their companies were legitimately paying these sums as expenses, in cash, direct to senior Nigerian officials (as opposed to into a relevant Ministry account, with invoices and receipts) who in turn used it to pay for rooms at the local Holiday Inn, meals etc. for their junior staff, lacks any credibility. Nor was Mr Cahill or Mr Murray able to give any explanation of why, if these payments were for legitimate contractual expenditures such as training troops, they would not have been openly recorded as such in the group's records.[181]

53. Mr Cahill came close to admitting that these payments were, in reality, bribes. He said *"whether or not he uses it all for that purpose, I am not going there".*[182] Mr Murray went further. He gave positive evidence that the payments made to Ministers and other officials were not used for actual travel costs or other out of pocket expenses. He said *"we gave them the money for their travel allowance for want of another description and*

[175] As set out in FRN's composite schedule of Dublin expenses at {AA/1.3}. This is a conservative calculation because the 2010 "*Dublin expense*" records are missing.

[176] Compare e.g. {H1/111.2}, cell H251 which shows total *"dash"* in 2006 of US$8,141,870 with {H1/111.4}, which shows legitimate group expenditure in the same period as US$7,491,516 over the same period (row 300).

[177] See e.g. Mr Cahill at {Day6/154:20-22}; Murray at {Day11/86:22} to {Day11/87:1}. Lloyd Quinn's email about the new 'Dublin expense' system dated 5 September 2007 is entitled *"New system for recording cash"* {H1/189}.

[178] {Day7/18:1-10}.

[179] See e.g. {Day7/24:8-13} ("*Is there a single document that you have ever seen where one of these people who is the recipient of the payments, is there a single document where they have written to you asking for payment and explaining what it was? A: There is not*").

[180] See similarly {Day8/49:10-21}.

[181] {Day6/177:23} to {Day6/179:13}.

[182] {Day6/160:1-2}.

they don't bring it with them, they leave it at home".[183] These were, therefore, naked bribes.

54. It follows that the 'inspection visit' and 'troop training' excuse has crumbled away, along with Mr Cahill's and Mr Murray's other silly excuses for the PR and Dublin expense payments.

ii. 'Why bribe?'

55. P&ID contends that the GSPA was a sound project which had been awarded through a transparent and careful due diligence process. Working backwards, it says that it therefore did not pay any bribes in connection with the GSPA because it did not need to. Nothing could be further from the truth.

56. To the extent that it is necessary to ask the question of why P&ID was motivated to pay bribes in connection with the GSPA (which it is not in light of the overwhelming evidence that they did) the answer is this: P&ID was an unknown BVI company. It had just a single employee.[184] Neither it nor Mr Quinn or Mr Cahill had ever built a gas plant before,[185] and it was in no position to do so. P&ID therefore needed to give the outward impression that it was a serious outfit which could be trusted to perform such a large infrastructure project, and that its proposal was properly thought through. To this end P&ID told three big lies with a view to giving the contract a veneer of outward legitimacy to outsiders:

    a. The <u>first</u> was that it had already done 90% of the engineering work towards the GSPA facilities and had already acquired the necessary technology licences.

    b. The <u>second</u> was that it had already obtained the necessary finance.

    c. The <u>third</u> was that it had carried out the necessary studies to ensure that there was a suitable gas source in the area.

57. The only due diligence carried out was Mr Tijani's two-page letter dated 23 February 2009 and P&ID's two-page response of the following day which contained a series of lies about P&ID's state of readiness.[186] Crucially, neither Mr Tijani nor Ms Taiga, being the senior officials involved in the technical and legal sides of the project, <u>ever</u> asked to see (i) evidence of P&ID's engineering work; (ii) evidence of P&ID's technology licences; (iii) evidence of P&ID's funding or of ICIL's ability to fund the

[183] {Day12/34:20-24}.

[184] P&ID's RFI Response schedule dated 30 June 2022 {A2/15.1}.

[185] As Mr Cahill confirmed at {Day9/44:4-11}.

[186] Both letters appear at {H1/457/1-4}. P&ID point to a six-line 'report' on P&ID's project in a memo dated 25 February 2009 {H1/463/1}. This was simply a description of the proposed project. It did not represent any due diligence on P&ID, or the fruits of any such due diligence, save that it repeats the unverified lie in P&ID's 24 February 2009 letter that *"Project funding will be by South Atlantic Petroleum"*. Mr Cahill confirmed that he was not aware of any other due diligence documents: {Day9/33:5-9}.

additional pipeline;[187] or (iv) the *"studies"* showing the existence of a suitable gas sources.

58. This was an extraordinary omission for two reasons. The first is that the GSPA was an infrastructure project of national importance, to be constructed on a challenging timetable. It is inconceivable that any honest official in the position of Mr Tijani and Ms Taiga would have passed it through without checking P&ID's credentials. The second is that the contract was drafted on onerous terms to FRN: a *"government lock-in basis in respect of gas supply"*.[188] The contract purported to place the risk of there being no gas supply entirely on FRN. If that transpired, contrary to P&ID's representations, FRN therefore risked being ordered to pay P&ID's lost profits over the 20-year term of the contract. No lawyer or technical adviser in the position of Mr Tijani or Ms Taiga could properly countenance that without carefully checking the *"studies"* which P&ID purported to have carried out on suitable sources of gas. But they did not ask to see them, let alone scrutinise them. To the extent needed, therefore, P&ID's motivation for resorting to bribery was its desire to gain support for the grant to it of the GSPA, avoid any due diligence, and to acquire the favourable approval of Grace Taiga on the legal side and Mr Tijani on the technical side giving the GSPA a cloak of legitimacy.

iii. Bribes to Ms Taiga and her family

59. Ms Taiga was the senior lawyer involved in negotiating and advising on the GSPA, a multi-billion dollar contract awarded to P&ID. Mr Cahill's WhatsApp of 15 November 2019 recognised her to be a *"critical component"*.[189]

60. It is beyond serious dispute that Grace Taiga was paid and promised bribes by P&ID both before the contract was entered into and afterwards. It is also beyond dispute that Ms Taiga expects to share in the spoils of the Awards: this is now common ground. Stepping back, the position is extraordinary. Were a similar discovery made about an official involved in awarding a valuable contract in the United Kingdom, it would rightly be a matter of public outrage and would certainly be considered a breach of public policy. The position in this case is no different simply because the contract was awarded by the Nigerian government.

61. The bribes paid to Ms Taiga and her family members are set out at Bribery SoF §§31 and 135. They amount in aggregate to:

    a. Approximately £90,000 between June 2004 and December 2005, when Ms Taiga was a legal adviser

[187] Ms Taiga sought to suggest that she had seen some *"letters from banks"* {Day16/69:17-18}. This is untrue: there are not, and never were, any such letters, as is (or should be) common ground.

[188] Mr Hitchcock email to Mr Cahill dated 28 August 2009 {H2/362}.

[189] {L/28/388} and see FRN's opening submissions at §295 {AA/1/117}.

at the MoD;[190]

b. Approximately US$25,000 between May 2008 and December 2009, when P&ID was seeking to win the GSPA;[191]

c. Approximately US$55,000 between March 2010 and June 2018, i.e. the period between the execution of the GSPA and the commencement of these set-aside proceedings.[192]

d. At least EUR 65,000 following the commencement of these set-aside proceedings.[193]

62. The sequencing of the payments is no coincidence. The 2004-05 payments were made at the time that the MoD awarded a suite of valuable contracts to Mr Quinn's and Mr Cahill's companies, many of which were endorsed by Ms Taiga[194]. Once she left the MoD, Ms Taiga was of no use to them until 2008 when P&ID began to chase the GSPA. At that point the tap was turned back on, and the payments continued to flow throughout the arbitration and these enforcement proceedings.

63. Mr Cahill and Ms Taiga lied about their knowledge of payments to Ms Taiga before Sir Ross Cranston. This was a cynical attempt to shut down FRN's fraud challenge without a trial or disclosure. Mr Cahill told Sir Ross Cranston in his first statement that he was *"unaware"* of any payments to Ms Taiga, beyond the post-2015 ones identified by FRN,[195] despite being in possession of a schedule sent to him by Mr Smyth in September 2019 showing many more such payments, including in the critical window before the GSPA and stretching back to her days as an MoD lawyer in 2004 {H9/217}. Mr Cahill then failed to correct the position in Cahill 2, and told a further lie that he had been unaware of the two additional payments uncovered by FRN,[196] despite those payments having been in the spreadsheet sent to him by Mr Smyth in September 2019. Mr Cahill also misled the Court by still making no mention of the <u>other</u> payments for the benefit of Grace that he was well aware of, given that (quite apart from contemporaneous knowledge of such payments) they had been listed in Mr Smyth's spreadsheet of September 2019 {H9/217} and in Mr Smyth's subsequent spreadsheet sent to him on 27 May 2020 {L/22/183}, attaching {L1/10}.

64. Mr Cahill's only answers were that (i) he forgot about the schedule sent to him by Mr Smyth in

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[190] Bribery SoF §§135(13)-(24) {A5/2/55-56}.

[191] Bribery SoF §§31(1)-(8) {A5/2/13}.

[192] Bribery SoF §§31(9)-(22) {A5/2/14}. All of these payments are agreed to have been made by P&ID save for approximately US$17,000 of cash deposits referred to at Bribery SoF §§31(10), (12) and (14). FRN maintains that these were the proceeds of bribes paid by P&ID, although whether or not they were does not significantly shift the dial.

[193] Bribery SoF §§31(25)-(27) {A5/2/16}.

[194] Bribery SoF {A5/2/58-59} referring to the following contracts with Ms Taiga's involvement: {H10/43/7}, {H1/51/7}, {H1/52/5}, {H1/53/9}, {H1/55/4}, and {H1/59/1}.

[195] Cahill 1 §97 {E/17/29}.

[196] Cahill 2 §24 (*"I was unaware of these payments until Nigeria obtained disclosure recently from various banks in the United States"*) {E/22/8}. Mr Cahill was in fact aware of the critical 28 December 2009 payment at the time it was made: §80 below.

September 2019; and (ii) his witness statements were drafted on the basis of questions put to him by P&ID's solicitors, KK.[197] As to these:

a. The first point is incredible. The relationship between Mr Quinn's and Mr Cahill's companies and Ms Taiga had been the subject of intense scrutiny since September 2019. Mr Andrew told the Court that *"during the period from September 2019 and till April 2020, Mr Cahill was trying to investigate what payments might have been made to Ms Taiga"*.[198] The schedule sent by Mr Smyth in September 2019 must have been a centrepiece of that investigation. Mr Cahill cannot have simply forgotten about it. Moreover, on 18 December 2019 Ms Taiga sent a WhatsApp expressing *"concern"* about the fact that it had been revealed in a Nigerian hearing that she had done some *"work for Papa (Mick) when I was in the defence ministry"*.[199] It is inconceivable that this would not have caused Mr Cahill to cast his mind back to Mr Smyth's schedule, which showed payments made to Ms Taiga from June 2004. Instead, at the time of drafting his first witness statement, Mr Cahill suppressed this message even from his own solicitors, along with the list of payments which he knew about. Even when it came to his second witness statement, it seems that Mr Cahill provided only a filleted list of payments to KK.[200]

b. Mr Cahill's second point is irrelevant. His witness statements were his evidence, not KK's. He made an unqualified statement, accompanied by a statement of truth, that he was unaware of any payments to Ms Taiga other than those uncovered by FRN.[201] That was a lie.[202]

65. Ms Taiga did not give any reason for herself hiding the payments from Sir Ross Cranston save for a bare assertion that they were *"not relevant"*.[203] Yet the payments to her were a main focus of FRN's set-aside application, as Ms Taiga well knew. Mr Andrew rightly accepted that, in hindsight, Mr Cahill's and Ms Taiga's evidence to Sir Ross Cranston had been *"utterly misleading"*.[204]

66. In addition to personally giving false evidence to Sir Ross Cranston, Mr Cahill coached Vera Taiga to tell Sir Ross Cranston that any payments were for her mother's eye operations but *"she does not recall the amounts"* and *"she does not recall the details of transactions which occurred so long ago"*.[205] She duly did so in her sworn statement.[206] Mr Cahill purported to apologise to the Court during his cross-examination for telling Ms Vera Taiga what to say in her sworn evidence, but that belated apology, offered only once

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197 See e.g. {Day6/30:24-25}, {Day6/33:16-22} and {Day6/91:3-8}.
198 {Day3/97:5-8}.
199 {L/30/19}.
200 Compare {L1/10/1} and {D/27/25} (with its cover email at {D/27/9}).
201 Cahill 1 §97 {E/17/29}.
202 As was put to Mr Cahill at {Day6/34:4-19}.
203 E.g. {Day15/31:10-11} (*"I did not mention them because I didn't think they were relevant"*).
204 {Day3/100:9} – {Day3/101:1}.
205 {L/29/211-212}.
206 Vera Taiga 1 {E/25}.

Mr Cahill was caught out, does not make his conduct any less egregious.[207] This incident further demonstrates Mr Cahill's lack of moral compass, as evidenced by his willingness to tamper with witnesses and seek to suppress incriminating evidence.

67. The reason that Mr Cahill and Ms Grace Taiga suppressed the payments before Sir Ross Cranston, and coached Vera Taiga to do so, is because they were bribes. Had they been legitimate payments for which there was an innocent explanation, there would have been no reason not to mention them.

Grace Taiga's role

68. A contract is tainted by a bribe if it is paid to an official who played *"a role"* in relation to the transaction.[208] The test is whether *"the agent has put himself in a position where his interest and duty may conflict"*.[209] Beyond that, the law *"sets its face against speculative enquiries into … how if at all the agent has been affected"* by the bribe.[210] As Chitty LJ said in *Shipway v Broadwood* [1899] 1 QB 369 at 373:

> "*I wish to state again emphatically that in such a case as this it is an immaterial inquiry to what extent the bribe or the offer of it influenced the person to whom it was given or offered. A contrary doctrine would be most dangerous, for it would be almost impossible to ascertain what had been the effect of the bribe*…" {Z1/5.01/5}.

69. Ms Taiga accepted in her oral evidence that, in paying her money, Mr Quinn was seeking to ingratiate himself in the expectation that she would in return *"view him favourably"*.[211] Ms Taiga accepted that this created a conflict of interest (*"It appears so, my Lord"*).[212] Mr Murray corroborated this: §79 below. She never told her employer of such payments.[213] That should be the beginning and end of the case on bribery as regards Ms Taiga.[214]

70. In any event, Ms Taiga certainly did play a role in relation to the GSPA. She and Mr Tijani were P&ID's main points of contact, and she was accordingly namechecked on four separate occasions in Mr Quinn's statement. Mr Cahill accepted that Ms Taiga, as a lawyer, had an *"important input"* into the contract.[215] Indeed, she was the person who advised Dr Lukman to execute the contract in her memo of 18 December 2009.[216] In light of that it cannot seriously be maintained that Ms Taiga did not play any role

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[207] Mr Cahill said *"With hindsight I accept that that was not appropriate and I am sorry I did it, but I did"* {Day6/143:20-21}.

[208] *Novoship (UK) Limited v Mikhaylyuk* [2012] EWHC 3586 (Comm) at [108] per Christopher Clarke J {Z1/89.2/36}.

[209] *Logicrose Ltd v Southend United FC* [1988] 1 WLR 1256, 1260G per Millett J {Z1/22/5}.

[210] Grant and Mumford, Civil Fraud (1st edn) at [7-023] {Z2/10.1/11}, citing *Logicrose* p.1260H per Millett J.

[211] {Day15/137:15-20}.

[212] {Day15/139:13-21}.

[213] {Day15/49:5-11}, {Day15/150:6-16}, {Day16/12:2-12}, {Day16/14:21} to {Day16/15:4}.

[214] This state of affairs was indeed also an offence contrary to s.8 of the Corrupt Practices and Other Related Offences Act 2000 {F8/5/300}, see {Day20/195:23} to {Day20/197:5}, {Day20/199:3} to {Day20/200:24}, and {Day20/203:5-23}.

[215] {Day7/103:1-5}. Professor Bamodu in turn further confirmed that as a matter of Nigerian law, Grace Taiga had a duty to warn of any risks in connection with the contract and to ensure that the matters stated in the contract had been verified: {Day20/179:13-20}, {Day20/182:14-22}, {Day20/187:10-16} and {Day20/189:8-12}.

[216] {H3/108/2} (*"Subject to your comments to the contrary, I advise that [the Minister] signs these Draft Agreements …"*).

in the award of the GSPA. Her role was a central one.

71. Ms Taiga told the Court in her oral evidence that she was *"just an errand lawyer"*.[217] This was false and self-serving evidence, and is contradicted by the contemporaneous documents. Ms Taiga was the key official involved in the negotiation of the contract. The chronology is as follows:

    a. Ms Taiga was involved in meetings between P&ID and the Ministry which led to the MoU, and was the person who advised Dr Lukman to sign it.[218]

    b. Mr Hitchcock met with Ms Taiga on 27 August 2009 to *"discuss the format of the Gas Agreement"*.[219] The following day, 28 August, Ms Taiga asked P&ID to *"state our terms in our draft"*.[220]

    c. Mr Hitchcock duly produced a first draft of the GSPA on the same day, 28 August, for circulation to Mr Cahill (commenting that it was drafted on a *"government lock-in basis"*).[221]

    d. After internal comments, Mr Hitchcock sent the draft to the Ministry on 1 September.[222] Importantly, this draft contained revised wording for recital (h), which was amended from representing that P&ID undertook to possess the necessary finance, technology and competence to that P&ID did possess each of those things.[223]

    e. As Mr Cahill accepted, the recipient of the first draft was presumably Ms Taiga since she was the one who had asked P&ID to state their terms.[224] Based on these documents, Mr Cahill accepted that *"[t]he author of the initial draft was P&ID"*.[225]

    f. On 31 August P&ID withdrew NGN 3.5 million of cash (approx. US$25,000) described as "PR".[226]

    g. Ms Taiga sent back a further draft of the GSPA on 18 November 2009 in essentially unchanged form {H3/31}. The letter was designed to give the impression that the GSPA had been drafted by Ms Taiga, whereas the documents cited above show that it had in fact been drafted by P&ID.

    h. Some last-minute changes were made to the draft based on a one-page list of comments from Dr

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[217] {Day16/110:8}.

[218] {Day16/40:8} to {Day16/42:10}.

[219] {H2/353}. The *"format"* of the Gas Agreement must have meant something more than typefaces, line-spacing etc, not least because the contract had not been drafted even at a high level at this point.

[220] {H2/364}.

[221] {H2/362}, attaching the first draft at {H2/363}. The metadata shows that the draft was produced by Mr Hitchcock: {H2/363.1}. There is nothing to suggest that it was an edit of an earlier draft: there are no tracked changes, and Mr Hitchcock's covering email describes the attachment as the *"proposed draft contract"*.

[222] {H2/373}.

[223] Compare recital (i) of P&ID's internal draft at {H2/363} with recital (h) of the draft sent to Ms Taiga at {H2/373}.

[224] {Day7/104:7} ("*It is a reasonable conclusion*").

[225] {Day7/105:17-18}.

[226] Spreadsheet entitled *"P&ID expenditures from Dublin & Cyprus"*, Abuja tab, row 15 {H4/327}.

Ibrahim on 17 December 2009. P&ID place weight on this but its relevance is unclear.[227] The fact that one further individual (Dr Ibrahim) provided last-minute input into the contract does not negate Ms Taiga's role as P&ID's main point of contact. It certainly does not suggest that Ms Taiga played no role in respect of the GSPA. In any event (i) the changes proposed by Dr Ibrahim were, in the grand scheme of things, minor; and (ii) FRN alleges that Dr Ibrahim was bribed by P&ID.

i. On 18 December 2009 Ms Taiga advised Dr Lukman to sign the GSPA {H3/108/2} and then witnessed its signing {H3/140/18}.

72. Ms Taiga gave confused evidence on the drafting history of the GSPA. She initially said that the contract had been drafted by the *"technical committee"*;[228] then she appeared to suggest that she had drafted the contract and sent it to P&ID for comments,[229]; then she said that she did not know who had drafted the contract;[230] then she said that she had been given the draft by the *"Minister's team"*.[231] None of these were accurate. The first draft of the GSPA was produced by P&ID, and sent to Ms Taiga by P&ID,[232] as the metadata confirms at {H2/363.1} and {H2/373.1}. Mr Cahill accepted that P&ID produced the first draft.[233] This is ultimately an arid debate: what matters is whether Ms Taiga played a role in the award of the GSPA, not the exact sequencing of the drafts. Nonetheless, to the extent that it matters, the contemporaneous documents and Mr Cahill's admission put the point to bed: P&ID produced the first draft, including of recital (i) (recital (h) in the final GSPA).[234]

73. Despite being P&ID's main point of contact and the senior lawyer who advised Dr Lukman to sign the contract, Ms Taiga did not verify (or check that anybody else had verified) P&ID's representations in the recitals that it already had finance for the project;[235] or that it already had the technology for the project; or that P&ID had done the necessary studies to identify a suitable source of gas, even though she accepted this was part of her job as a lawyer.[236] Nor did she take any steps to verify the letter of comfort issued by ICIL that it had a contractual arrangement to provide finance (of some US$90 million)[237] for a pipeline.[238] Ms Taiga agreed that if P&ID had no money, was a worthless company and

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[227] P&ID's opening submissions §§617-620 {AA/2/180}, referring to the comments at {H3/97.1}.

[228] {Day16/50:11-17}. Ms Taiga herself was a member of the Technical Committee: Taiga 2 §12 {E/24/5}.

[229] {Day16/58:17}; {Day16/54:12-13}. See similarly {Day16/61:19-20} where Ms Taiga suggested that she drafted the recitals to the contract; {Day16/66:4} (*"I'm maintaining that I drafted this"*).

[230] {Day16/73:22-23}.

[231] {Day16/87:25}.

[232] {H2/372}, attaching the first draft at {H2/373}.

[233] {Day7/105:17-18} (*"[t]he author of the initial draft was P&ID"*).

[234] Ms Taiga appeared to accept this in response to the Judge's questions: {Day16/155:3}.

[235] Subject to her incorrect comment that there may have been letters from banks on 'the file'. See §74 below.

[236] E.g. {Day15/113:15-20}, accepting that, as a Ministry lawyer, her job included *"ensur[ing] that appropriate due diligence had been done"*. See also Professor Bamodu at {Day20/186:14} to {Day20/187:16}.

[237] This is P&ID's own estimate of the cost: {H3/375/10} §6.2.

[238] {Day16/89:12} to {Day16/91:8}.

had no finance those would be *"very, very material facts for the Minister to know"*.[239] Yet she never drew this to anybody's attention, and instead waived through whatever P&ID wanted in the contract. She did so because she had been compromised.

74. On a point of detail, Ms Taiga suggested in parts of her oral evidence that the GSPA had been drafted by her on the basis of information from P&ID's *"file"*. The premise of this statement was false: P&ID produced the first draft of the GSPA, not Ms Taiga, and it changed minimally thereafter. In any event Ms Taiga was obfuscatory about what information was said to be on the 'file'. She said that it contained *"letters from banks"* indicating that P&ID had finance,[240] yet it is common ground that no such letters exist. If they did, they would have been disclosed by both parties. It is possible that Ms Taiga was referring to the two-page letter in which P&ID falsely told Mr Tijani that funding had been put in place by SAPETRO {H1/457/1-4}. Likewise copies of any other communications or drafts of the GSPA passing between P&ID and the MPR, if they existed, would have been captured by P&ID's own searches. Either way, there is no stash of 'file' documents relating to P&ID which have not been disclosed by FRN.[241] If Ms Taiga looked at any documents at all, it is likely these were the (minimal) letters and documents relating to the project which were in the MPR's possession, and have already been disclosed, most of them by both parties.

Bribes paid to Grace Taiga and her family members during her MoD days

75. Ms Taiga received around £90,000, mostly through her daughter, Ise Taiga, in 2004-5.[242] These payments coincided with the award of contracts worth millions of dollars to ICIL group companies over the same period, many of which bear Ms Taiga's signature.[243]

76. The relationship between Ms Taiga and the ICIL group companies during her MoD days is laid bare in her WhatsApp of 18 December 2019 in which she expressed concern about the revelation that she did some *"work for Papa (Mick) when I was in the defence ministry"*.[244] This confirms the corrupt relationship: Ms Taiga was supposed to be working for the MoD, not for Mr Quinn. Mr Andrew accepted that, on its face, the message was *"an admission of something irregular"* and had the *"connotation"* of *"a corrupt relationship between Grace Taiga and Mr Quinn"*.[245] Yet he and Mr Burke were sent a copy of the message at the time and remained silent about it before Sir Ross Cranston.[246]

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[239] {Day16/99:14-18}.
[240] {Day16/69:6-25}.
[241] As explained in FRN's letter at {O1/110/1}.
[242] Bribery SoF §§135(13)-(24) {A5/2/55-56}.
[243] The contracts are listed in chronological order at Bribery SoF §136 {A5/2/58}.
[244] {L/30/19}.
[245] {Day3/88:7-24}.
[246] {L/31/32}.

77. Mr Cahill (but not Ms Taiga) sought to explain away the 2004-05 payments as being solely for the benefit of Ise Taiga, who was studying in the UK. This excuse was cooked up at the last minute in Mr Cahill's sixth witness statement.[247] It is not supported by a single document and does not make sense in any event. Ms Taiga could offer no explanation for why Mr Quinn would have been in touch with her young daughter, whom he had never met, or what Ise needed or used the money for.[248] In any event, Mr Cahill's excuse is contradicted by P&ID's own documents, which variously record the payments as *"MOD Legal"* and *"Legal – GT"*.[249] The suggestion that these were payments made independently of Grace Taiga's role as a lawyer at the MoD is therefore a fiction. They were corrupt payments made in return for Grace showing favour and assistance in awarding contracts to ICIL companies; whether or not they were received by and used to benefit Ise Taiga is irrelevant.[250]

Bribes to Grace Taiga and her family members prior to and after the GSPA

78. When Ms Taiga moved from the MoD to the MPR in 2006,[251] the flow of payments ceased until mid-2008. That coincided with P&ID beginning to chase the GSPA. The payments made to Ms Taiga before and around the time of the GSPA are set out at §31 of the Bribery SoF {A5/2/13}. The Court will by now be familiar with the details, which are not repeated here.

79. The fact of the payments, their amount,[252] and (with one exception)[253] that they were intended for Grace Taiga's benefit is not in dispute. Nor is it seriously disputed that these payments were made for the purpose of ingratiating P&ID with Ms Taiga in the expectation, express or implied, that she would provide favours in return. As Mr Murray said, all of the payments made by Mr Cahill, Mr Quinn and their companies to Nigerian officials over the years were made with a view to ingratiating themselves (*"That would be a part of it, yes"*) and with an expectation that they would be viewed favourably going forwards (*"I would hope so. Yes"*).[254] Ms Taiga went further. She said that she believed the payments made to her were for the purpose of Mr Quinn ingratiating himself with her, and in return for her viewing him *"favourably"*.[255] When it was put to her that this was improper she replied *"I was not in the mood to*

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[247] Cahill 6 §16 {D/26/7}.

[248] {Day15/155:4} to {Day15/159:22}.

[249] Spreadsheet entitled *"Marshpearl"* {H9/150}, Sterling tab, rows 512, 572, 620, 651, 691, 713, 714 and 914.

[250] As accepted by Professor Bamodu at {Day20/196:3-11}.

[251] See Taiga 3 §8 {D/8/3}.

[252] Save for approximately US$17,000 of cash deposits referred to at Bribery SoF §§31(10), (12) and (14). FRN maintains that these were the proceeds of bribes paid by P&ID, although this does not much matter given that the vast majority of the payments are admitted.

[253] There is a specific dispute as to whether the payment to Vera Taiga on 15 June 2016 was intended for Grace Taiga's benefit. Mr Cahill says it was not at Cahill 6 §19 {D/26/7}. To the extent that it matters, the payment was clearly made for Grace Taiga's benefit. It was requested by her, who pleaded with Mr Cahill to come to *"my rescue and assistance please"* {L/12/10}.

[254] Mr Murray at {Day12/6:18} to {Day12/8:9}.

[255] {Day15/137:15-20}.

know what is right or wrong".[256]

80. The payment of US$5,000 on 28 December 2009 is a stark example. Ms Taiga contacted Mr Smyth in the middle of the night, in the period just before the GSPA was signed, asking for money. The request was not expressed to be for medical assistance or any particular purpose: it was a bare call for cash. Mr Smyth actioned the payment the next day.[257] Mr Cahill said in Cahill 2 that he was unaware of this payment until FRN obtained disclosure of it from the New York District Court.[258] That was false. Mr Cahill was in fact sent a record of payments, including this one, just three days later by Mr Smyth.[259]

81. That the payments to Ms Taiga from 2008 onwards were connected to the GSPA is revealed by an important slip on the part of P&ID. In his schedule sent to Mr Cahill in September 2019 Mr Smyth described the payment of £3,500 in October 2008 as a *"PR"* payment, and the payment on 29 March 2010 for US$5,000 as a payment for the *"Gas Contract"* {H9/217}.[260] Mr Cahill was unable to explain why these payments bore the labels that they did, save to say that they were assigned by Mr Smyth who was unfamiliar with their true purpose.[261] In fact, Mr Smyth was extremely familiar with the payments: he actioned them. In any event Mr Smyth has not been called to give evidence about the thinking behind this incriminating document. The Court should therefore proceed on the basis that he meant what he said, and had reason for this.

82. There is another important slip. Ms Taiga received US$20,000 by way of two US$10,000 instalments on 18 December 2017 and 27 June 2018.[262] This reflected the amount that Mr Cahill listed as his 'Commitment' to Ms Taiga in a schedule on 9 September 2017, around the time of the sale to VR.[263] Mr Cahill sought to explain these payments as medical expenses following a fall,[264] yet it is common ground that Ms Taiga did not travel abroad for medical treatment at this time. Most fundamentally, the payments are labelled by ICIL's accountant, Mr Hender, as being payments *"on behalf of Lismore to GT"* and *"on behalf of IPCO to GT"* {H10/66}. It is thus clear that these payments had nothing to do with medical expenses. They were Ms Taiga's share of the bounty from the VR investment, hence why one of the payments was internally recorded as made on behalf of P&ID's new owner, Lismore.

83. P&ID's overall answer to the Taiga payments is that they were made for 'humanitarian' purposes

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256 {Day15/140:6-9}.

257 See the email chain of 28 and 29 December 2009 at {H3/120.1}.

258 Cahill 2 §24 {E/22/8}.

259 Mr Smyth's email dated 1 January 2010 {H3/123}, attaching spreadsheet entitled *"Expen"* at {H3/124}, row 41.

260 Mr Andrew accepted that the reference to 'Gas Contract' was "*highly relevant*" and suggested the payment "*was in some way, shape or form related to that contract"* {Day3/75:25} to {Day3/76:1}.

261 {Day6/116:16} to {Day6/117:4}.

262 Bribery SoF §§31(21) and (22) {A5/2/15}.

263 {H9/47/3}.

264 Cahill 1 §107 {E/17/31}.

(whatever that means). However, Mr Murray accepted that such payments, when made, were intended to curry the favour of the official in question: §79 above. That is a bribe as a matter of fact and law. Ms Taiga likewise agreed that a bribe is a bribe is a bribe: it matters not why the official needs the money, or how he or she spends the money {Day16/4:6-14}. Indeed, she accepted that the more needy the official, the more susceptible he or she is to being compromised {Day16/5:9-15}. The fact that some (but not all) of the payments to Ms Taiga may have been used to pay private medical bills is therefore irrelevant. P&ID's 'humanitarian' excuse does not work. The truth is that these were thoroughly corrupt payments intended to place Ms Taiga into P&ID's pocket, both at the time of the GSPA and then throughout the arbitration to ensure that she did not speak up. That is why, in a revealing message, Ms Taiga referred to her fear that uncovering further payments would show that *"while the case is going [on] in Court I am still demanding and receiving gratification"* {L/30/59}. Gratification is a word used in Nigerian law to refer to bribe and Ms Taiga knew that.[265] It is plain as day from this message how Ms Taiga perceived the payments. So too from her message to Mr Cahill that *"there is a strong requirement to be discreet and limit third party activities regarding our 'behind the scenes' liaisons. In particular financial relations"*.[266]

84. Finally, P&ID's opening submissions were replete with references to the purported 'customary gift giving' exception under Nigerian law.[267] Its reliance on this previously central part of its case was abandoned at a late stage of the trial, and its attempts to justify the payments made to Ms Taiga (and others, including Ms Belgore and Mr Tijani) on that basis must therefore be rejected. The suggestion that the payments made to Ms Taiga, through a network of offshore bank accounts, at times that she was awarding Mr Quinn's and Mr Cahill's companies millions of dollars of contracts, and in circumstances where Mr Cahill has never met Grace Taiga in person, were 'customary gifts' was in any event absurd.[268] It is easy to see why the point was dropped.

Grace Taiga's interest in the GSPA and the Awards

85. The bundles are replete with messages from Ms Taiga to Mr Cahill cheering on P&ID from the sidelines,[269] offering advice on how to win the claim against Ms Taiga's former employer,[270] treating P&ID as *"our"* company and its legal team as *"our"* lawyers,[271] expressing elation about P&ID's victories

265 {Day15/10:16} to {Day15/11:4}. P&ID's Nigerian law expert agreed: {Day20/193:19-22}.

266 {L/30/4}.

267 See e.g. P&ID's opening submissions §§539.2 {AA/2/158}; 712 {AA/2/201}; 792 {AA/2/222}; 801 {AA/2/224-225}; {Day2/153:2-17} (*"As to the relevance of the purposes of the payments, my Lord will hear from our Nigerian law expert, Professor Bamodu, that there is a long established and wide ranging culture of gift giving in Nigeria and that unsurprisingly, it is entirely lawful for a public officer in Nigeria to accept personal gifts from personal friends to the extent recognised by custom").*

268 P&ID's opening submissions §801 {AA/2/224}.

269 E.g. {L/26/5}.

270 E.g. {L/12/9}.

271 E.g. {L/12/6}, {L/12/7}, {L/26/2}, {H9/180}.

and the prospect of becoming *"so wealthy"* upon settlement,[272] and finding consolation in the fact that interest was accruing on the debt.[273] Mr Cahill admitted at one point in his cross examination that one of these messages did *"show that she sees herself at that date as being entirely in our camp"*.[274] Likewise Ms Taiga said she saw herself as *"part of the family"*.[275]

86. It is no longer in dispute that Ms Taiga expects to receive money out of the proceeds of the Awards. Mr Cahill said *"she clearly did have some expectation of some benefit from the thing. That, as you say, we are agreed on"*.[276] Ms Taiga likewise accepted this.[277] Ms Taiga's evidence in her fifth statement that *"I held no stake, nor did I have any expectation to hold a stake in P&ID and/or to profit from any award to P&ID following the arbitration"* was therefore dishonest,[278] as was her failure to reveal the true position before Sir Ross Cranston. Ms Taiga agreed that this was *"not alright"* but offered no apology.[279]

87. Just as it is clear that Ms Taiga has an expectation to receive money out of the Awards, so too it is clear that Mr Cahill agreed to meet that expectation during the arbitration. In his message of 24 June 2015 Mr Cahill said *"I am confident we will settle the Arbitration in the next 2 to 3 weeks and I will make good provision for you as I discussed with Mick"* {L/12/4}.[280] Equally clear is the fact that, if Mr Cahill agreed to inherit this responsibility from Mr Quinn as of June 2015, Mr Quinn must have made a promise to Ms Taiga before then. Precisely when this was Mr Cahill was unable to say.[281] Given the utterly corrupt relationship between Mr Quinn, Mr Cahill and Ms Taiga since 2004, it is likely that the promise was first made at the time the GSPA was being negotiated; but on any view it must have been made before Mr Quinn died and therefore during the initial years of the arbitration,[282] as part of procuring Ms Taiga's silence, as was Mr Cahill's reiteration of the promise.[283] Any honest lawyer in Grace Taiga's position would have reported the bribery.[284]

88. Ms Taiga's expectation of sharing in the Awards is reflected in various schedules of 'Commitments'

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[272] E.g. {L/12/1} (*"Papa released d good news of the commencement of settlement of some time ago nd was hoping to spend d Christmas hols in London!"*); {L/12/5} (*"I keep remembering Papa telling me Grace u will be so wealthy u will travel all over d world"); {H9/193} ("Congratulations! … It is wonderful to be alive!"*).

[273] {L/26/5}.

[274] {Day7/164:4-5}, referring to the WhatsApp dated 5 September 2018 at {L/26/5}.

[275] {Day16/129:15}.

[276] {Day7/162:13-15}. See also {Day7/164:16-20} (*"… having an expectation, as we have agreed she did have some sort of expectation at that time, that she saw herself entirely in our camp and was trying to help by making these suggestions and so on. That I have no problem with agreeing"*).

[277] {Day16/123:14-19} referring to Ms Taiga's request for an *"advance"* at {L/12/5}. See also {Day16/132:13-14} (*"I did expect something, if need be"*); {Day 16/136:20} (*"I do have expectations"*).

[278] Taiga 5 §13 {D/17.1/5}.

[279] {Day16/137:15} (*"It is not all right, my Lord"*).

[280] Mr Cahill confirmed that he agreed with Mr Quinn to make *"provision"* for Grace at {Day7/154:12-19}.

[281] {Day7/150:1-7}. Notably, by August 2012, Adam Quinn was referring to Ms Taiga as *"our legal adviser"* {H5/176}.

[282] Mr Quinn died in February 2015. It is equally clear from the disclosed WhatsApps that Ms Taiga was interested in a settlement from December 2014 {L/12/1}.

[283] Mr Cahill's denials did him no credit at {Day8/144:16} to {Day8/145:3} and {Day8/22:5-14}.

[284] {Day16/114:2-8}.

produced by Mr Cahill. For example, one schedule identifies a commitment of US$500,000 for Ms Taiga {H9/208}. Another suggests US$200,000 {H9/76/5}. In his written evidence Mr Cahill sought to dismiss these documents as 'doodles' of benevolent payments that he wished to make to friends in the event that he became wealthy from the Awards.[285] This was thoroughly misleading. Each of the individuals on the list was either involved in the GSPA or had an intimate knowledge of the ICIL group's (thoroughly corrupt) business practices, and would therefore expect to be paid for their silence in the event that Mr Cahill became unimaginably rich. Mr Cahill ultimately accepted this. He said *"You may be right about the friends. If I have made such a statement, it is incorrect"*.[286]

iv. Bribes paid to Mr Tijani

89. The bribes paid to Mr Tijani are set out at §§33-43 of the Bribery SoF {A5/2/17-21}.

90. It is instructive to start with the hard facts. It is not disputed that Mr Tijani played an instrumental role in the award of the GSPA. Mr Cahill admitted in cross-examination that he had downplayed Mr Tijani's role in his first witness statement, where he had falsely said that Mr Tijani was not *"remotely critical"* to the GSPA and that it would have been *"madness"* to have paid a bribe to Mr Tijani, whom he described as a *"relatively low-level official"*.[287] That false evidence was given to Sir Ross Cranston with a view to shutting out this challenge without a trial. Mr Cahill offered no justification for this, and agreed that he could not honestly maintain that Mr Tijani was a low level official.[288]

91. There is a somewhat arid debate about whether Mr Tijani was the 'chairman' of the technical committee assigned to the GSPA.[289] To the extent that it matters, he was.[290] On any view he was P&ID's main point of contact at the Ministry alongside Grace Taiga.[291] None of this is capable of serious dispute, as Mr Cahill accepted.

92. Despite his central role, Mr Tijani did not carry out <u>any</u> due diligence on P&ID as a proposed contractor, save for his two-page letter dated 23 February 2009 and P&ID's two-page response the following day which was full of undetected lies {H1/457/1-4}.[292] Mr Cahill blithely said that he did not see anything extraordinary about a multi-billion dollar gas processing contract being awarded on the

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[285] Cahill 3 §50 {D/5/18}.

[286] {Day7/181:15-16}.

[287] Cahill 1 §117 {E/17/33}; {Day8/119:25} (*"To be frank, I think I overstated his unimportance"*); {Day8/122:13-14} (*"I certainly agree that I overegged the cake or whatever in relation to downgrading his importance. He was more important than is implied by that paragraph"*).

[288] See {Day8/123:1-25}; {Day8/128:2-7}.

[289] P&ID's opening submissions §586 {AA/2/173}.

[290] See e.g. {H3/20}, {H10/170/1}, Quinn 1 §86 {G/9/21}, Tijani 1 §18 {E/19/4} and §30 {E/19/6}.

[291] See e.g. {H2/288}, {H2/317}, {H2/353} and {H3/105}.

[292] Mr Cahill confirmed that he was not aware of any other due diligence questions: {Day9/33:5-9}.

basis of an unverified, two-page letter about P&ID's capabilities.[293]

'Bonga Audit' payments

93. Mr Quinn and Mr Cahill approached Mr Tijani with an offer of valuable work relating to the Bonga Audit in March 2013. This occurred relatively shortly after the commencement of the arbitration when P&ID was preparing its Statement of Claim. As part of the initial exchange, Mr Tijani described Mr Quinn as *"one of the guys I assisted over the years when I was the technical adviser to the Petroleum Minister"* {H5/350}. This was correct: Mr Tijani did *"assist"* Mr Quinn in his role as technical adviser at the MPR, in return for bribes.

94. Mr Tijani immediately joined the dots between the offer of work on the Bonga Audit and his previous role on the GSPA. On 21 March 2013 Mr Hitchcock said to Mr Smyth: *"Can you please let Mick know that TJ is sending a complete copy of his P&ID file via DHL with latest arrival Wednesday next"* {H5/368}. Mr Cahill said in cross-examination that the email looked *"a little bit odd"* and that, taken at face value, would indicate a corrupt relationship with Mr Tijani.[294] He also accepted that it would be improper for Mr Tijani to share his confidential file, but denied that it was ever actually sent.[295] That is an untestable assertion because P&ID's hard copy files have been burnt.[296] The likelihood is that the email meant what it said and that Mr Tijani did in fact send his file. In any event, it was wholly improper for Mr Tijani even to offer to send his file of documents relating to the P&ID matter, which was the subject of a multi-billion dollar arbitration against his former employer. Any honest person in Mr Cahill's position would have told Mr Tijani not to send it. Mr Cahill remained silent. With hindsight he said, *"Perhaps that's what – that's perhaps what I should have done"*.[297]

95. The extent of Mr Tijani's role in the Bonga Audit is disputed. He says that he had no day-to-day involvement, or ownership interest, in the company with which Lurgi Consult contracted, Conserve Oil, because he held a public position at the time. P&ID disputes that.[298] This does not much matter because on any view Mr Tijani received two payments totalling US$41,000 into his personal bank account from Lurgi Consult on 3 April 2014 and 22 April 2015.[299] These payments were not for any work done on the Bonga Audit for the simple reasons that: (i) the entity supplying the engineers for the project was Conserve Oil, not Mr Tijani personally; (ii) the payments were made after the Bonga

[293] {Day9/33:13-15}.
[294] {Day8/141:1-3}; {Day8/141:7-16}.
[295] {Day8/143:8-12}; {Day8/144:6-9}.
[296] See {H8/407/1} where Mr Nolan tells Mr Smyth *"all the files relating to P&ID were burnt"*.
[297] {Day8/145:4-5}.
[298] Tijani §§48-49{E/19/11} and 53 {E/19/12}; P&ID's opening submissions §§710-711 {AA/2/200}.
[299] Bribery SoF §§41(2) and (4) {A5/2/20}. For the avoidance of doubt, FRN maintains its case that the remaining indirect payments through Conserve Oil identified at Bribery SoF §§41(1) and (3) were also bribes intended for Mr Tijani {A5/2/20}.

Audit had concluded; and (iii) they were made after all of Conserve Oil's invoices had been settled.[300]

96. In his judgment Sir Ross Cranston said that *"there is no explanation as to why the payments of US$30,000 in April 2015 went to Mr Tijani directly and after the Bonga Audit was completed. There is nothing to support Mr Cahill's story that these might be bonus payments"*.[301] P&ID was thus put to the challenge of improving its case but has come up with a blank. In his third statement Mr Cahill backed down from his assertion of a bonus payment and instead said: *"I do not recall why [the payments were made] … I cannot say with certainty whether one or both of these payments were in fact wedding gifts"*.[302] In cross-examination Mr Cahill elaborated. He said that he had *"continued to make enquiries"* about the payments but *"I can't get a satisfactory answer"*.[303]

97. In order to make the personal payments to Mr Tijani in April 2014 and April 2015, Mr Cahill or one of his associates must have held Mr Tijani's bank co-ordinates. Mr Tijani's evidence that he gave his bank details to Mr Hitchcock during a weekend visit to a mutual friend's house, so that he could arrange payments to be made *"as part of P&ID's support"*, must therefore be true.[304] P&ID has offered no other explanation as to how the bank details came into its possession.

98. Why, one might wonder, was a P&ID-associated company paying tens of thousands of dollars to Mr Tijani during a critical period of the arbitration, without any contractual basis or explanation? The answer is: to procure his silence about the manner in which the GSPA was awarded, and therefore to ensure that a potential defence that the contract had been procured on the basis of bribery and lies did not see the light of day. Mr Cahill accepted that this would be the correct inference if, contrary to his position, the payments to Mr Tijani were found to be improper ones.[305] He also agreed that Mr Tijani would have been a potentially important witness in the arbitration.[306]

US$50,000 cash bribe on 1 April 2009

99. Prior to the GSPA, Mr Tijani received (at least) a US$50,000 cash bribe following a dinner at Chopsticks restaurant on 1 April 2009 with Mr Quinn and Mr Hitchcock, in the critical period when the GSPA was being proposed to the MPR.[307] Lord Wolfson described Mr Tijani's evidence of this encounter as *"undoubtedly fabricated"* and submitted that it should be given *"no weight at all, except where it is corroborated*

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[300] See spreadsheet entitled "*SUMMARY Conserve Payments*" {H9/400} row 19, which says "*The final balance was cleared by a bank transfer on 6 March 2014*".

[301] Cranston Judgment §199 {C/12/32}. The figure referenced in this paragraph is incorrect: it should be approximately US$40,000 paid in April 2014 and April 2015.

[302] Cahill 3 §56 {D/5/21}.

[303] {Day8/152:24} to {Day8/153:3}. He confirmed that there was no contractual basis for the payments: {Day8/148:18-23}.

[304] Tijani 1 §51 {E/19/12}.

[305] {Day9/141:20} to {Day9/142:8}.

[306] {Day8/137:2-5}.

[307] Tijani 1 §§19-26 {E/19/4-6}.

by the contemporaneous documents".[308] Mr Cahill likewise described the statement as a *"total fabrication"*.[309] These criticisms fall apart upon a proper review of the contemporaneous documents:

a. A meeting involving Mr Tijani at the MPR did in fact take place on 1 April 2009: {H1/500}; {H1/503}.

b. A dinner at Chopsticks Restaurant did in fact take place that very evening, the costs of which were recorded on an internal spreadsheet under the reference *"Chopsticks – Director's entertainment"* the following day.[310] Having been shown this, Mr Cahill resiled from his previous assertion of *"total fabrication"*, instead accepting that "*of course*" Mr Tijani had attended a dinner with Messrs Quinn and Hitchcock at Chopsticks on 1 April.[311] On its own that is suggestive of bribery given that Mr Tijani was a key player in reviewing P&ID's proposal at the time.

c. Extraordinarily, the bill at Chopsticks Restaurant amounted to NGN 421,000, which was approximately US$2,800. Whether that was spent solely on food and drink or also on less salubrious activities matters not. Extravagance on this scale is, of itself, an indicator of an inappropriate relationship, as Mr Cahill accepted.[312]

100. Either, therefore, Mr Tijani was very lucky to guess the date of the meeting and the venue of the dinner, or he was telling the truth in his witness statement. Mr Cahill attempted to rescue the situation by suggesting that the EFCC had adapted Mr Tijani's evidence around P&ID's disclosure documents. This broke down and was withdrawn when it was pointed out to Mr Cahill that P&ID had not given disclosure of any of these documents by the time of Mr Tijani's statement.[313]

101. The only missing piece of the jigsaw is the US$50,000 of cash. It is unsurprising that the physical bank notes have not been found. It is also unsurprising that there is no banking entry with a reference to 'Mr Tijani bribe' or similar. P&ID and its associated companies were cash merchants, keeping vast sums of money (Mr Nolan refers to half a million dollars)[314] in a safe for the precise reason that cash bribes are not traceable. Nor is it surprising that Mr Tijani chose not to deposit the proceeds of bribes into his own bank account (or at least not in any recognisable way). Nor is the size of the bribe remarkable in light of the scale of the other 'PR' and 'Dublin expense' payments uncovered, or the scale of the

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308 {Day2/8:17}, P&ID's opening submissions §646 {AA/2/186}.

309 {Day8/126:9-13}.

310 Spreadsheet entitled *"2009 Returns"*, April tab, row 35 {H10/109}.

311 {Day8/159:19-21} and {Day8/160:17-19}.

312 {Day8/165:1-3}. Indeed, there are other markers of an inappropriate relationship, including Mr Tijani's request, made on the same day as a meeting between Mr Tijani and Mr Hitchcock, that ICIL make an offer of employment to two of his friends: {H3/100}. The meeting is recorded at {H3/105}.

313 {Day8/160:23} to {Day8/161:7}.

314 Nolan 4 §10 {D/25/4}. It can be seen, for example, that US$20,000 was withdrawn under the reference *"Papa Quin Dublin Expenses"* the day before the meeting: spreadsheet entitled *"Dublin Exps 2009"* {H6/158}, row 47.

entertainment to which Mr Tijani was treated on 1 April 2009.

102. The correct conclusion is therefore that Mr Tijani had not made a lucky guess about the date of the meeting in the MPR or the fact of the Chopsticks dinner on that day. He was telling the truth, both about his encounter with Mr Quinn and Mr Hitchcock in early April 2009 and about the US$50,000 cash bribe. His statement is, to use P&ID's words, *"corroborated by the contemporaneous documents"*.[315] It is moreover corroborated by the unexplained payments to Mr Tijani's personal bank account in 2014 and 2015, which have been addressed above, and Mr Quinn and Mr Cahill's *modus operandi* of paying cash bribes on this scale routinely. Indeed, Lord Wolfson referred in his opening submissions to a spreadsheet showing that 'Dublin expense' payments were made *"every couple of days"*.[316] Quite.

103. P&ID criticises the inconsistency between Mr Tijani's statement and his early evidence to the EFCC.[317] The chronology is that Mr Tijani denied any impropriety in his September 2019 interviews.[318] However, on 15 November 2019 the EFCC obtained the banking records of Conserve Oil which showed payments being made directly from a P&ID-related company to Mr Tijani.[319] When presented with these incriminating documents Mr Tijani came clean. On 12 January 2020 he confessed that he had received payments from P&ID and that he overlooked shortcomings in the company's proposal.[320] That evidence was confirmed in a witness statement before this Court, which openly referred to the plea agreement he had entered into.[321] There is nothing sinister in that. The story is simply one of Mr Tijani running away from the truth before it finally caught up with him.

104. There are two remaining points to address in relation to Mr Tijani:

a. It is possible that Mr Tijani received further cash payments ('Dublin expenses') in the course of his many meetings with P&ID. FRN cannot be sure whether he, or other officials, were the target of such payments because that information has deliberately been expunged from P&ID's records. FRN deals with these anonymous Dublin expense payments separately below.

b. P&ID has accused FRN of 'cherry-picking' Mr Tijani's evidence, served under a hearsay statement, in an impermissible way.[322] The complaint appears to be that Mr Tijani describes the payments made to him as *"gifts"* rather than *"bribes"*. There is no cherry-picking here. The question of whether a

315 P&ID's opening submissions §646 {AA/2/186}.
316 {Day2/155:1}.
317 P&ID's opening submissions §§634-639 {AA/2/184}.
318 See e.g. Mr Tijani's EFCC interviews between 4 and 7 September 2019 {J/78}, {J/79}, {J/80}, {J/81}, {J/82}, {J/83} and {J/84}.
319 As recorded at §101 of the Cranston Judgment {C/12/16}.
320 Mr Tijani's EFCC interview dated 12 January 2020 {J/102}.
321 Tijani 1 §12 {E/19/3}.
322 P&ID's opening submissions §§38-39 {AA/2/16}; {Day2/9:2-8}.

particular payment was an unlawful one for the purpose of Nigerian or English bribery rules is a legal one. FRN is not seeking to distance itself from the facts and circumstances of the payments described by Mr Tijani in his evidence.[323]

v. Bribes paid to Dr Lukman and other officials at the Gas Roadshow

105. Dr Lukman was the Minister for Petroleum at the time of the GSPA and the contract bears his signature. Mr Tijani's evidence is that Dr Lukman applied *"great pressure"* on him to push P&ID's proposal through.[324]

106. Mr Quinn's evidence is that he had approached Dr Lukman at an unspecified time prior to August 2008 to discuss his proposal for a gas project in Calabar.[325]

107. Dr Lukman attended a Gas Investors' Roadshow in Abuja on 15 May 2008.[326] It seems from P&ID's own emails that one of the purposes of the Roadshow related to the submission of P&ID's *"Bid Proposal"*.[327] Mr Quinn referred to the Roadshow in his witness statement to the Tribunal.[328]

108. Mr Cahill said that Mr Hitchcock had attended the Roadshow on behalf of P&ID.[329] That was wrong. In fact it was Mr Quinn who attended, as can be seen from the record of his participation fee in P&ID's internal documents.[330]

109. One of the internal spreadsheets disclosed by P&ID records a transaction the day before the Roadshow, 14 May 2008, under the reference *"Papa – Dublin Expenses"*.[331] It is not disputed that (i) this was a cash withdrawal;[332] and (ii) it was withdrawn by or for the benefit of Mr Quinn (*"Papa"*). The amount of the cash withdrawal was very large: NGN 10 million, which equates to approximately US$84,000. This was plainly a bribe to be brought along to the Gas Roadshow given:

a. The fact that it bore the label *"Dublin expenses"*;

b. The coincidence in timing between the withdrawal and the Roadshow;

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[323] To the extent that it matters in light of this point, P&ID's description of the law against 'cherry-picking' of a party's own witness' account is wrong. There is no *"absolute"* rule that a party may not distance itself from part of a witness' evidence. Rather, the judge has a *"discretion to do what is necessary in order to produce justice"*: *Silvera v Urquhart* [2003] EWHC 809 at [45] {Z1/46.1/9}.

[324] Tijani 1 §38 {E/19/9}.

[325] Quinn 1 §56 {G/9/15}.

[326] {H1/290.1/3}.

[327] Email from Isa Yusuf to Mr Quinn dated 28 April 2008 {H1/274}. See similarly {H1/261/4}.

[328] Quinn 1 §36 {G/9/11}.

[329] {Day8/86:10-11}.

[330] Spreadsheet entitled *"2008 Daily Returns"*, May tab, row 204, referring to *"Participating fees for Roadshow – Papa …"* {H10/108.1}.

[331] Spreadsheet entitled *"Dublin Exps 2008"* {H6/157} row 100.

[332] Mr Murray's evidence is that all Dublin expenses were cash transactions: Murray 5 §7 {D/24/3}.

c. The fact that the withdrawal was made by or given to *"Papa"*, i.e Mr Quinn, the very individual who attended the Roadshow on behalf of P&ID.

d. The fact that Mr Cahill accepted in his evidence that Dublin expenses recorded under Mr Quinn's name in this period were *"likely"* payments made in connection with the GSPA.[333]

110. Neither P&ID nor Mr Cahill has felt able to give any evidence to contradict this inference or to explain the purpose for which the payment was made: it is not addressed in any witness statement and Mr Cahill confirmed that he had no relevant evidence to give in his oral testimony.[334] The correct conclusion is therefore that if, as FRN contends, 'Dublin expenses' means bribes, the NGN 10 million withdrawal (approx. US$84,000) was used to pay bribes to Dr Lukman, and possibly other officials, at the Roadshow in connection with P&ID's proposal for the GSPA.[335]

111. To the extent that further evidence is needed to support the contention that Dr Lukman was compromised (which it is not), it is to be found in the documents and evidence set out at §318 of FRN's opening submissions {AA/1/128}, including Dr Lukman's statement to Mr Kupolokun that the GSPA had been approved by the Federal Executive Council, and therefore could not be taken away from P&ID.[336] This was a lie, as Dr Lukman must have known. It is difficult to see any reason for it other than that Dr Lukman was in P&ID's camp and fighting for its interests.

112. Finally, Dr Lukman was also a likely recipient of Dublin expense payments, in particular the cascade of cash that was withdrawn in December 2009. These payments are addressed separately below.

vi. Bribes paid to Mr Njiddah, Dr Ibrahim and Mrs Dikko

113. FRN has identified payments, which it contends were bribes, to three further specific individuals:

a. **Mr Njiddah** served on the Oil & Gas Reform Committee alongside Dr Lukman, and was an adviser to the President between 2009-15. He received a payment on 20 May 2011 under the reference *"Contract … P&ID"* {H9/460/6}. P&ID has offered no explanation for this payment.

b. **Dr Ibrahim** was a technical adviser at the MPR, who served alongside Mr Tijani. He received a series of large, round-figured cash payments into the account of one of his companies and his personal account in the period of the GSPA, matched by a number of cash withdrawals from P&ID-

[333] {Day8/78:3-6}; {Day8/80:15-25}.
[334] {Day8/90:20} to {Day8/91:11}.
[335] FRN has identified a number of further, suspect cash movements on Dr Lukman's bank statements at the relevant time, as set out at Bribery SoF §§100 {A5/2/36}.
[336] See the note of the meeting at {H9/251}.

related companies.[337]

c. A mysterious **Mrs Dikko** received a payment of £10,000 labelled *"PR – Gas"* on 7 October 2008 {H9/455}. P&ID has offered no evidence to explain this 'PR' transaction. If FRN is correct that 'PR' is a codeword for bribe, this was plainly a further bribe paid to an official or family member in connection with the GSPA.

vii. 'Dublin expense' bribes

114. In addition to the bribes paid to identified officials described above, a series of Dublin expense payments took place at critical periods in the negotiation of the GSPA. The precise official(s) to which these cash payments were made have been expunged from the record. This was a deliberate and universal practice, as can be seen from the composite list of Dublin expense payments, totalling more than US$10 million between 2008 and 2012, at {AA/1.3}. These payments are deliberately shrouded in mystery.

115. Lord Wolfson made an extraordinary submission in opening that, because Mr Quinn and Mr Cahill paid bribes so regularly (he referred to Dublin expenses being paid *"every couple of days"*), and because they are not referenced to any specific project(s) or payee(s), it is impossible for FRN to prove that any one of them was paid in connection with the GSPA.[338]

116. Yet P&ID's witnesses declined to specify any other purpose for which the payments were made. When Mr Cahill was asked whether it was his evidence that every Dublin expense was attributable to a project other than the GSPA he said *"Of course it isn't. It would be nonsense to say that"*.[339] On the contrary, he said that it was *"likely"* and *"more than possible"* that Dublin expense payments attributed to Mr Quinn during the period of the GSPA were paid for the purpose of that project.[340]

117. What, then, is the Court to do? The answer is that it must do the best it can with the evidence it has, and must not allow P&ID to benefit from a deliberate practice of recording cash bribes anonymously. The correct approach is to examine the Dublin expenses and their (limited) descriptions against a chronology of events relating to the GSPA in order to ascertain whether it is more likely than not that the bribe was connected to that project. P&ID has identified a number of these payments, which are set out in Annex 1. These are payments which are overwhelmingly likely to have been made in relation to the GSPA. Some of them are large and others are more modest. To take just two examples:

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337 Bribery SoF §§44-48 {A5/2/21}.
338 {Day2/154:23} to {Day2/155:14}.
339 {Day8/75:8-19}.
340 {Day8/78:2-7}; {Day8/80:20-24}.

a. A Dublin expense payment of NGN 100,000 (approx. US$600) labelled *"Papa – Dublin expenses"* was recorded 48 hours before the GSPA was signed, and a further Dublin expense for the same amount was recorded under the name *"Adam"* on the day it was signed.[341]

b. NGN 1 million of Dublin expenses was recorded on 3 September 2009,[342] being the same day as a meeting of the Joint Operating Committee, of which the members were Mr Quinn, Mr Hitchcock and Mr Kuchazi.[343] The withdrawal is labelled as *"Papa/Kuchazi – Dublin expenses"*.

118. Mr Cahill gave evidence on a particularly large Dublin expense transaction on 23 December 2009, which was one of many such transactions on that day (just two weeks before the GSPA was signed). One of P&ID's spreadsheets records a Dublin expense withdrawal of US$500,000 referred to as *"Jim - $500,000 – Dublin expenses"*.[344] Mr Cahill sought to explain this as a Christmas bonus for expat staff.[345] Yet (i) Mr Nolan's evidence is that expat staff were paid by electronic bank transfers, not in cash;[346] (ii) when Christmas bonuses were paid, they were documented and were indeed paid by bank transfer;[347] and (iii) there is not a single documentary record of any cash bonuses, let alone half a million dollars of them, being paid in December 2009.[348]

119. Mr Cahill also gave evidence that another of the payments recorded by P&ID, labelled 'Cash via Yinka', was a bonus paid by Mr Hitchcock to P&ID's staff. The problem is that Mr Hitchcock was, at the time, P&ID's only member of staff according to its own pleaded case. Mr Cahill was unable to offer any response save to suggest that P&ID's pleaded case was wrong.[349] Notably, there has been no attempt to amend it since then. Mr Cahill's explanation was demonstrably bogus.

viii. Section 73

120. P&ID contends that FRN acted unreasonably in not uncovering the bribery upon which it now relies during the arbitration, and is therefore barred from running its case under s.73 of the 1996 Act. This point is not properly pleaded or particularised. The only plea that P&ID has been able to identify is paragraph 8 of the Defence, which says that *"FRN was on notice of matters on which it now seeks to rely at the time of the arbitration, or could have discovered them"* {A1/2/5}. This is not a plea about bribery at all, and is

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341 Spreadsheet entitled "*P&ID expenditure 2009 & 2010*" at {H4/116}; spreadsheet entitled "*Dublin Exps 2009*" at {H1/423}.

342 Spreadsheet entitled "*2009 returns*" {H10/109}.

343 {H2/385}; {H2/389}.

344 Spreadsheet entitled "*2009 returns*" {H10/109}. The withdrawal is corroborated by an entry in another spreadsheet: {H3/163.1.2}, row 73.

345 {Day8/109:12} to {Day8/113:21}.

346 Nolan 4 §9.2 {D/25/3}.

347 See e.g. some 2005 Christmas bonuses documented in an email of 10 December 2005 at {H1/61.1} and {H1/61.2}, and the corresponding bank records at {M/0.03/2}.

348 As Mr Cahill accepted at {Day8/115:10-17} (*"there is not a single document in my possession at this time that shows that"*).

349 {Day7/91:6} to {Day7/93:6}.

bereft of any particulars.

121. The reason the point has been pleaded (at best) agnostically is because it is a bad one. The test is not whether FRN could have uncovered the bribes, it is whether it should have done so. Moreover, a favourable approach is to be adopted in a case of concealed fraud where *"the source of the evidence is contained in the opposite camp"*.[350] P&ID has come nowhere near meeting the test.

122. First, it is extraordinary and indeed improper to contend that FRN ought to have uncovered the bribes upon which it now relies in circumstances where P&ID's own witnesses perjured themselves before Sir Ross Cranston in an attempt to cover them up: §63 above.

123. Second, it is incredible to suggest that FRN should, through an international investigation of the kind conducted in 2019 onwards, have uncovered the facts underpinning its bribery case during the arbitration. Those facts were hidden from FRN through coded records, a network of offshore bank accounts and false evidence to this Court. The first and critical pre-GSPA bribe to Ms Taiga was discovered only after an application before the New York District Court, the output of which P&ID fought tooth and nail to withhold from the English courts.[351] The suggestion that FRN ought to have conducted a worldwide investigation of this kind, involving multiple organs of the state and foreign disclosure application, in the midst of a commercial arbitration about a claim for breach of contract, is fanciful. Indeed, the import of P&ID's case must be that Mr Shasore, Ms Adelore and the other lawyers involved in the arbitration acted unreasonably (i.e. negligently) in failing to persuade FRN to embark on such an investigation. Yet P&ID has made no such allegation, no doubt because putting it that way reveals its case on s.73 for the absurdity that it is.

124. Third, P&ID's submission as to what FRN could and should have done during the arbitration does not work on its own terms. P&ID contend that FRN should have requested the Nigerian bank statements of Ms Taiga and Mr Tijani *"during 2016"*.[352] Those bank statements, when obtained in late 2019, did not reveal any payments in the run-up to the GSPA: no such payments were discovered until FRN sought disclosure of US bank statements from the New York District Court. In any event, the significance of the bribes paid to Ms Taiga and Mr Tijani is that they would have provided a defence to liability.[353] FRN therefore needed to discover the payments before the Liability Award. P&ID's case is that FRN ought to have discovered the payments after that Award. Yet at that point the Tribunal would have been *functus* on issues of liability. FRN's only recourse would have been to apply to set aside the Liability

[350] *HJ Heinz v EFL* [2010] Lloyd's Rep 727 at [31]-[33] per Burton J {Z1/74/8}.

[351] Cranston Judgment §§111 {C/12/17}; 124 {C/12/19}; 190 {C/12/30}; 198 {C/12/32}. P&ID is therefore wrong to contend at §915 of its opening submissions that the bribes paid to Ms Taiga upon which FRN now relies could have been uncovered simply by recovering her bank statements in Nigeria {AA/2/253}.

[352] P&ID's opening submissions §918 {AA/2/254}.

[353] This appears to be common ground: §128-129 above.

Award, which would have required an extension of time under s.80(5) of the 1996 Act. But, as explained below, Sir Ross Cranston has already found that FRN acted reasonably in not uncovering the bribes when it did in the period after the Liability Award (including in 2016) for the purposes of granting an extension of time to challenge that Award.[354] If FRN's bribery challenge to the Liability Award is not barred by s.73, it is no answer to claim that FRN should have uncovered the bribery in advance of the Final Award, since the bribery was of relevance at the liability stage and, if the former Award falls, so too does the latter.[355] P&ID's (bad) contention that FRN should have commenced an investigation in 2016 different to that which it in fact undertook therefore does not work on the timeline in any event.

125. Fourth, there is a further knock-out point. Sir Ross Cranston has already found that FRN did not act unreasonably in uncovering the fraud when it did, and did not make a deliberate decision not to investigate fraud.[356] In particular he found that there was no trigger to put FRN on notice of the need to conduct a worldwide investigation of the kind that commenced in September 2019.[357] It is true that this finding was made in the context of deciding whether FRN had acted reasonably for the purpose of extending time under s.80(5) of the 1996 Act, but the test is materially identical. Unless, therefore, the Court considers that Sir Ross Cranston was wrong to make the finding that he did, there is no reason of logic to conclude that FRN ought reasonably to have uncovered the bribery during the course of the arbitration, when it has already been found that there was no reason why it should have done so after the arbitration.

126. P&ID takes the point, by analogy with the position under the Limitation Act, that it is legally entitled to deny the bribery but contend that, if it did happen, FRN should reasonably have uncovered it.[358] The point is not that P&ID is barred as a matter of law from taking this position. It is that P&ID's steadfast denials of bribery, perjury, withholding of information, and protracted disclosure battles in these enforcement proceedings provide a real-life guide as to what would have happened had FRN had reason to allege bribery during the arbitration. As Sir Ross Cranston found, P&ID has to date untruthfully held itself out as an entirely legitimate company, innocent of any wrongdoing.[359] In those circumstances it does not lie in P&ID's mouth, as a matter of fact, to contend that FRN failed to act reasonably in not uncovering that which it has enthusiastically concealed.

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354 Cranston Judgment §§229-239 {C/12/36}.

355 See *RBS v Highland* [2013] 1 CLC 596 at [144]-[145] {Z1/94.3/46}.

356 Cranston Judgment §§239 {C/12/37} ("*In summary, this does not seem to me a case where Nigeria knew, believed or had grounds to suspect so as to have taken further steps as regards the fraud now alleged … In other words, it seems to me that at this stage Nigeria can rightly claim that it could not with reasonable diligence have ascertained the fraud*"); 245 {C/12/38}; 275 {C/12/43}.

357 Cranston Judgment §§250 {C/12/39} ("*The concept of reasonable diligence only makes sense if there is something to put the claiming on notice of the need to investigate whether there has been a fraud … In this case the trigger for a thorough fraud inquiry was absent*"); 264 {C/12/41}.

358 P&ID's opening submissions §921; {Day2/134:1} to {Day2/135:25} citing *FII Group Litigation (No 2)* [2022] AC 1 at [199]-[202] {Z1/167/90}.

359 Cranston Judgment §245 {C/12/38}.

127. As to the six 'red flags' identified at §§907-912 of P&ID's opening submissions {AA/2/251}:

a. The first three are generic and high-level points relating to suspect features of the GSPA and the fact that corruption is widespread in Nigeria. They come nowhere near showing that FRN acted unreasonably in not embarking on an investigation of, and in not uncovering, bribery in connection with the GSPA, let alone the specific bribery it is now alleging.

b. The fourth to sixth red flags boil down to the same point: that FRN was advised to, and did, carry out an investigation into the circumstances of the GSPA in 2016. However, as Sir Ross Cranston already found, this investigation did not throw up anything that ought reasonably to have put FRN on notice of the bribery. On the contrary, at that stage the EFCC *"found that the GSPA had been approved at a senior level, with Ms Taiga on the legal side and Mr Tijani on the technical committee. In other words, the GSPA had the cloak of legitimacy"*. Sir Ross Cranston also found, correctly, that bribery and corruption was not at the forefront of the investigation, which was instead focused on the capacity of P&ID to perform the GSPA: Cranston Judgment at §§237-238 {C/12/37}. There is therefore nothing in this point.

ix. Effect of the bribery on the Awards

Bribery as a defence to the claim in the arbitration

128. Had FRN known that the GSPA was procured by bribes, that would have been a defence to P&ID's claim in the arbitration. The law is set out in the Nigerian law expert reports. In short, the position is that a Nigerian court would apply English law on this issue,[360] as summarised in Annexure V to Professor Ojukwu's report {F8/13/203}:

a. A contract is tainted by bribery where the agent or representative has put himself in a position where his interests and duty to the principal may conflict (Annexure V §6 {F8/13/205}).

b. A contract tainted by a bribe is voidable and may therefore be rescinded (Annexure V §10 {F8/13/205}).

c. Rescission on grounds of bribery may be invoked as a defence to a claim for breach of contract, including for the first time in the course of the proceedings (Annexure V §§15-16 {F8/13/207}).

d. The innocent principal in any event has the right to terminate the contract going forwards (Annexure V §17 {F8/13/207}).

e. Moreover, a contract is void if both the briber and the bribee know that the contract was induced

[360] Ojukwu 1 §10.12-10.13 {F4/1/64}.

by bribery, such that the bribee did not have authority to execute it (Annexure V §§18-22 {F8/13/207-208}).

129. Professor Ojukwu was not challenged on any of these points and they must therefore be taken as accepted.[361] Mr Milner confirmed on behalf of P&ID that it did not dispute any of the above principles as a matter of either English or Nigerian law.[362] It follows that, had the bribery by or on behalf of P&ID of one or more of the officials involved in the award and entry of the GSPA been known to FRN, it would have offered a complete defence to P&ID's claim for lost profits of around US$6 billion. Instead, the defence was concealed from FRN, including as a result of ongoing bribes paid during the arbitration. That ongoing deception was offensive to English public policy for the reasons in the following paragraphs.

Bribery as a ground for setting aside the Awards: Honeywell and National Iranian Oil

130. P&ID, seeing the writing on the wall, boldly submitted in opening that *"while the allegations of bribery in relation to the GSPA will take up many days of this trial, they actually have very limited (if any) role in the overall framework"*.[363] The Court is therefore being invited to ignore weeks of excruciating evidence that it has heard on P&ID's corrupt activities. Such a submission stands in contrast with the position taken by VR, which is suing Mr Cahill and Lismore on the basis that, had it known about the payments to officials, it would not have invested in the litigation because the fact of the payments do provide a defence to enforcement.[364] Once again VR is riding two dishonourable horses.

131. P&ID's legal point is in any event a bad one. It rests on the assertion that there is a blanket principle that the fact that a contract has been procured by bribery, of whatever kind and in whatever circumstances, will never provide a public policy reason for setting aside an arbitral award (**"the Blanket Principle"**). On its face that is a surprising proposition: the question of whether any particular award has been procured in a way which breaches public policy, or itself breaches public policy, is one that must be judged on its own facts. There is no such Blanket Principle for the reasons given below.

132. But the first point is that even if there were such a Blanket Principle, it would not apply here. This case concerns a defence that has been suppressed by means of a campaign of bribery throughout the

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361 Indeed, Professor Bamodu confirmed that, as a matter of Nigerian law, an officer in the public service is expected to carry out his duties honestly and impartially; and he cannot do that if affected by considerations of benefit to himself or another person, and if a contract was entered into following one or more officials dealing with it having been in a conflict of interest, it would be voidable: {Day20/176:13-24}, {Day21/25:25} to {Day21/26:19}, {Day20/176:13-24} and {Day21/25:25} to {Day21/26:19}.

362 {Day21/14:15} to {Day21/15:1}; {Day21/20:13-19}.

363 P&ID's opening submissions §552 {AA/2/163}.

364 See PHL's Request for Arbitration at e.g. §6.9, alleging that VR would not have provided funding had it known about the unlawful payments because they represent an *"existential risk to the company and the value of its only underlying assets"* {Q1/28/19}.

arbitration, and by the perjured evidence of Mr Quinn about the circumstances in which the GSPA came into existence. The fact that the defence was one of bribery is, in that sense, neither here nor there. The position would be the same if the GSPA had been procured through duress, for example by pointing a gun at the head of Ms Taiga or Dr Lukman when they signed the contract, or by making fraudulent misrepresentations, and that fact was successfully hidden until the conclusion of the arbitration, for example through a campaign of further intimidation or of bribery which prevented those in the know from giving evidence to the Tribunal or informing FRN about the true position. The breach of public policy in such a case is that the culpable party (i.e. P&ID) has successfully concealed a defence from the innocent party and the Tribunal.

133. In this case P&ID dishonestly suppressed the defence through a campaign of bribes paid and promised to Ms Taiga and Mr Tijani throughout the course of the arbitration, and indeed continuing during these enforcement proceedings, as part of ensuring they remained onside and did not tell FRN about the fact of the bribes paid to win the GSPA.[365] In this respect Mr Cahill accepted that, had either Ms Taiga or Mr Tijani been aware of such bribes, the only honest thing to do would have been to report them to FRN, and therefore the Tribunal.[366] That was also the positive duty of both the briber and bribee under Nigerian law.[367] A reason they did not do so is because they were, and continued to be, in P&ID's pocket. P&ID thus successfully, through bribery, suppressed highly relevant evidence and a complete defence to the claim from the arbitration.

134. The *Honeywell* and *National Iranian Oil* cases say nothing about such a scenario for the simple reason that, in both cases, the alleged bribery defence was <u>not</u> suppressed by the claimant during the arbitration: in *National Iranian Oil* the bribes were known about, alleged, and rejected by the Tribunal;[368] in *Honeywell* the alleged bribes were known about but the defendant chose not to participate in the arbitration.[369] In both cases, for good measure, the English court also held that the allegation of bribery was not made out on the facts.[370]

135. <u>Second</u>, the Blanket Principle in any event does not exist. P&ID relies on the following two passages from *Honeywell* and *National Iranian Oil* (both of which are *obiter* in light of the fact that no bribery was

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[365] The bribes paid to Ms Taiga following the GSPA and up to the conclusion of the arbitration are set out at Bribery SoF §§31(9)-(27) {A5/2/14}. They total some US$55,000 prior to the commencement of the EFCC investigation in September 2019, and some EUR 65,000 after then. The bribes paid to Mr Tijani during the course of the arbitration are set out at Bribery SoF §41 {A5/2/19}. They total around US$100,000. In addition, during the arbitration Mr Quinn and Mr Cahill confirmed Ms Taiga's expectations that she would receive a share of the proceeds.

[366] {Day8/18:6-24}, agreeing that "*If she had been bribed … of course she was under a duty to come clean and tell FRN*".

[367] Nigerian lawyers' joint memorandum at {F4/3/37} and {Day20/206:12} to {Day20/207:17}.

[368] *National Iranian Oil* [32]-[38] {Z1/118/8}.

[369] *Honeywell* at [89] {Z1/101/16}. It is in any event doubtful that the bribery would have provided a defence in the *Honeywell* case, which was a claim for works already done under a contract which had not been avoided by the time they were completed: *Honeywell* at [51] {Z1/101/10}.

[370] *Honeywell* at [88] {Z1/101/16}; *National Iranian Oil* [49(4)] {Z1/118/12}.

proven):[371]

a. In *Honeywell* Ramsey J said *"… contracts which have been procured by bribes are not unenforceable. It follows that I do not consider that Meydan has real prospects of successfully contending that recognition or enforcement of the Award should be refused on the basis that it would be contrary to public policy, if contrary to my previous conclusion, the Contract had been procured by a bribe"* ([185] {Z1/101/26}).

b. In *National Iranian Oil* Burton J said *"There is no English public policy requiring a court to refuse to enforce a contract procured by bribery"* ([49(2)] {Z1/118/11}).

136. These two *obiter* statements are a slender foundation for a principle that allegations of bribery can never lead to the Court setting aside an award on grounds of public policy. The only basis on which such a Blanket Principle could be upheld is that the public policy of finality, in all cases and regardless of the nature and circumstances of the bribery, trumps English public policy concerns about corrupt and illegal behaviour. Unsurprisingly, neither case says any such thing. The question of whether any particular fact pattern offends English public policy to such an extent that the policy in favour of finality is overridden depends on the facts of each individual case. In the present case there are three particularly pertinent facts:

a. First, the bribery took place on an industrial scale; was targeted at officials intimately involved in the award of the GSPA; and continued after the contract was awarded and (in the case of Ms Taiga and Mr Tijani) during the arbitration.

b. Secondly, there is a direct link between the bribes paid by P&ID and its claim in the arbitration. FRN's liability to pay P&ID lost profits of US$6 billion arose from the fact that it failed to supply gas because a suitable source was never found. P&ID had represented in the recitals to the GSPA that it had already done the *"necessary studies"* to identify suitable sources of gas,[372] with the individuals responsible for verifying this, Ms Taiga and Mr Tijani, having been bribed.[373]

c. This is not, therefore, a case of a purely 'incidental' bribe dredged up years after the event as a last-ditch attempt to avoid an award. It is a case about bribery that goes to the core of the very liability which P&ID is seeking to enforce.

d. Thirdly, P&ID continued to bribe Ms Taiga and Mr Tijani during the course of the arbitration and all of them, in breach of their duties, failed to report the bribery.

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[371] P&ID seeks to suggest that the Blanket Principle has been endorsed by the Court of Appeal in *RBRG*: P&ID's opening submissions §553.4 {AA/2/164}. The passage cited says no such thing.

[372] GSPA, recital (i) {H3/140/4}.

[373] The falsity of the representation is addressed at §§146-151 below.

137. Third, there is a further, complete, answer to P&ID's reliance on *Honeywell* and *National Iranian Oil*. On the particular facts of this case Mr Quinn gave deliberately dishonest evidence in the arbitration itself by choosing to serve a witness statement *"explain[ing] how the GSPA came about"* without mentioning the bribes. He no doubt did this because he considered it important to P&ID's case to give the impression, contrary to reality, that this was a properly negotiated contract which had been preceded by due diligence. That is why he set out in some detail the background to the award of the contract and name-checked the key individuals including Ms Taiga and Mr Tijani. FRN has set out the case law on perjury and misleading evidence at §331 of its opening submissions and does not repeat it here {AA/1/134}. In short:

a. By choosing to give a statement about how the GSPA *"came about"*, Mr Quinn was giving positively false evidence: he was falsely purporting to give a full and frank account of how the GSPA came about, but he missed out the bribery part of the story and thereby created a materially misleading impression;[374] and/or

b. There was also a clear implied false representation, made by Mr Quinn's representation that his witness statement explained how the GSPA *"came about"* and purporting to set out the history of the contract,[375] that there had been nothing illegitimate about the circumstances in which it was awarded;[376] and/or

c. In any event, the misleading omission of the bribery from Mr Quinn's story of "*how the GSPA came about"* is more than capable of justifying the set-aside of an award, as can be seen from the *Celtic Biotechnology* judgment. In that case the respondent, Knowles, had presented evidence to the arbitrator without drawing its attention to a key piece of correspondence with a third party which discredited that evidence. At [98][377] Jefford J found that the failure to identify the correspondence in evidence was deliberate, and therefore fraudulent for the purpose of s.68 because it created a *"wholly misleading impression"*. That is what Mr Quinn did in this case. See similarly [105] where Jefford

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374 *Spencer Bower and Handley: Actionable Misrepresentation* (5th Ed, 2014) at §4.18 {Z2/4/10-11}, and the authorities cited at §331 of FRN's opening submissions {AA/1/134}.

375 Including namechecking the individuals involved in reviewing the GSPA, including Grace Taiga and Mr Tijani, by reference to their positions in government (whilst concealing their divided loyalty), describing in detail P&ID's interactions with those individuals (whilst omitting corrupt meetings and pre-existing relationships) and advancing a theory as to why FRN was interested in contracting with P&ID (without mentioning corrupt inducements).

376 The essential question is whether in all the circumstances it has been impliedly represented by the defendant that there exists some state of facts different from the truth. In evaluating the effect of what was said, a helpful test is whether a reasonable representee would naturally assume that the true state of facts did not exist and that, had it existed, he would in all the circumstances necessarily have been informed of it: *Geest plc v. Fyffes plc* [1999] 1 All ER (Comm) 672, 683 per Colman J {Z1/28.1/12}. In *Bennett Gould & Partners Ltd v O'Sullivan* [2018] EWHC 2450 (QB) at [91], a statement of the profits of a business to an investor was held to impliedly represent that those profits were honestly earned {Z1/135.2/30}. In *UBS AG v Kommunale Wasserwerke* [2014] EWHC 3615 (Comm) at [747]-[750], the Court found an implied representation was made to the effect that the transaction opportunity which it was presenting was not known to be tainted {Z1/103.3/207-208}.

377 {Z1/125/12}.

J found that the award was obtained by fraud *"in that matters that were completely inconsistent with key issues in Knowles' case were deliberately withheld from the arbitrator"*.[378]

138. This perjury and/or misleading of the Tribunal is, of itself, sufficient to set aside the Awards. Had the Tribunal and P&ID known of the bribery during the arbitration, the outcome of the arbitration would have been different, both because it would have provided a defence to P&ID by rescinding or terminating the GSPA, and because it would have fundamentally undermined P&IDs credibility. Both Mr Cahill and Mr Andrew admitted that, had the GSPA been procured by bribes, it would have been dishonest for Mr Quinn to have served a statement *"explain[ing] how the GSPA came about"* without mentioning that.[379]

D. PERJURY

i. The background to Mr Quinn's evidence: award and (non-)performance of the GSPA

139. P&ID was appointed to act as a project manager on behalf of Tita Kuru to design a gas processing plant (**"Project Alpha"**). Project Alpha was to be situated in Lagos. It included a polypropylene plant and had only one production stream. Project Alpha ultimately failed: no gas processing plant was constructed.[380]

140. There is no dispute that the engineering designs produced, and the licences acquired, for Project Alpha belonged to Tita Kuru.[381] Mr Cahill had a go at suggesting in his oral evidence that Tita Kuru had granted its permission for P&ID to use the designs and licences (possibly only to *"test the water"*) but accepted that there was not a single document to show this.[382] It is not credible that Tita Kuru would have permitted P&ID to use US$40 million of design work and licences without any written record or terms of agreement.[383] The truth is that P&ID used the work behind Tita Kuru's back, as recorded in P&ID's internal memo of 21 August 2009: *"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 … however none of the above is known or available to Tita Kuru except the letter to the President"* {H2/344}.

141. The experts agree that, from a technical perspective, the Project Alpha work was unquestionably

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[378] {Z1/125/13}.

[379] Mr Andrew at {Day5/78:20} to {Day5/79:6}; Mr Cahill at {Day9/155:15-22}.

[380] Lord Wolfson incorrectly put to Mr Bunten that the project failed because FRN failed to supply it with gas {Day18/55:6-8}. Project Alpha did not involve the Nigerian government. It was a private contract between Tita Kuru and P&ID. FRN was under no obligation to supply the project with gas. The position was more accurately stated by P&ID's finance expert, Mr Dimitroff, at {Day19/125:19-25}.

[381] Mr Cahill accepted this at {Day9/4:4-13}.

[382] {Day9/9:23} to {Day9/10:2}.

[383] Mr Cahill accepted that one would expect such a permission to be recorded in writing: {Day9/5:2}.

irrelevant by some point between February and April 2009.[384] But the contemporaneous documents make clear that, in addition to being unusable because they did not belong to P&ID, the Project Alpha drawings were recognised within P&ID to be irrelevant to the GSPA because of technical differences between the two projects by, at the latest December 2008. Thus:

a. An internal timeline produced by P&ID in August 2009 said that, as of December 2008, it had been *"clear"* that the Project Alpha engineering work and licences would not be of any use to the GSPA because the projects were *"totally dissimilar"*.[385]

b. In an internal memo produced by P&ID in July 2009 Mr Quinn stated that *"None of the engineering or licensing for Project Alpha will be used in the Calabar Project as the design is completely different"*.[386]

c. A memo sent by P&ID to Tita Kuru's representative on 4 August 2009 states that *"Project Alpha and Calabar Project are separate and unrelated Projects"* and lists a number of *"obvious"* reasons why this was so.[387]

142. Despite this, P&ID made representations to FRN on eight separate occasions between 2008 and 2010 repeating two of its three big lies which had been intended to give the project a veneer of legitimacy:[388] (1) that the majority of the preparatory work for the GSPA had been done (including engineering designs, licences and land); and (2) that all of the finance was in place. Seven of these representations were made after December 2008, when the Project Alpha work had been undoubtedly identified by P&ID as being unusable for the GSPA. The Court is asked to read each of them.[389] They give the lie to P&ID's argument that the falsehoods in Mr Quinn's witness statement were an honest slip. They were lies that had been told repeatedly, dishonestly and consciously before, in and after the GSPA.

143. The lie about the engineering designs was reinforced by two further deceptions:

a. First, P&ID doctored the screenshot of the Project Alpha designs reproduced in a PowerPoint presentation given to the MPR on 1 April 2009. This involved deleting the name of the licensor and replacing it with the name of a 'friendly' company, Kran Engineering, owned by one of Mr Cahill's friends (Mr Vlok).[390] The intention must have been to avoid enquiries being made of the actual licensor, Lummus, as to who owned the licences and designs. Mr Cahill was unable to provide any

[384] Engineering experts' joint memorandum §43 {F1/3/6}.

[385] {H2/349/8}. The cover email dated 26 August 2009 is at {H2/348}.

[386] {H2/245/3}.

[387] {H2/261}.

[388] See §56 above for the three lies. The third big lie was that P&ID had identified suitable gas sources through the necessary studies. This is addressed below.

[389] On 7 August 2008 {H1/326}, 25 February 2009 {H1/457}, 11 June 2009 {H2/122}, 11 January 2010 (in the GSPA recitals) {H3/140/4}, April 2010 {H3/309}, 14 May 2010 {H3/330}, 20 June 2010 {H3/378} and 21 July 2010 {H3/414}.

[390] The presentation is at {H1/501/5}. For a blown-up version of the two nameplates, see {F1/1/52-53}.

explanation for the doctoring.[391]

b. Second, P&ID wrote a letter on 11 June 2009 stating that its engineering designs *"already provided … for two separate production streams"*.[392] The Project Alpha drawings only provided for one production stream.[393] This was a conscious and calculated lie designed to mask the fact that P&ID had no designs for the GSPA at all.

144. The two big lies about preparatory work and finance were deliberately and consciously baked into the GSPA to give the project a cloak of legitimacy. Recital (h) represented that *"P&ID possesses the requisite finance, technology and competence for the fast track development of the project"* {H3/140/4}.[394] As explained above, neither Mr Tijani nor Ms Taiga asked to see evidence of this.

145. The true position, as the parties agree, is that P&ID had no finance, had no engineering designs, and had no licences.[395] When asked to compare that position to what P&ID had represented it to be, Mr Newenham, an experienced engineer, said he had *"not seen a situation like this"* before.[396]

146. A third big lie was also baked into the GSPA. In recital (i) P&ID represented that it had done *"all necessary studies, including the identification of suitable associated gas fields"*. As Mr Cahill accepted, this was a fundamental premise of the GSPA. Without a guaranteed source of gas, he said, the project was a non-starter.[397] Even more importantly, the GSPA imposed on FRN an unqualified obligation to supply gas for the 20-year term of the contract (on what Mr Hitchcock described as a *"government lock-in basis in respect of gas supply"* {H2/362}). If there was no readily available suitable gas source, that would expose FRN to a liability for 20 years of lost profits, as in fact happened. The purpose of the recital was therefore to give the GSPA an outward semblance of legitimacy as a properly thought-through and legitimately awarded project.

147. The *"suitable associated gas fields"* identified by P&ID were OML 123, which was connected to the Adanga pipeline, and OML 67, which would need to be connected via an additional pipeline to be constructed as part of Phase II of the project.[398] Yet P&ID had not done the necessary studies to demonstrate that these, or any other fields, were suitable sources of gas. The only study carried out

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391 {Day9/27:18} (*"I can't comment on that. I have never noticed that or seen that before"*).

392 {H2/122/1}.

393 As P&ID's own expert agrees. See e.g. Newenham 1 §95 {F1/2/31}; and as Mr Cahill eventually agreed {Day9/50:3-4}.

394 Mr Hitchcock appears to have drafted the wording of this recital: §71.d above.

395 Engineering experts' joint memorandum {F1/3} §§37 (no engineering design); 39 (P&ID had no more than a collection of part-developed concepts); 42 (P&ID had not reached an advanced stage of preparatory work); 47 (no evidence of any detailed engineering work); 49 (no complete engineering package). The agreement that there was no finance in place is set out at P&ID's opening submissions §945 {AA/2/264} (*"It was not the case that all the project finance was 'in place'"*).

396 {Day18/140:4}.

397 {Day7/100:18-21}.

398 See e.g. {Day9/59:12-16}.

was the AB Jones report, which was obtained in September 2009, and meetings with the operator of each field, Addax (in respect of OML 123) and ExxonMobil (in respect of OML 67) in October 2009.[399] Both individually and in combination these revealed serious problems:

a. The AB Jones report showed that the output of OML 123 would fall to *de minimis* levels just several years into the start of the 20-year project.[400]

b. Moreover, Addax informed P&ID that the AB Jones figures were inaccurate in that, even for the early years of the project, only 100 units per day would be available (whereas the GSPA required 150 units) {H2/478/1}.[401]

c. ExxonMobil informed P&ID that no associated gas was available from OML 67 because it had already been committed to another project {H2/478/2}.[402]

d. As a result, P&ID concluded that *"Alternative sources of gas … need to be identified and their suitability and availability confirmed"*,[403] but no further studies were carried out and no alternative source of gas was ever found.

148. Despite this, P&ID represented in recital (i) to the contract that it had done the necessary studies to identify suitable sources of gas. That was false, as P&ID's expert Mr Newenham accepted.[404] Not only had P&ID not identified any suitable sources of gas, but the only study it had procured demonstrated that the two identified targets, OML 123 and OML 67, were <u>not</u> suitable. Neither Ms Taiga nor Mr Tijani (both recipients of bribes) probed them on this and instead were content to sign off on a contract which gave the outward impression that (i) suitable gas sources had already been identified, and (ii) all that remained for FRN to do was to complete the logistics of delivering the gas from those sources.[405] As explained above, this was one of P&ID's motivations for resorting to bribery, should it be necessary to prove one.

149. Mr Cahill said that these problems could have been overcome because there was *"only a small portion of OML 123 that was actually in production"*, and public filings by Addax showed that there were further reserves in non-producing fields which could be used if P&ID was prepared to *"wait for them to come on-*

[399] The AB Jones report is at {H2/448}. The meeting notes are at {H2/478}.

[400] Mr Cahill accepted that this was *"problematic for implementation within the specified period"* {Day9/63:22-23}. He also accepted that the AB Jones report showed that OML 123 was a *"non runner"* {Day9/69:22} to {Day9/70:2}. See similarly {Day9/104:12-16}, accepting that OML was *"not suitable for immediate purposes"*.

[401] Mr Cahill accepted that *"that was a problem"* at {Day9/60:13-16}.

[402] Mr Cahill accepted that *"that would be a problem"* if true at {Day9/71:7-15}.

[403] {H2/478/3}.

[404] {Day18/174:16-19} *("Q: … it is fair to say, isn't it, when one looks at this statement that it is plainly false … A: I agree, yes")*.

[405] As Mr Cahill accepted at {Day9/80:11-13} and {Day9/83:5-7}.

stream".[406] This does not stack up. Even assuming that there were further untapped sources of gas in OML 123, it is wholly unclear, and must have been wholly unclear to P&ID at the time, when if ever they might come online, how they would be accessed, who would pay for the infrastructure to access them, and how Addax might be incentivised to install that infrastructure or allow it to be installed on their field. Indeed, the public filing that Mr Cahill referred to lists the *"Contingent Gas Resources"* in OML 123, which are *"not currently considered to be commercially recoverable"* {H2/425/1}. Moreover, the premise of the GSPA was that the facilities would process waste gas which was already being flared as a by-product of existing oil production. What Mr Cahill seemed to be proposing was the extraction of new gas out of the ground. That would be a different project, and certainly not one that could be achieved within the 18-month timetable envisaged by the GSPA.[407] Nor would it be a project with any environmental benefit. But in any event, the issue for this Court is not whether there was in fact a suitable source of gas,[408] but whether the GSPA was a legitimately-obtained contract or the product of corruption. The fact that P&ID slipped a lie about the availability of a suitable gas source past Mr Tijani and Ms Taiga (with or without their knowledge – it matters not which) is further compelling evidence, should it be needed, that they were both bribed.

150. P&ID was therefore proceeding on a wing and a prayer. Put at its lowest, it knew that there was a real risk that the GSPA never could or would be performed. This explains Mr Cahill's decision to draw the shutters down on any expenditure on the project just 10 days after the GSPA was signed.[409] The relevant documents are set out at FRN's opening submissions §110 {AA/1/55} and are not repeated here. Mr Cahill said that he took the decision not to spend any funds *"very deliberately and very consciously and very prudently"* because P&ID was waiting on information from FRN as to the source of gas for the project.[410] He said, for example, that he did not want to spent millions of dollars *"in readying the site which might not be even used"*.[411] The question is: why did Mr Cahill, just 10 days into the contract, think that the site might never be used? The truth is that he knew that there was a very real possibility, indeed a likelihood, that the GSPA never could or would come to fruition. Mr Murray spelled this out clearly in his evidence. He said that, at the time that Mr Cahill decided not to pay the fee to acquire the land,[412] *"the GSPA had fallen through"* and that there was a *"strong concern"* that the MPR would not proceed.[413]

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406 {Day9/61:11} to {Day9/63:9}; {Day9/93:10-22}. Mr Cahill appears to have been referring to the Canadian filing document at {H2/425}.

407 As Mr Cahill accepted: "*Q: If it were right that additional gas could be sourced from 123, that was not gas that was going to be available at any stage early on in this project … A: You are quite right*" {Day9/95:12-18}. Mr Newenham agreed at {Day18/172:21-22}.

408 FRN does not contend that the unavailability of gas, or the misrepresentation in recital (i) to the GSPA, is *per se* a ground for setting aside the Awards.

409 Mr Murray said that no more than *"minimal money"* was spent on the project: {Day12/70:8}.

410 {Day9/106:4-25}.

411 {Day9/110:7-9}.

412 See Mr Hitchcock's request for funds for the land dated 19 February 2010 at {H3/271}.

413 {Day12/74:1-10}; {Day12/78:11-12}. See also {Day12/75:11-16}.

But this was just one month after the GSPA was signed, during which time there had been no material developments. The only conceivable reason that P&ID would have perceived the contract as having *"fallen through"* is that its performance had been a non-starter from the outset, save in that it imposed a valuable contractual obligation on the part of the Government.

151. It follows from the above that performance of the GSPA was, from P&ID's perspective, no more than a shot in the dark. The contract and surrounding correspondence contained three big lies (as to finance, preparatory work and available gas) to give the project an outward appearance of legitimacy, but these were not probed or verified because those charged with due diligence, Ms Taiga and Mr Tijani, had been bribed: this was one of P&ID's main motivations for bribing them. Mr Quinn's evidence to the Tribunal must be read against that background.

ii. The falsities in Mr Quinn's evidence

152. Quinn 1 dishonestly perpetuated, in particular, two of P&ID's three big lies: that P&ID had done the vast majority of preparatory work for the GSPA, including 90% of the engineering designs and acquisition of licences and land;[414] and that it had already obtained finance, when in fact it had done and obtained nothing. P&ID knew that it could tell these lies because, as explained below, it had access to FRN's privileged documents which revealed FRN was unaware that these were lies.

153. The main way in which Mr Quinn's statement achieved this deception was through a sleight of hand. It gave the deliberate impression that the work done by Tita Kuru on Project Alpha was referable and therefore relevant to the GSPA, when in fact it was unserviceable and irrelevant. This was the falsehood at the heart of Quinn 1.

154. The false passages of Mr Quinn's evidence are identified in FRN's opening submissions at §349 {AA/1/143} and are not reproduced here.[415] P&ID seeks to divide those passages into two separate silos. It says that §§47-49 of Quinn 1 were true because they were describing P&ID's progress on another project, Project Alpha, between 2006 and 2008. By contrast it accepts that §110 of Mr Quinn's evidence, which relates to P&ID's state of preparedness in May 2010, was false, but says that it was honestly and immaterially so. Mr Andrew accepted in cross-examination that §110 was *"certainly fundamentally wrong"*.[416]

155. It is wrong to splice up Mr Quinn's evidence in this way. Both parts of his statement were intended to

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[414] FRN's submissions on the perjury about land allocation are already set out at §§370-373 of its opening submissions {AA/1/150}. In the interests of space, they are not repeated here.

[415] They are pleaded at SoC §61 {A1/1/36}. This includes two subsidiary paragraphs which reproduce the same lies: Quinn 1 §§4 and §70.

[416] {Day5/60:9}.

describe P&ID's state of preparedness for the GSPA. §110, which purported to describe P&ID's progress as of May 2010, was the dénouement of the paragraphs that came before it about P&ID's work on *"the Project"* in 2006-08. As P&ID accepts, this is how the Tribunal interpreted Mr Quinn's evidence.[417] It is also how Mr Cahill interpreted it, agreeing that §110 of Quinn 1 was *"the punchline"* of the material that comes before.[418] It is also how Mr Andrew, the drafter of the statement, said that he intended it to be read: he allegedly believed until recently that the earlier passages on progress between 2006-08 were describing progress on work that was referable to the GSPA. He claimed that he, like FRN and the Tribunal, had the wool pulled over his eyes.[419]

156. It is unsurprising that the Tribunal fell for the sleight of hand. Mr Quinn did not mention the existence of a separate project named Project Alpha anywhere in his evidence. On the contrary, he referred to progress made on *"the Project"* (singular) at §41, which is the subheading to that section of his statement {G/9/12}. This tied in with §11 of P&ID's Statement of Claim, which defined *"the Project"* as the *"Definitive Agreement … for P&ID to construct and operate a gas processing facility in the Calabar region"*, i.e. the GSPA {G/3/3}.[420]

157. Moreover it would make no sense for Mr Quinn to devote an entire section of his witness statement (i.e. §§41-49) to a description of work done on an unnamed project that was, as is common ground and as Mr Quinn and Mr Cahill knew at the time,[421] of no relevance to the GSPA. No reasonable reader would interpret the early section of his statement in that way. As Mr Andrew accepted, the *"whole purpose"* of Mr Quinn's evidence was to describe work that was *"entirely referable to the GSPA"*. The Tribunal therefore read and understood the statement *"exactly as Mr Quinn presented it, as [he (Mr Andrew)] presented it, and as BRG presented it"*.[422]

158. Mr Andrew sought to argue that the irrelevance of the Project Alpha drawings was a question of *"fine technical detail"* which did not become apparent until the scales fell from his and Mr Cahill's eyes only during the course of the Tita Kuru arbitration.[423] This point unravelled when Mr Andrew was shown (i) contemporaneous documents showing that P&ID had not believed the Project Alpha drawings to be applicable to the GSPA since December 2008: §141 above;[424] and (ii) Mr Cahill's own sworn

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417 P&ID's opening submissions §940, saying *"It is right to note that the Tribunal does appear to have misunderstood Mr Quinn's evidence as referring to work done on the Calabar Project, not Project Alpha"*; and see Mr Andrew's evidence at {Day5/49:2} to {Day5/54:22}.

418 {Day9/174:5-11}.

419 {Day5/42:1-2} (*"I was not told that anything in the letter was incorrect"*); {Day5/69:11-18}; {Day5/33:17} to {Day5/42:19}.

420 P&ID's Statement of Claim §5 defines the *"Definitive Agreement"* as the GSPA {G/3/2}.

421 Engineering experts' joint memorandum §§38 and 44 {F1/3/6}. Mr Cahill eventually accepted this in cross-examination: he said that they were of *"minimal use"* save in *"trivial"* respects: {Day9/156:10-19}.

422 As accepted by Mr Andrew: {Day5/53:10-18}.

423 {Day3/65:5-7}.

424 See e.g. {Day5/63:3-21}.

evidence in the Tita Kuru arbitration that he had known this since at least July 2010[425] (with Mr Cahill confirming in cross-examination that he had known of the inapplicability of the Project Alpha drawings since at least July 2009).[426] Having been shown these materials Mr Andrew said that he *"can't explain"* why Mr Cahill and Mr Quinn had told him the opposite at the time of drafting Quinn 1,[427] and accepted that had he known the true position it would *"absolutely"* have affected his drafting of Quinn 1.[428] He said *"I accept that what they [Mr Quinn and Mr Cahill] told me in 2013 and 2014 was not correct"*.[429] Likewise, the contention that all necessary finances were in place was unambiguously false.[430] It is thus plain that the evidence of Mr Quinn was intentional and dishonest, as was known to both Messrs Quinn and Cahill.[431]

159. P&ID's next argument is that Mr Quinn's citation of the 14 May 2010 letter at §110, stating that all of the finance was already in place and that 90% of the engineering designs had been completed, was an honest mistake.[432] It was not. This passage of Mr Quinn's evidence dishonestly repeated almost *verbatim* the lies recycled over and again, on eight separate occasions, to FRN between 2008 and 2010. The references are set out at §142 above. Mr Cahill accepted that these representations in 2008-10 were *"carefully considered statements"* rather than a slip of the hand.[433] The citation of the letter was also a reinforcement of what P&ID had said in its Statement of Claim, which referred to it as an *"update"* on *"what had been achieved"*.[434] Moreover, Mr Andrew referred the Tribunal to the letter at the quantum hearing as a *"useful letter on the subject of what progress had been made as of May 2010 in the building of the GPFs"*.[435] In cross-examination Mr Andrew said that this had been a carefully considered and relevant submission.[436] Rightly so, because this was an important point for P&ID. The progress that it had allegedly made on the GSPA transformed it from an unknown company that had done nothing to perform, to a credible one that had done almost everything. P&ID's own expert, Mr Newenham, as an experienced engineer who has worked on many gas projects and is familiar with the technical details

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425 Cahill 2 in the Tita Kuru arbitration §6.3, stating that *"by the time of the execution of the MoA [30 July 2010] it was clear to us that the Project Alpha work product was no longer relevant"* {K/15/11}. See Mr Andrew {Day5/69:8-10} *"I accept that Mr Cahill must have known of it since July 2010 because the documents indicated that this was a conclusion that had been reached even before that"*.

426 {Day9/21:16-21}.

427 {Day5/72:5}.

428 {Day5/60:1-3}.

429 {Day5/74:14-15}. As regards the 14 May 2010 letter see {Day5/41:24} to {Day5/42:1} (*"They [Quinn and Cahill] had reviewed the witness statement and they knew that I was going to refer to the letter and I was not told that anything in the letter was incorrect"*).

430 {Day5/64:18-25}.

431 These were fundamental falsities: see, for example, {Day5/57:24} to {Day5/58:7}, in circumstances where Mr Quinn was very familiar with the project (see {Day5/39:2-8}, and both Mr Quinn and Mr Cahill knew the true position from (at latest) 2009 onwards: {Day5/63:3} to {Day5/64:3}, {Day5/69:19-25} and {Day5/72:5-7}, nor could they be innocently mistaken as to whether or not finance was in fact in place: see, for example, {Day5/65:22} to {Day5/66:6}.

432 P&ID's opening submissions §949 {AA/2/266}.

433 {Day9/118:17-19}.

434 P&ID Statement of Claim §61 {G/3/13}.

435 Liability transcript pp.60-61, lines 13-25 and 1-3 {G/28/15-16}.

436 {Day5/77:12-23}; {Day5/45:8-13}.

of this case, said that it was a *"very reasonable assumption"* that the representations at §110 of Mr Quinn's statement were knowingly false to Mr Quinn and Mr Cahill, and that in his view *"no honest person and no honest contractor in P&ID's position could have made any one of those statements at the time they were made"*.[437] P&ID's case that the falsehoods at §110 were honest mistakes cannot survive the views of its own expert, or the overwhelming evidence to the contrary.

160. Mr Cahill sought to rescue Mr Quinn's statement in a different way, which bears no resemblance to how P&ID has presented its case in its pleadings or submissions. He said that a substantial portion of the engineering work had been done, in the sense that P&ID might have been able to lease an offshore facility from a third party, such as Aker,[438] or purchase the designs from a company such as AET, meaning that it would have been *"insane"* for P&ID to produce designs itself.[439] He said *"It's like buying a car and saying you didn't do the design work on that"*.[440] This is contrary to P&ID's opening submissions, which accept that the statement referring to P&ID's progress on the engineering designs in §110 of Mr Quinn's statement was false. It is also absurd to compare the purchase of a car to the design and construction of a half-billion-dollar gas stripping plant. The fact that a person might be intending to go out to the market to buy a car does not mean they can truthfully represent that they have carried out 90% of the engineering designs for that car. On Mr Cahill's view of the world, anybody could say that they have almost completed the designs for a major gas processing facility because they could, in principle and if they obtained the necessary finance, lease the facility from somebody else or purchase some designs from a third party. In any event, the fundamental problem with Mr Cahill's argument is that Mr Quinn said that P&ID had done the design work and did have all the necessary project finances in place. He did not say that P&ID had done no design work and obtained no finance but intended in the future to secure finance and lease a facility or procure the designs from someone else, no doubt because this would have shown that there was nothing of substance behind P&ID. This point is therefore hopeless.

iii. Materiality of the perjury to the Awards

161. The test for whether a fraud or breach of public policy under s.68(2)(g) of the 1996 Act has caused a substantial injustice is, according to a number of well-known authorities and texts, whether the Tribunal *"might well"* have reached a different conclusion.[441] Other cases use different formulations.

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[437] {Day18/148:6-17}.

[438] For completeness, P&ID's interactions with Aker were highly superficial. They culminated in a three-and-a-half page, high-level quotation which was never followed through {H2/223}.

[439] {Day9/53:16-20}; {Day9/121:1} to {Day9/124:25}.

[440] {Day9/136:24-25}.

[441] The relevant authorities are set out at §395 of FRN's opening submissions {AA/1/157}, including Merkin's *Arbitration Law* §20.8 {Z2/18/5}, citing various authorities including *Vee Networks*.

For example, P&ID has cited cases which state the test as being whether the perjury would have *"probably"* affected the result or would have had *"an important impact"* on the result.[442] Whether these are truly different tests is unclear, but it matters not. However the threshold is articulated, it is met in this case. It is overwhelmingly likely that the Tribunal would have reached a different conclusion had it not been presented with Mr Quinn's false evidence, which was the only factual evidence put forward by P&ID to discharge its burden of proving that it could and would have performed.

162. The falsehoods in Mr Quinn's statement boil down to a simple point. P&ID was seeking to give the impression that it had done a mountain of work on the project, had obtained finance, technology licences and land, and was therefore in a position to perform. In fact it had done no work and obtained no finance or licences or land: it was a man of straw. That was plainly material to the question of whether P&ID had proven that on the balance of probabilities it would have performed the contract such that it was entitled to claim US$6 billion of allegedly lost profits. The Tribunal's finding at §§50-51 of its Final Award was that:[443]

> "… 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. [The Tribunal then cites §§42, 47, 49, 102 and 110 of Quinn 1] …
>
> 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."

163. Based on these paragraphs of the Final Award alone the falsehoods in Mr Quinn's evidence were patently material. They were the only evidence cited by the Tribunal in direct support of its conclusion that P&ID was able and willing to perform.

164. Very importantly, as the Tribunal recognised, it was P&ID's burden to prove to the Tribunal that it would in fact have performed.[444] Without discharging that burden its claim would have failed. The only evidence it adduced to do so was Mr Quinn's statement. Without that evidence, it would have had nothing.

165. P&ID contends that the Tribunal's conclusion was instead based on three other 'pillars' of evidence: (i) the existence of a good reason for why P&ID had not made further progress; (ii) the likely profitability of the project; and (iii) the absence of any evidence of legal or financial obstacles which

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[442] P&ID's opening submissions §967, citing *Chantiers* at [61] {Z1/79/18}.

[443] Final Award §§50-51 {G/49/13-14}.

[444] *Flame SA v Glory Wealth Shipping* [2014] QB 1080 [85] {Z1/107/27}: *"The innocent party is claiming damages and therefore the burden lies on that party to prove its loss. That requires it to show that, had there been no repudiation, the innocent party would have been able to perform its obligations under the contract"*. The Tribunal confirmed that P&ID bore this burden: Final Award §44 {G/49/13}.

stood in the way of the scheme.[445] This cannot be reconciled with the plain words of §§50-51 of the Final Award, which rely expressly and exclusively on the false passages of Mr Quinn's evidence {G/49/13-14}. In any event, each of P&ID's three alternative 'pillars' misses the mark: the question is not whether someone could or would have performed the contract. It is whether P&ID, an unknown company with no experience of building gas processing plants and only a single employee, could and would have done so. The only evidence on that question was Mr Quinn's statement on what steps P&ID had actually taken towards performance.

166. There is a further point. Had the Tribunal not been misled by Mr Quinn's perjury it would have known not only that P&ID had taken no steps at all towards performance, but also that it had lied about this, both to the Tribunal and FRN.[446] The GSPA contained representations by P&ID that it already possessed the requisite finance and technology,[447] and the exhibits to Mr Quinn's statement contained the 14 May 2010 letter which represented that P&ID had all of the finance in place, had completed 90% of the engineering designs, and had secured a plot of land. Mr Quinn's evidence was needed to cover over these untruths. Had it been revealed that P&ID had been telling lies, both to FRN and the Tribunal, that would have cast a *"completely different complexion"* on P&ID's claim for 20 years of lost profits, as Mr Andrew accepted.[448] Mr Andrew likewise agreed that, had the Tribunal known the true position, it would *"at the very minimum"* have raised *"real questions as to whether it [P&ID] could ever have performed the GSPA or in fact ever intended to do so"*.[449]

167. It is not open to P&ID to seek to plug the gaps in its evidence, after removing the perjury, by replacing it with fresh evidence from the experts or anybody else.[450] Mr Andrew's suggestion that, instead of lying, the case could have been presented *"in a different way"* therefore goes nowhere.[451] But in any event, and for good measure, the expert evidence shows that P&ID would and could not have performed and that P&ID could therefore not, even on honest evidence, have discharged its burden of proving as much. P&ID was a shell company with a single employee, no experience of building a gas plant (let alone on a fast-track basis) and had taken none of the steps that any serious contractor would have

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[445] P&ID's opening submissions §§969-971 {AA/2/272}.

[446] In determining whether there has been a substantial injustice in a case involving dishonesty, the Court is entitled to consider not only how the case would have progressed without the irregularity, but also with the Tribunal's knowledge that the party in question has behaved dishonestly: FRN's opening submissions §251 and footnote 534 {AA/1/97}. In any event, on the facts of this case, the dishonesty would have been visible from the documents on the Tribunal's file, in particular the recitals to the GSPA and the 14 May 2010 letter.

[447] GSPA recital (h) {H3/140/4}.

[448] {Day5/75:1-13}. See also {Day5/76:1-2} where Mr Andrew agreed that §110 of Quinn 1 *"cast the state of readiness of P&ID in a different light"*.

[449] {Day5/75:2-8}.

[450] See e.g. *RBS v Highland* [2013] 1 CLC 596 at [106] per Aiken LJ {Z1/94.3/35}. It appears from footnote 226 of P&ID's opening submissions {AA/2/272} that this is common ground.

[451] {Day5/75:20}.

taken by the time it executed the GSPA or shortly thereafter. There was a debate between the experts as to whether P&ID ought reasonably to have progressed its design work, beyond a single hand-drawn sketch,[452] in the absence of a confirmed source of gas.[453] To the extent that it matters, it could and should have done so. As Mr Bunten explained, it is standard practice for designs to be progressed on the basis of a range of assumptions about the feedstock gas. Mr Newenham agreed.[454] The experts agreed that a completed engineering package could have been produced on the basis of assumptions.[455] Such an approach was, in particular, necessary and reasonably to be expected for a project such as the GSPA with a 20-year term where the gas was likely to emanate from different sources over different periods.[456] But there is a more fundamental point. Mr Quinn did not tell the Tribunal that P&ID had failed to progress its design work because there was a lack of data about gas sources. He said that P&ID had in fact completed 90% of the engineering designs. It is no answer for P&ID now to say that there was a good reason why the engineering work was not done. If there had been such a reason, any honest person would have told the Tribunal the true position rather than a lie.

168. Finally, P&ID say that it is impossible that anyone was misled by Mr Quinn's statement because FRN knew the true position, i.e. that P&ID had not done any preparatory work for the GSPA. It is impossible to see how this can be maintained in circumstances where P&ID's own solicitor, Mr Andrew, alleges that he was misled about the true position;[457] where P&ID's experts BRG were misled about it;[458] where the Tribunal was misled about it;[459] and where P&ID's previous counsel, Mr Mill KC, was misled about it.[460] It seems that P&ID's case is that FRN was the only person in the room, other than Mr Cahill, not to have been misled by Mr Quinn's evidence, which is deeply unlikely. Unsurprisingly, therefore, none of the submissions and statements identified by P&ID in their opening submissions refer to the key deception in Quinn 1 that the engineering work done and licences

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[452] The sketch is reproduced at §67 of FRN's opening submissions {AA/1/40}. Mr Newenham confirmed that this sketch was the only design work he had seen for the GSPA.

[453] It was not in dispute that P&ID could have done this, only whether they should have done so: {Day19/3:16-24}.

[454] {Day19/31:9} to– {Day19/32:11}. Indeed, Tita Kuru expended US$40 million on design work for a gas processing project, Project Alpha, which ultimately did not progress.

[455] Engineering experts' Joint Memorandum §§50 and 51 {F1/3/7}. Mr Newenham accepted that a particular concern that he had about an outlier in the gas composition data was resolved by the fact that the field in question, Knock Adoon, was a receptacle for particularly rich gas from other fields which were flaring the lean gas associated with them. Since the purpose of the GSPA was to take that lean gas, that would not be an issue: {Day19/33:1-13}.

[456] See e.g. Mr Bunten at {Day18/81:17-24}.

[457] {Day5/74:14-15} *"I accept that what they [Mr Quinn and Mr Cahill] told me in 2013 and 2014 was not correct"*.

[458] See e.g. Mr Andrew at {Day5/47:20} to {Day5/48:2}, accepting that BRG interpreted Mr Quinn's statement as demonstrating that P&ID was in an advanced state of preparation for the GSPA. This is reflected in e.g. BRG 2 §2.2.8, concluding based on Mr Quinn's statement that *"P&ID were well advanced in their preparation to build the Gas Processing Facilities"* {H8/418/10}. A full list of the BRG references is set out at §396(d) of FRN's opening submissions {AA/1/158}.

[459] P&ID's opening submissions §940, saying *"It is right to note that the Tribunal does appear to have misunderstood Mr Quinn's evidence as referring to work done on the Calabar Project, not Project Alpha"*.

[460] As Mr Andrew admitted at {Day5/37:5-11}, referring to the transcript of the hearing before Sir Ross Cranston at {C/11.4/30}.

acquired in 2006-2008 were irrelevant to the GSPA, because there was nothing in Mr Quinn's evidence to indicate that that was so.[461] P&ID mistakenly places reliance on two particular documents:

a. First, Ms Hakeem-Bakare, a junior associate at Twenty Marina Solicitors, stated in a draft of the Statement of Disputed Facts that the work done by P&ID in 2006-2008 had *"no nexus with the GSPA and Claimant at the time could not have foreseen successfully entering into an agreement with [the FRN]"* with "*the…cost expended by Claimant…incurred two years before approaching the Federal Government of Nigeria*".[462] This was reference to an idea that the work and costs had been undertaken by P&ID at a time when it was not envisaged they would be used for the GSPA project; not that, contrary to Mr Quinn's evidence, the costs incurred, engineering work done and licences acquired were unusable and irrelevant to performing the GSPA. Tellingly, Ms Hakeem-Bakare's point was deleted from the draft by Mr Shasore or Ms Adelore, the point was never taken, and (as the Tribunal found at §§50-51 of its Final Award) the entirety of Mr Quinn's evidence was therefore accepted as a true and fair account of the preparatory work completed by P&ID for the GSPA.

b. Secondly, Lord Wolfson took Mr Bunten to a costing report produced by Genesis in 2013. Genesis were not experts in the arbitration, but their report was cited by P&ID's quantum experts, BRG. Lord Wolfson referred to the introductory statement in the Genesis report that *"further adjustments to the detailed engineering for the Calabar Project needed to be re-done and we have therefore treated the current engineering plans as conceptual. Once the actual gas composition has been finally determined this could impact by way of a three/four month delay due to completion of the revised detailed engineering"*.[463] The premise of this statement was that a set of designs already existed for the Calabar Project, and that there would need to be *"further adjustments"*, once final gas compositions were received, to finalise them. That is consistent with Mr Quinn's false evidence that 90% of the engineering designs already existed, but that they would have needed to be tweaked once the gas composition data was received to achieve 100% completion.[464] It is wholly inconsistent with the true position, which is that no engineering designs existed for the Calabar Project.[465] Notably, BRG interpreted both Mr Quinn's statement and the Genesis report as meaning that a set of designs did exist and that P&ID was therefore *"well advanced in their preparation to build the Gas Processing Facility"*.[466]

iv. Section 73

[461] P&ID's opening submissions §§936 {AA/2/260}; 983-988 {AA/2/274-276}.
[462] {H7/245}, attaching the draft at {H7/246/1}.
[463] {H8/100/8}.
[464] Quinn 1 §§97 {G/9/24}, 110 {G/9/26} and 120 {G/9/28}.
[465] As the experts agree: Engineering experts' joint memorandum §37 {F1/3/6}.
[466] See the complete set of references to the BRG report at §396(d) of FRN's opening submissions {AA/1/158}.

169. P&ID's final argument is that FRN should with reasonable diligence have uncovered Mr Quinn's perjury at the time of the arbitration, and is therefore barred by s.73 of the 1996 Act. There are three answers: (1) that FRN's lawyers were corrupted; (2) that, as established in *Takhar*, it is not open to a party which has obtained a judgment or award by fraud to contend that the innocent party has acted unreasonably in failing to uncover the fraud; and (3) that FRN cannot be criticised for acting unreasonably when P&ID's own legal team claim to have been duped by Mr Quinn's perjury. FRN deals with these points in detail at §§403-413 of its opening submissions {AA/1/164}, which the Court is asked to read.

170. As to the first point, members of FRN's legal team were corrupted at the jurisdiction and liability stages of the arbitration as described in Section E below. FRN cannot be said to have acted unreasonably in failing to uncover Mr Quinn's perjury in circumstances where its legal team had been compromised by its opponent. Those were the lawyers involved in FRN's defence when it was ordered, by the Tribunal's Procedural Order No.9, to identify any parts of Mr Quinn's statement which it disputed. The undisputed parts of Mr Quinn's evidence were thus 'baked in' to the arbitration by the quantum stage, as the Tribunal confirmed at §§50-51 of its Final Award and as Mr Andrew submitted to be the case at the time.[467] The fact that the new legal team, instructed at a late stage of the quantum process, is not known to have been tainted is therefore irrelevant because the damage had already been done.

171. In its opening submissions, P&ID placed reliance on the Tribunal's procedural order permitting FRN to serve any evidence that it wished in relation to quantum, with no express carve-out in respect of Mr Quinn's statement.[468] Lord Wolfson was referring to Procedural Order No.10, which contained standard form directions for the parties to exchange their evidence on quantum {G/32}. As one would expect, it says nothing at all about the question of whether Mr Quinn's evidence had been baked in as a result of the Tribunal's previous direction under Procedural Order No.9: it was simply a direction as to timing. The Tribunal subsequently confirmed in its Final Award that Mr Quinn's evidence had indeed been 'baked in': Final Award §51 {G/49/14}.

172. The second point is that, as a matter of law, it is not open to a fraudster who has obtained a judgment by fraud, including through perjured evidence, to profit from it by contending that the innocent party has acted negligently in failing to uncover his fraud sooner. This is the effect of *Takhar* as set out at §269 of FRN's opening submissions {AA/1/102}. It is common ground that this is the correct

[467] See the various references at FRN's opening submissions §408 {AA/1/167}.
[468] {Day2/69:12-21}.

approach to judgments.[469] There is no reason in principle why a different approach should apply to arbitral awards. As Sir Ross Cranston said in his Cranston Judgment, 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"*.[470]

173. Lord Wolfson submitted that Sir Ross Cranston's reasoning was limited to applications for extensions of time under s.80(5) of the 1996 Act.[471] That is wrong. The submission that the Judge accepted was that *"Takhar applies equally to challenges to set-aside an arbitral award under section 68 of the 1996 Act"*. He was not limiting his comments to s.80(5).[472] On any view, there is no principled basis to distinguish between the test for extending time under s.80(5), which is a test of reasonable diligence, and the test under s.73, which is also a test of reasonable diligence. *Takhar* applies to both.

174. The third answer to P&ID's section 73 argument is that P&ID cannot maintain that FRN acted unreasonably in taking Quinn 1 at face value as a truthful piece of evidence, and not uncovering the perjury, in circumstances where that is precisely what P&ID's own legal team claims to have done, as did P&ID's experts. In this respect, P&ID's case on the truth or falsity of Mr Quinn's evidence throughout these enforcement proceedings has been a mess. The evolving story is set out in detail at §§374-393 of FRN's opening submissions {AA/1/151}. The main points are as follows:

    a. P&ID presented the false position before Sir Ross Cranston that Mr Quinn's evidence was true in its entirety because P&ID was in an advanced state of preparation for the GSPA.[473] It is now common ground that it was not.[474]

    b. P&ID's original pleaded position, after Sir Ross Cranston gave his judgment, was likewise that P&ID had done the vast majority of the engineering designs etc. such that it was in an advanced state of preparedness.[475]

    c. When confronted with a claim by Tita Kuru based on alleged misuse of the Project Alpha designs, P&ID amended its pleading to delete its case that a significant proportion of the Project Alpha work was serviceable for the GSPA, and that P&ID had reached an advanced stage of the preparatory

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[469] {Day2/117:22} to {Day2/118:2} where Lord Wolfson said that a reasonable diligence requirement *"now doesn't apply when you are applying to set aside a judgment for fraud at common law"*.

[470] {Day5/33:17} to {Day5/38:13} and see Cranston Judgment §183 {C/12/29}. The finding was *obiter* because Sir Ross Cranston found that FRN had, in any event, acted reasonably in uncovering the fraud when it did.

[471] {Day2/119:1-25}.

[472] See Cranston Judgment §183, stating that *"Mr Howard has the best of the arguments"*. The argument which Sir Ross Cranston accepted is formulated at §180 {C/12/29}.

[473] As reflected in Cranston Judgment §202 {C/12/32}. The corresponding submission of P&ID's then-counsel, Mr Mill KC, is at Cranston Transcript, Day 2, internal pp.115-117 {C/11.4/30}.

[474] Engineering experts' joint memorandum §42 {F1/3/6}.

[475] The original statements in the Defence are listed at §381 of FRN's opening submissions {AA/1/153}.

work for the GSPA.[476]

d. The most recent iteration of P&ID's pleaded case is set out in its RFI Response dated 30 June 2022, where it maintains that no part of Mr Quinn's evidence was false, despite the backtracking described above. In particular, its case is that (i) Mr Quinn's evidence about the finance being *"in place"* was true because he was truthfully *"expressing confidence"* that P&ID would be able to obtain it if and when required;[477] and (ii) his statement about 90% of the engineering work having been completed was true because it was an accurate reproduction of the 14 May 2010 letter which Mr Quinn was citing.[478]

e. In its opening submissions P&ID then backtracked again and admitted for the first time that it <u>was</u> false for Mr Quinn to represent at §110 of his statement that P&ID had finance in place and had done 90% of the engineering drawings.[479] This was a correct concession, but was made only at the eleventh hour and, even now, is not in line with P&ID's pleaded case, supported by a statement of truth, which formally remains as set out in the 30 June 2022 RFI.

f. In his cross-examination Mr Cahill relapsed to maintaining that each of Mr Quinn's statements relating to engineering designs and finance was <u>true</u> because (i) P&ID could have obtained the designs from a third party such as Aker;[480] and (ii) in stating that all of the project finance was *"in place"*, Mr Quinn meant that there had been discussions with funders, in particular Arcadia.[481]

175. It thus took three years of hard-fought enforcement proceedings before this Court with very extensive disclosure to force P&ID to admit, for the first time in its opening submissions for trial, that part of Mr Quinn's statement was false. That was preceded by a mosaic of different and inconsistent positions taken by P&ID and its legal team in the preceding three years, and the inconsistencies and U-turns have continued throughout the trial.

176. Very importantly, Mr Andrew maintained that he himself was misled by Mr Quinn and Mr Cahill to believe that the Project Alpha work was referable to the GSPA, and that P&ID was therefore in an advanced state of preparedness to in fact perform the GSPA.[482] He claimed that he understood Mr Quinn's witness statement to be true as at the date of the Cranston hearing, and that he had no reason at any stage to believe or suspect any part of it was incorrect or misleading.[483] P&ID's quantum expert,

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[476] The most relevant amendments are reproduced at §387 of FRN's opening submissions {AA/1/155}.

[477] RFI Response §37(2) {A2/15/19}.

[478] RFI Response §29(1) {A2/15/16}.

[479] P&ID's opening submissions §§944-946 {AA/2/264}.

[480] See §160 above.

[481] See e.g. {Day9/175:24} to {Day9/176:1}.

[482] {Day5/74:16-17} (*"I accept that what they [Mr Quinn and Mr Cahill] told me in 2013 and 2014 was not correct"*); {Day5/41:24} – {Day5/42:1} (*"They [Quinn and Cahill] had reviewed the witness statement and they knew that I was going to refer to the letter and I was not told that anything in the letter was incorrect"*).

[483] {Day5/38:8-13} and {Day5/39:15-21}.

BRG, was likewise misled;[484] as was P&ID's counsel for the hearing before Sir Ross Cranston, Mr Mill KC, who presented a false picture to Sir Ross Cranston (on P&ID's instructions) that P&ID was in an advanced state of preparedness.[485] FRN cannot properly be accused of acting unreasonably in failing to uncover that which P&ID's own lawyers did not.

177. For each of the three reasons above, P&ID's s.73 argument therefore fails.

E. CORRUPTION OF FRN'S LAWYERS

178. This section addresses two of FRN's set-aside grounds together: the receipt of the FRN Privileged Documents and the corruption of FRN's lawyers. P&ID is desperate to place these two grounds into separate silos:[486] it contends that there is *"simply no rational connection"* between the two.[487] One can see why P&ID feels the need to make that submission, but it is hopeless. The FRN Privileged Documents were obtained from FRN's lawyers as one of the products of their having been corrupted. As P&ID's witnesses accepted, there is no such thing as a half-corrupt lawyer.[488] As soon as P&ID tainted one or more members of FRN's legal team by paying or promising money, or soliciting its privileged documents, his or her loyalty was irreversibly divided. Mr Burke rightly accepted that *"if any of the FRN lawyers were involved in the corrupt provision of documents, that would reveal that such lawyers had been corrupted to serve P&ID's interests"*.[489]

i. Mr Quinn's and Mr Cahill's attitude to lawyers

179. The significance of Mr Quinn's and Mr Cahill's track record of corruption in this context, including their corruption of lawyers, cannot be overstated. It is plain from the 'Dublin expense' records that the ICIL companies were up to their neck in corruption until 2012.[490] Thereafter, at the suggestion of Mr Nworgu, they ceased keeping a record of them.[491] To be clear, therefore, the bribing did not stop in 2012, just the records.[492] To the extent that proof is needed it is to be found in a WhatsApp dated 5 December 2015 in which Mr Etim requested (and Mr Cahill provided) US$50,000 for Dr Alimi to

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[484] Mr Andrew at {Day5/47:20} to {Day5/48:2}. See the list of relevant paragraphs of the BRG report at §396(d) of FRN's opening submissions {AA/1/158}.

[485] Mr Andrew at {Day5/51:14-18}.

[486] In their opening submissions P&ID alleged that FRN has unhelpfully *"blended"* its cases on the FRN Privileged Documents and collusion, *"when in truth the confidential documents have nothing to do with the collusion case"* (§192).

[487] P&ID's opening submissions §1047 {AA/2/298}.

[488] Mr Burke at {Day13/86:10-17}; Mr Andrew at {Day3/141:2-6}. As would be expected, Professor Bamodu confirmed that as a matter of Nigerian law, Nigerian legal practitioners have a duty to act in the best interests of their client, and it would be improper to act if they had a potential conflict of interest: {Day20/177:7} to {Day20/178:17}.

[489] {Day13/87:9-13}.

[490] See FRN's composite schedule of Dublin expenses at {AA/1.3}.

[491] Mr Nworgu email dated 20 September 2013 §§7 and 9 {H6/86/1}.

[492] Mr Cahill agreed that 'Dublin expense' transactions did not stop abruptly in 2012: {Day9/180:4}.

"spread around the places he will be going for us" {H7/444.1}.

180. P&ID were moreover up to their old tricks recently. Mr Cahill, Mr Andrew and Mr Burke obtained a further stash of legally privileged material in the period after the commencement of its English enforcement application on 16 March 2018. The relevant documents are contained in the hard-copy confidential bundle provided to the Court. The contents of the documents are not reproduced in these submissions, but the Court will see that they include some privileged material on settlement negotiations obtained by Mr Adebayo in April 2018;[493] a sensitive and privileged memo from the Central Bank of Nigeria (CBN) dated 30 August 2019;[494] and legal advice to the President obtained by Dr Alimi's sidekick Don Etim in September 2020.[495]

181. Mr Cahill agreed that there was *"no honest reason"* why anyone might have leaked the CBN memo and that *"the only conclusion"* he could draw is that it was the product of *"corrupt behaviour"* by whoever obtained it.[496] Mr Andrew likewise said that *"I can think of no reason why it would be in the interests of FRN to share [the document] with P&ID"*.[497] Despite these remarkable admissions Mr Cahill maintained that he could not remember how the document had made its way to him. A series of WhatsApp disclosed by P&ID only after Mr Cahill's cross-examination suggest that they were sent to him surreptitiously, and then deleted, by Mr Nolan.[498] The true circumstances in which the memo was obtained, and the identity of the leaker, therefore remains shrouded in mystery but, as suggested by Mr Cahill, the original obtainer may still have been Mr Adebayo.[499] This is all an extraordinary position and a direct attack on the integrity of these enforcement proceedings before the English High Court. Mr Cahill also lied in his sixth statement where he said that the CBN memo was deleted and was not forwarded to anyone else.[500] In fact, disclosure subsequently provided by P&ID shows that both Mr Andrew and Mr Burke received the memo.[501] Mr Andrew feigned ignorance and pretended he had not read this important document.[502] Mr Burke at least had the decency to accept that he had opened the document, although he did not alert FRN or the Court to this at the time and failed to volunteer his receipt of it in any of his witness statements.[503] Most importantly, Mr Andrew rightly accepted that, had the CBN memo

493 Confidential Bundle Tab 3.

494 Confidential Bundle Tab 1.

495 Confidential Bundle Tab 2.

496 {Day10/112:8-15}; {Day10/116:7-11}.

497 {Day4/177:1-4}.

498 The deleted WhatsApps and surrounding missed calls, all dated 7 September 2019, are at {H9/227.01}, {H9/227.02}, {H9/227.03}, {H9/227.04}, {H9/227.05} and {H9/227.06}. Quinn Emanuel said in its letter of 15 February 2023 that these documents were disclosed (on day 14 of the trial) *"because the documents appear to go to the issue of how Mr Cahill was supplied with the CBN Memorandum"* {O1/78/1}.

499 {Day10/114:23-24}.

500 Cahill 6 §39 {D/26/12}.

501 Confidential Bundle Tabs 5 and 6.

502 {Day4/175:3-7}.

503 {Day14/81:16-18}; {S/1/5} (lines 20-23}.

been obtained corruptly, that would shine a light on how the other FRN Privileged Documents had been obtained.[504]

182. It is also important to keep in mind the significance of the overwhelming evidence that bribes were paid to Grace Taiga, who was the head of legal at the MPR, as conclusively establishing that those behind P&ID had no qualms, and in fact saw the advantages of, paying bribes to FRN's lawyers. By the stage of the commencement of the arbitration, she had been replaced by Mr Dikko, who himself received bribes from Mr Quinn directly. Mr Dikko was then replaced by Ms Adelore, who, again, the overwhelming evidence establishes was the recipient of bribes by those acting on behalf of P&ID. This was Mr Cahill's and Mr Quinn's *modus operandi*.

183. Mr Quinn and Mr Cahill were thus involved in serial corruption both before and (in the case of Mr Cahill) after the arbitration, including the corruption of lawyers. That not only increases the likelihood that they resorted to the same tactics during the arbitration, but makes it positively unlikely that they did not: why break the habit of a lifetime?

i. The role of Mr Adebayo

184. With Mr Quinn's health suffering (he died in February 2015), the absent Mr Adebayo was increasingly central to the corruption of FRN's lawyers on behalf of P&ID. He was P&ID's agent: Mr Andrew described him as P&ID's *"man on the ground in Nigeria"*.[505] He was appointed as P&ID's settlement facilitator in July 2014,[506] but was working on behalf of P&ID before then.[507] He was the conduit for many of the FRN Privileged Documents.[508] He has, and had at the time, an eye-watering stake in the Awards, and therefore had an irresistible incentive to engineer unfavourable outcomes in the arbitration for FRN and settlement through whatever means. As described below, his role bears all the hallmarks of, and was indeed to act as, a corrupt middleman, as Mr Cahill knew and intended when P&ID appointed him as its agent.[509]

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[504] {Day5/33:14-16}.

[505] {Day4/155:17-18}.

[506] Clause 5.2.1 {H9/65/5}, and see further {H6/389}. The Settlement Brokerage Agreement remained in place until 8 August 2016, when it was replaced with a further agreement (the Internal Advisory Agreement). The various iterations of the agreements with Mr Adebayo are set out at §447 of FRN's opening submissions {AA/1/191}.

[507] Mr Cahill accepted that he was working for P&ID in 2012, albeit to a more limited extent: {Day10/44:22-24}. Mr Andrew revealed that Mr Adebayo may have obtained FRN Privileged Documents as early August 2013 {Day4/58:17-22}. He also accepted that Mr Adebayo continued to represent P&ID after the Settlement Brokerage Agreement came to an end: he said that Adebayo was *"certainly representing P&ID's interests in Nigeria"* in 2017 {Day5/24:1-2}, with his witness statement confirming that Adebayo was still part of P&ID as of at least June 2017: Andrew 5 §119{D/6/34}.

[508] See e.g. Mr Cahill at {Day10/23:7-8} (*"It is certainly true … that Tunji Adebayo forwarded numerous FRN documents to us"*).

[509] Mr Cahill's denials of this (see e.g. {Day10/32:16-24} and {Day10/32:25} to {Day10/34:7}) lacked credibility in light of the overwhelming evidence about the true nature of Mr Adebayo's role. Mr Andrew and Mr Burke similarly must have known that this is what Mr Adebayo had been appointed to do as P&ID's *"man on the ground in Nigeria",* being the obvious explanation for the

185. This was not Mr Adebayo's first corrupt brief for P&ID. He had been involved in bribery on behalf of ICIL companies in the past. A clear example is the following trio of payments set out in the Bribery SoF §135(5) {A5/2/54}:

> 5) On 7 March 2003:
>
> i. A payment of US$50,077.46 by Kristholm to "*Mr. D. Danladi*" **{M/56/8}**.
>
> ii. A payment of US$60,087.46 by Kristholm to "*B, Kaigama*" **{M/56/8}**.
>
> iii. A payment of US$50,077.46 by Kristholm to "*Mr. Tunji Adebay*" **{M/56/8}**.

186. Mr Cahill was unable to give any coherent explanation for this payment to Mr Adebayo,[510] which was for precisely the same sum as the payment made to Mr Danladi, an official at the MoD, on the same day, made twelve days before the third payee, Dr Kaigama, awarded a £760,000 contract to Mr Cahill's company Marshpearl {H1/18}. The obvious truth is that this was Mr Adebayo's slice of the pie for 'facilitating' the contract by acting as an intermediary for bribes paid to Mr Danladi and Dr Kaigama.

187. It seems that Mr Adebayo was also involved in other corrupt ventures with ICIL companies. He is identified as a payor of 'Dublin expenses', which is a codeword used to obscure bribes, in the ICIL companies' accounts.[511]

188. Mr Cahill and Mr Quinn were very familiar with the concept of appointing middlemen in Nigeria to do their dirty work.[512] The corrupt Dr Alimi, who had a brief to settle the IPCO litigation and was sent US$50,000 by Mr Cahill to *"spread around"* to officials in seeking to do so, is an obvious example.[513] Mr Etim, who was involved in requesting the corrupt funds for Dr Alimi, was (and it appears still is being) used as a middleman to dishonestly obtain FRN's privileged information in these proceedings.[514] Likewise the corrupt *"Prof and Uzo"* who created a *"PR saga"* by overpromising bribes to officials in

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financial arrangements entered into with him and the reason that Mr Adebayo had procured the FRN Privileged Documents. Their denials of this (see, for example, {Day13/215:15-25}, {Day13/200:2-9}, {Day4/23:15} to {Day4/24:1}, and {Day4/161:22} to {Day4/162:3}) again lacked any credibility.

[510] His only evidence was a bare assertion that the payment had nothing whatsoever to do with any MoD contract (despite the exact coincidence in amount and date with the other payments), and that Mr Adebayo's father was ill. But he ultimately said *"what that payment related to, I don't know"*: {Day10/16:12} to {Day10/17:2}.

[511] See e.g. the spreadsheet entitled *"Dublin Exps 2011"* row 57 (*"Adam – cash to Tunji - $5,000"*) on 6 September 2011 and row 87 (*"$10,000 Neil Tunji – Dublin Exps"* on 20 December 2011 {H6/159}.

[512] The use of middlemen in Nigeria as agents for corruption is a well-recognised problem. See e.g. the November 2022 sentencing remarks of Fraser J in *SFO v. Glencore Energy UK Ltd* {Z1/178.1/7-8 }. Glencore pleaded guilty to seven counts under the Bribery Act 2010 involving its West Africa Oil Trading desk, with the remarks identifying at §§36 and 41 that, in Nigeria, Glencore created addenda to a service agreement with its agent, who operated through a company, to give the illusion that the bribes advanced to that agent were payments to him for legitimate services. Invoices were created for "service fees" and these were paid by the defendant as a way of advancing funds to the agent so they could be used for bribes.

[513] {H7/444.1}. The payment to the "DOCTOR – IPCO" four days later is at {H9/472}, row 286.

[514] Confidential bundle Tab 2.

August 2007, such that they exceeded their budget and were thenceforth restricted to drawing a total of US$150,000 cash from ICIL's bank accounts *"to split any way which they like"* {H1/176}.

189. Seen against this background, it is clear that P&ID appointed Mr Adebayo to take whatever steps he needed to achieve a settlement, including by corrupting officials. Even Mr Cahill was prepared to accept that any honest person who assigned the role of a settlement facilitator to someone on the ground in Nigeria, and provided him with an incentive of the lion's share of the settlement, *"would have a concern that the facilitator might be paying bribes"*.[515] In the case of Mr Adebayo that is an understatement. It would have been blindingly obvious to any honest person with access to the facts and documents that Mr Adebayo was being appointed to pay bribes. The following are obvious indicators of corruption:

    a. **The level of Mr Adebayo's remuneration:** The terms of P&ID's deal with Mr Adebayo speak for themselves. Under the Settlement Brokerage Agreement Mr Adebayo was entitled to 50% of any settlement over US$1 billion, plus a bonus of US$60 million for any settlement above US$950 million.[516] No reasonable person could have believed, and P&ID did not in fact believe, that this was a sensible level of remuneration for negotiating a settlement. Rather, through this entitlement P&ID gave, and intended to give, Mr Adebayo an extraordinarily large war chest, contingent on the settlement going through, to be used for disbursing kickbacks to officials. It is noteworthy that the ICC Guidelines on Agents, Intermediaries and Other Third Parties 2010 (**"the ICC Guidelines"**) identifies a situation where an agent's fee *"seems disproportionate in relation to the services to be rendered"* as a red flag for corruption {Z3/6.1/7}. Another set of ICC guidelines, for SMEs, advises that *"extreme caution should be exercised if the third party [i.e. the agent] proposes success fees <u>because this could be an indication of an intention to pay bribes or to create a slush fund from which to pay them</u>"*[517]. That is precisely what was going on here.

    b. **Payments to Mr Adebayo through sham invoices:** Mr Adebayo's slush fund was further fed by large payments from P&ID and related companies, to which he had no contractual entitlement,[518] and which were papered over by sham invoices and records. The payments made to Mr Adebayo, which are not in dispute, are listed at Bribery SoF §20 {A5/2/8}. They total around US$285,000 between March 2012 and April 2018. Of particular note are the payments of US$50,000 on 20 February 2013, US$70,000 on 5 December 2014 and US$100,000 on 30 June 2015. Each of these

[515] {Day10/33:1-7}.

[516] Appendix I to the Settlement Brokerage Agreement {H9/65/9}.

[517] ICC Anti-Corruption Third Party Due Diligence: A guide for Small and Medium Size Enterprises {Z3/10.1/17}.

[518] Mr Cahill agreed this at {Day10/62:17-19}.

payments was recorded as an expense of P&ID.[519] More importantly, each was recorded under a sham invoice or record:

i. The US$50,000 payment was documented in a sham invoice headed *"Calabar Gas Processing Project"* {H5/329}. The payment was allegedly for the preparation of a report on delays to the project. Mr Cahill accepted in cross-examination that no such report existed, and this was a sham invoice.[520]

ii. The US$100,000 payment was documented in a sham invoice, produced by Mr Smyth on the notepaper of Mr Adebayo's company, Trenko, for the provision of certain technical reports and attendance at settlement discussions and the liability hearing {H7/311.2}.[521] Again, Mr Cahill accepted that this was a sham: Mr Adebayo had not produced or procured any reports and had no entitlement to these monies.[522]

iii. The US$70,000 payment was recorded as being a P&ID expenditure for *"FLIGHTS + HOTELS etc."*.[523] Mr Cahill accepted that this was not the true purpose of the payment, as is obvious from its size.[524]

c. Mr Cahill accepted in the abstract that there could be no honest reason to produce false invoices or records,[525] that the only purpose of such a document could be to mislead,[526] and that if these payments had been legitimate there would have been no reason to paper over them with false records rather than recording their true purpose.[527] His excuse was that the Cypriot bank required paperwork to support the transactions. But he had no answer to the question of why, if these payments had been for a legitimate purpose, the bank could not have been presented with paperwork setting out that purpose rather than a false one.[528] Mr Cahill's only response was *"I am not going to say whether it was right to do that or whether it was wrong"*.[529] The only sensible inference is that these were all payments for an improper purpose, namely to fund a slush fund for bribes paid by Mr Adebayo on behalf of P&ID in his role as settlement facilitator.

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519 The US$50,000 was recorded in an invoice entitled *"Calabar Gas Processing Project"* {H5/329}, the US$70,000 and US$100,000 payments were recorded on a spreadsheet named *"P&ID costs"* at {H7/323}. See likewise the spreadsheet entitled *"Jan 2016 Budget"*, cell G/13, recording the US$100,000 payment as *"Tunji – P&ID"* {H8/19}.

520 {Day10/70:23}.

521 The cover email which shows that Mr Smyth produced the sham invoice is at {H7/311.1}.

522 {Day10/63:10-12}.

523 Spreadsheet entitled *"P&ID costs"*, sheet 1, row 48 {H7/323}.

524 {Day10/73:13-17}.

525 {Day10/60:17-21}.

526 {Day10/64:4-10}.

527 {Day10/66:11-21}; {Day10/67:8-13}.

528 {Day10/68:1} to {Day10/69:12}.

529 {Day10/69:10-11}.

d. **US$750,000 payment in November 2017:** Mr Adebayo's slush fund for bribes, and/or reimbursement for bribes paid, was padded again by a US$750,000 payment out of the proceeds of the sale of P&ID to VR in November 2017.[530] Mr Cahill believed that Mr Adebayo had no contractual entitlement to this payment.[531] Rather he sought to explain it as an unparticularised investment in Mr Adebayo's own gas project while accepting that *"There is not a single document that shows that"*.[532]

e. **No anti-corruption provisions**: None of P&ID's agreements with Mr Adebayo contained anti-corruption provisions. More importantly, neither Mr Cahill nor anybody else at P&ID did anything to ensure that Mr Adebayo was not fulfilling his role by paying bribes, despite the obvious indicators that he was. That, of course, is because they knew full well what he was up to.

f. **Mr Adebayo's role in illicitly obtaining documents:** The fact that Mr Adebayo's role involved obtaining internal and privileged documents through secret backchannels, as P&ID well knew, was in itself a clear indicator of corruption. Mr Adebayo's involvement in the FRN Privileged Documents is addressed in further detail below.

190. Should further evidence be needed that Mr Adebayo's role involved the payment of bribes, and that P&ID knew this, it is to be found in the budgeting emails of December 2013 and 2014. The emails are at {H6/192} and {H7/73}. In each one Mr Adebayo set a budget for ICIL's Nigerian operations for the critical period of the arbitration: 2014 and 2015. The budget for 2014 was US$460,000 and for 2015 was US$580,000. Mr Cahill agreed to fund around half of each budget through contributions in cash from Dublin. Extraordinarily, the budgets are not broken down at all between ICIL's various Nigerian operations, or between different heads of expenditure within those operations. They were requests by Mr Adebayo for wads of cash for unspecified purposes. The requests are all the more extraordinary in light of the fact that, as Mr Cahill admitted, Mr Adebayo had no day-to-day familiarity with ICIL's businesses: his *"main role"* was confined to seeking to settle the P&ID case.[533] Most tellingly, the *"bulk of the increase"* in the budget for 2015 was said by Mr Adebayo to have been *"attributable to the Calabar Gas Project and the benefits of this will not arise before late 2017"* {H7/73}. Yet there were no operations in respect of the Calabar Gas Project which required funding from Nigeria in 2015. The GSPA had been terminated and all that was left was a London-seated arbitration.[534] When presented

[530] Spreadsheet entitled *"Reconciliation of VR funds"*, "Bank" tab, row 9 {H9/95}.

[531] {Day10/77:4-16}. Mr Adebayo's current entitlement only arises upon settlement of the claim and, in any event, US$750,000 bears no resemblance to the 10% to which he is entitled in that contingency.

[532] {Day10/79:7-8}.

[533] {Day10/41:14-23}.

[534] The arbitration was being conducted by Mr Andrew and Mr Burke at no cost pending the receipt of litigation funding in November 2015: Andrew 5 §22 {D/6/6}. Mr Andrew himself funded the costs of Harcus Sinclair: {Day3/8:15-18}. There is no reason to believe that any of the arbitration costs were being funded from Nigeria.

with this reality, Mr Cahill produced his usual bluster but was unable to identify any actual costs that P&ID was incurring in Nigeria in 2015.[535] The obvious conclusion is that the costs for which Mr Adebayo was budgeting were not legitimate operating costs, but were funds for bribes to be paid to officials, the benefits of which he hoped would arise at some point from *"late 2017"*, i.e. once a settlement had been achieved through the bribes.

191. It follows from the above that there was (i) not only an obvious risk that Mr Adebayo would carry out his assignment to settle the case through corruption, but also (ii) that P&ID positively knew and expected that he would do so (precisely as he had done on previous occasions: §§185-186 above). P&ID thus authorised and is responsible for Mr Adebayo's corrupt activities in the course of his efforts to procure a settlement.[536] But in any event, P&ID is responsible for the acts of Mr Adebayo carried out *"within the general scope of the authority given to him"*, i.e. in the scope of his role as settlement facilitator, whether or not they were specifically authorised: *Hamlyn v John Houston & Co* [1903] 1 KB 81, 85 {Z1/5.1/5}.[537] The corrupt acts of Mr Adebayo were undoubtedly carried out within his remit as settlement facilitator, with Mr Andrew expressly identifying Mr Adebayo as being part of P&ID in his witness evidence.[538] It should therefore go without saying that Mr Adebayo's actions are squarely attributable to P&ID for the purpose of s.68(2)(g) of the 1996 Act.

192. There is a further and equally fundamental point. Mr Adebayo currently holds a stake of some $850 million in the awards. His interests are entirely aligned with those of P&ID and he is its privy. The question for this Court is whether it is contrary to English public policy, within the meaning of s.68(2)(g) of the 1996 Act, to enforce the Awards. It would obviously be contrary to public policy to allow an award to stand in circumstances where it has been obtained by the fraud of a person who, by the award creditor's own actions, stands to gain hundreds of millions of dollars from its enforcement. In the analogous context of setting aside judgments, it has been held that a judgment cannot survive a fraud committed by someone who is *"part of a team which was helping to row it to victory"*.[539] Mr Adebayo was, and is, undoubtedly part of the P&ID camp seeking to row it to victory.

193. Given the stench of corruption emanating from Mr Adebayo and his murky role as a settlement facilitator, what is P&ID's response? It is a stonewall: P&ID says that Mr Adebayo is unwilling to give evidence or provide his documents and, most extraordinarily, pleads non-admissions as to whether he

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[535] {Day10/49:22} to {Day10/51:21}.

[536] As put to Mr Cahill at e.g. {Day10/32:16-24}.

[537] See similarly *The Ocean Frost* [1986] AC 717, [741]-[746] per Goff LJ, where a principal was held (*obiter*) to be responsible for his negotiating agent's bribery in similar circumstances. See also the cases cited at footnote 1032 of FRN's opening submissions {AA/1/191}.

[538] At §119 of Andrew 5, Mr Andrew refers to Mr Adebayo as *"somebody at P&ID"* {D/6/34}.

[539] *Odyssey Re (London) Ltd v OIC Run Off Ltd* [2000] EWCA Civ 71, [2001] Lloyd's Rep IR 1 per Nourse LJ at p.12 cols.1-2 {Z1/32/12}.

corrupted FRN's lawyers in the course of obtaining the FRN Privileged Documents.[540] In those circumstances, the Court is entitled to draw the strongest of adverse inferences about what Mr Adebayo's evidence and documents would have revealed had they been made available.

ii. The role of Mr Kuchazi

194. Many of the points that apply to Mr Adebayo apply equally to Mr Kuchazi, save that his involvement appears to have been most prominent at the time when the GSPA was awarded and in the early period of the arbitration. He was unable to give any sensible explanation for why he was granted a 3% stake (which he still has),[541] worth hundreds of millions of dollars, in a gas processing project for which, according to his first statement, he carried out mere administrative tasks such as delivering letters.[542] He, like Mr Adebayo, is recorded in ICIL's records as being involved in the payment of 'Dublin expenses',[543] and he has been caught red-handed with FRN Privileged Documents.[544] Mr Kuchazi was plainly used as a corrupt middleman, as he came close to admitting when he described his true rule as being a *"contact man"* for P&ID.[545]

iii. P&ID obtained the FRN Privileged Documents through corruption

195. The situation with which the Court has been presented is an extraordinary one. P&ID has been caught red-handed with a cache of FRN's privileged material in its possession, most if not all of which must have emanated from FRN's lawyers. Faced with questions about the exact individuals who provided these documents, in what circumstances and why, P&ID has put forward a conspiracy of silence. Its position, in the timeless words of Manuel of Fawlty Towers, is 'I know nothing'. But self-evidently someone must know from whom the Documents came and why. The reality is that this professed ignorance is a construct, and P&ID's witnesses at trial were both contemporaneously aware, and aware when giving evidence, that the privileged documents and information came from corrupted members of FRN's legal team, and probably which individuals specifically.[546] But in any event, Mr Adebayo obviously knows who he and his assistants were obtaining documents from: his fingerprints are all over the FRN Privileged Documents and Mr Cahill maintained that the very reason that Mr Adebayo

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[540] Defence §§70J and 70L {A1/2/58}.

[541] As confirmed by Mr Kuchazi at {Day17/66:7-11}.

[542] Kuchazi 1 §8 {E/10/3}. P&ID likewise sought to describe him as having done only *"low level"* work {H9/299/3}.

[543] See e.g. spreadsheet entitled *"NOVEMBER DAILY CASH CONTROL",* cell I/25, which records *"Dublin Expenses Kuchazi"* of NGN 500,000 {H3/163.3}. For further examples see Bribery SoF §14 {A5/2/6}.

[544] FRN Privileged Documents SoF §§6, 30, 60(1), 61(2) {A5/1}.

[545] Kuchazi 2 §5 {D/3/2}. The ICC Guidelines identify as a red flag for corruption an agent whose only qualification is *"influence over public officials, or the [agent] claims that he can help secure a contract because he knows the right people"* {Z3/6.1/7}.

[546] As was put to Mr Cahill {Day10/33:18-25}, {Day10/159:4-12} and {Day10/165:5-18}; Mr Andrew {Day4/86:10-21}, {Day4/38:5-10} and {Day4/161:22} to {Day4/162:3}; and Mr Burke {Day13/196:5-10} and {Day13/211:6-15}.

was not giving evidence was to avoid having to "*name individuals who had helped him*".[547] P&ID have accordingly not tendered him as a witness nor provided a single one of his documents. This entitles the Court to draw the strongest of adverse inferences that (i) Mr Adebayo corrupted members of FRN's legal team during the arbitration acting on behalf of P&ID; (ii) the leaking of the FRN Privileged Documents was a product of this corruption; and (iii) the corrupted lawyers included Mr Dikko, Ms Adelore, Ms Belgore, Mr Shasore and Mr Oguine, since Mr Adebayo is not prepared to give evidence denying this. However, even if the Court was simply satisfied that some unknown member of the FRN's legal team was corrupted, that is itself sufficient to set aside the Awards. As Hamblen J said in *Nayyar v Denton Wilde Sapte* [2010] PNLR 15, a party who has corrupted an agent of another cannot hide behind the fact that the identity of that agent has been concealed:

> "It was also suggested that there can be no bribery or intended bribery without identification of the fiduciary in question. However, I consider that it is sufficient if payment is made, as here, as an inducement to a fiduciary to betray his trust, even if the identity of the relevant fiduciary is not known for certain. It would be surprising if the claimants could escape the consequences of wrongful conduct because their attempts at bribery failed to focus sufficiently on who would be bribed" ([116]) {Z1/77.1/27}.

196. It is in any event sufficiently clear who was behind the leaks of the FRN Privileged Documents. It is not disputed that (at least) a large number of the Documents were leaked by members of FRN's legal team, including Mr Shasore and Ms Adelore.[548] A forensic examination of the documents confirms this: see Annex 2. Moreover, Ms Adelore, and Mr Shasore's partner, Mr Ukiri (acting, it is to be inferred, at Mr Shasore's instigation), have been caught red-handed supplying privileged documents to Mr Adebayo: {I/223} and {I/179}. Ms Adelore and Mr Shasore are therefore undoubtedly part of the cohort of leakers.

197. Mr Cahill's emails show that he had a *"friend"* and *"lady contact"* at the MPR whom he tapped up as a corrupt source of insider information.[549] When asked about this Mr Cahill feigned amnesia and said that he could not recall who she was.[550] He speculated that it may have been Mr Adebayo,[551] which was hopeless since his second email refers to a *"lady contact"*. Mr Murray was more frank. He accepted

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[547] {Day10/28:21} to {Day10/29:3}.

[548] Mr Cahill accepted that some of the documents originated from Mr Shasore at {Day10/120:6-7}. He said that in many cases it was *"plain from the document where it came from"* {Day10/28:15-16}. Mr Andrew said he believed that {I/208} had been shared by Mr Shasore {Day4/115:22} to {Day4/116:14}. He also accepted that the Defence notes at {I/110} were *"likely"* leaked by Mr Shasore {Day4/57:13-16}. At {Day4/145:16-23} Mr Andrew accepted that it was *"possible"* the FRN Privileged Documents were being leaked by Mr Shasore, Ms Adelore, Mr Oguine and others. Mr Murray accepted as a *"fair conclusion"* that the FRN Privileged Documents must have been leaked by FRN's lawyers: {Day12/112:20} to {Day12/113:1}. Mr Burke agreed that it was a reasonable inference that Ms Adelore and Mr Shasore were *"responsible for leaking a lot of the documents"* {Day14/64:9-13} and that *"Shasore, or his firm, are undoubtedly the source of some of the leaked documents"* {Day13/161:22-25}.

[549] See the emails at {I/122} and {H6/243}.

[550] {Day10/149:24-25} ("*It is absolutely true that I don't remember who it was in 2013 that passed that information either directly or indirectly to us*").

[551] {Day10/152:8-10}.

that the emails may well have been referring to a corrupt relationship with an insider at the MPR.[552] Mr Burke likewise accepted that they were referring to *"a mole at the MPR"*.[553] All of the signs point to Ms Adelore, an undisputed source of FRN Privileged Documents, as being Mr Cahill's *"friend"* and *"lady contact"* at the Ministry. None of P&ID's witnesses provided any reason to believe otherwise, and this is consistent with the concrete proof of her leaking privileged documents to Mr Adebayo on other occasions.[554]

No evidence establishing that the FRN Privileged Documents were legitimately shared with authority

198. As would be expected, as a matter of Nigerian law: (i) all oral or written communications made by client to his lawyer are privileged, with it being a breach of a lawyer's duties to disclose the content of such communications without authority;[555] and additionally (ii) public officials are prohibited from disclosing documents or information obtained in the course of his or her duties.[556] P&ID has not established that the FRN Privileged Documents were each legitimately shared with authority, or disproved the contrary. Mr Burke and Mr Andrew both accepted the building blocks of FRN's case that, in those circumstances, the only sensible inference is that they were provided corruptly, but refused to accept the punchline that they in fact were. Thus:

a. Mr Andrew accepted that, where a client has obtained an opposing party's privileged material and has provided no justification for that state of affairs, the natural conclusion is that *"that person has been party to a corrupt arrangement with the other side"*.[557] He said that one would *"assume a guilty motive"* and that corruption would be *"an easy assumption to make"* where *"all you knew was that the documents had been handed over and the person had refused to explain that"*.[558] He also accepted that the very fact of an opposing side's lawyer handing over documents deliberately and without authority would be a *"strong indicator"* of dishonesty;[559] as would the fact that the documents were damaging to the case of the opposing party;[560] as would the fact they had been provided covertly;[561] as would the fact that the sender had deleted them upon receipt;[562] as would the fact that the documents had been doctored

[552] {Day12/144:19} to {Day12/145:4}.
[553] {Day13/149:24-25}.
[554] {I/223}, attaching {I/224} and {H7/112.1}.
[555] Ojukwu 1 §§7.20-7.24 {F4/1/45} and rules 19(1)-(2) of the Rules of Professional Conduct for Legal Practitioners {F8/6/157} and see {Day20/177:7} to {Day20/178:7} and {Day21/32:7-17}.
[556] Ojukwu 1 §§7.25-7.32 {F4/1/47} and Rule 030416 of the Public Service Rules {F8/19/383}.
[557] {Day3/139:2-15}.
[558] {Day3/140:8-11}; {Day3/142:11-12}.
[559] {Day3/146:9-13}.
[560] {Day3/147:13-18}.
[561] {Day3/147:19-22}.
[562] {Day4/54:16-20}.

in an attempt to hide the identity of the leaker.[563] Mr Andrew asserted that nobody in fact ever told him the identity of the person(s) leaking the FRN Privileged Documents;[564] claimed that nobody ever told him why the documents had been leaked;[565] and accepted that P&ID's pleaded case is that it has no explanation at all for why a large proportion of the FRN Privileged Documents came into its possession.[566] Yet he refused to follow his own logic in accepting that the Documents must have been obtained through corruption.

b. Mr Burke was keen to impress on the Court that it was *"[his] judgment that counted because [he] was the silk dealing with this [i.e. the receipt of the FRN Privileged Documents]"*.[567] In this respect he accepted that the receipt of an opposing party's privileged documents from a client was of itself *"an obvious red flag"*.[568] He accepted that a barrister who came into possession of such documents had to make a proper enquiry of his lay client.[569] He accepted that, if no satisfactory explanation was forthcoming, the barrister would need to withdraw.[570] He accepted that a bare reassurance from the lay client that *"I got it properly"* would not be a satisfactory explanation.[571] Nor would a response from the client to the effect that *"I'm not telling you where [I got it from]"* or *"I can't tell you where this came from"*: that would in Mr Burke's view be a *"massive red flag"*.[572] He accepted that this is in fact what his client, P&ID, told him, and that the documents appeared to have been provided *"surreptitiously and covertly"*.[573] Yet, like Mr Andrew, he refused to accept the obvious conclusion: that the FRN Privileged Documents had been obtained through corruption. His reason for this boiled down to a blind assertion: *"There is no way Mick Quinn or Brendan Cahill would ever have compromised me"*.[574] But this seeks to prove too much: Messrs Quinn, Cahill, Andrew and Burke never expected the fact that P&ID had obtained, or were sharing the privileged documents with Andrew and Burke, to ever be revealed to the outside world. This fact was not revealed to FRN or the Tribunal at any stage of the arbitration, or the Court at the time of the Cranston hearing or before. Rather, P&ID expected its communications with Andrew and Burke to be forever cloaked in privilege, typically adding *"privileged and confidential"*

563 {Day4/56:7-10}.
564 {Day3/151:5-6}.
565 Andrew 5 §60 {D/6/16}; {Day3/152:13-17}.
566 As set out in P&ID's RFI Response at {A2/12} and {A2/13}.
567 {Day13/183:11-13}.
568 {Day13/209:12-13}.
569 {Day13/65:16-21}.
570 {Day13/69:4-8}.
571 {Day13/71:19-20}.
572 {Day14/39:24}.
573 {Day13/207:10-11}.
574 {Day13/135:8-9}.

when sending onwards the illicitly obtained privileged documents.[575]

199. P&ID's case on the leaking of the FRN Privileged Documents is set out in the two schedules to its 17 May 2022 RFI Response.[576] In respect of all of the Documents, other than one, it says that it does not know who the original source was.[577] As well as purporting not to know from whom the documents were obtained, P&ID has not offered a single evidenced explanation for how and why they were obtained. For the vast majority of the Documents, no explanation has been tendered at all: these are the *"Nones"* on the RFI schedules. For the others, P&ID has offered no more than conjecture, based not on any actual knowledge or evidence about why the document came into the hands of P&ID but rather on assumptions derived from the nature of the document: §208 below. This is P&ID's pleaded case and it must, of course, be held to it.

200. In his oral evidence Mr Andrew attempted to plug the gaps by suggesting that all of the FRN Privileged Documents were provided *"as part of the settlement discussions that Mr Adebayo was involved in"*.[578] This was said to be based on a conversation with Mr Cahill or Mr Burke, although he could not remember which.[579] This is not P&ID's pleaded case and is not supported by any sworn evidence. Leaving that aside, and taking Mr Andrew's account at face value, a statement that the Documents were supplied *"as part of the settlement discussions"* is no explanation at all. It is a mere description of the fact that the majority or all of the Documents were leaked to Mr Adebayo, who was P&ID's settlement agent. When pressed on what happened at those discussions, Mr Andrew could only say that Mr Adebayo kept the details *"close to his chest"*.[580] In any event, Mr Andrew eventually confirmed that he did not feel able to give evidence about any of the FRN Privileged Documents other than those specifically addressed in his witness evidence.[581] The blanket 'settlement discussions' excuse, to the extent that it was an excuse at all, therefore fell away, save in its half-truth that Mr Adebayo was indeed obtaining documents via the corrupt arrangements he was entering into as P&ID's 'settlement facilitator'.

201. The obvious person who could have told the Court from whom the documents were obtained and in what circumstances is Mr Adebayo. He has refused to do so. Mr Andrew said that Mr Adebayo *"would*

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[575] FRN Privileged Documents SoF at §§10, 14, 15, 16, 17, 19, 20, 23, 31, 58, 59 and 60 {A5/1}; {Day13/120:8} to {Day13/121:1}.

[576] {A2/12} and {A2/13}. The first schedule is a list of FRN Privileged Documents where the intermediary for distributing the document is known. The second schedule is a list of FRN Privileged Documents where the intermediary is unknown.

[577] The one document with an identified source is at Annex 1, row 130 (Chief Ayorinde) {A2/12/6}.

[578] {Day3/152:13-17}. See similarly {Day4/100:21-23} (*"The only reason for the sharing of the documents, as I understood it, after the arbitration had commenced was to do with the possible settlement of the claim"*).

[579] Ibid.

[580] {Day4/22:7-8}.

[581] {Day4/127:3-15}.

not say who was providing the documents to him within the Government".[582] Mr Cahill confirmed this.[583] He tried to justify Mr Adebayo's position on the basis that he wanted to protect his sources.[584] There is no sworn witness evidence from Mr Adebayo to that effect. But in any event the fact that the consequences of the wrongdoing of Mr Adebayo and those who illegally leaked documents to him are beginning catch up with them is not a good reason for withholding relevant evidence from this Court. Nor could it in any event excuse P&ID's failure to disclose Mr Adebayo's documents. If Mr Adebayo held documents which indicated that he had obtained the FRN Privileged Documents legitimately, he and P&ID would have released them. The correct and only inference is that Mr Adebayo's documents show the opposite.

202. Mr Burke gave a different account of Mr Adebayo's position. He said that, although he had forgotten the details,[585] he had carried out a full investigation into the provenance of the FRN Privileged Documents with Mr Adebayo and had been told by him that they were all furnished anonymously.[586] No trace of this purported investigation appears in any of Mr Burke's three witness statements;[587] nor does it appear in a single note taken by Mr Burke; nor in any other document, and it is starkly inconsistent with what Mr Cahill claimed to have himself been told by Mr Adebayo. Either the investigation was a thing writ in water or it did not take place. The truth is the latter: Mr Burke needed to concoct an investigation in light of the fact that, had he not carried one out, he would be *"disbarred in a minute"*.[588] In any event, the purported outcome of the investigation, that the documents had been provided anonymously, is a nonsense. If that was indeed Mr Burke's conclusion, it was on his own evidence a *"red flag for corruption"*.[589] Moreover, if Mr Adebayo really had told him that the FRN Privileged Documents had been furnished anonymously that would have been false. The documentary record reveals that at least two documents were supplied to Mr Adebayo by Ms Adelore and Mr Ukiri using their own email addresses.[590] Mr Burke agreed that, in light of this, Mr Adebayo must have told him *"a barefaced lie"*.[591] The mask eventually slipped when Mr Burke claimed he had *"made it plain [to Mr*

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[582] {Day4/25:22-23}. See likewise {Day4/22:19-23} confirming that *"Mr Adebayo is not prepared to tell us from whom, when and in what circumstances he obtained any of the documents"*.

[583] {Day10/27:24-25}: Mr Cahill confirmed that Mr Adebayo has *"not to this day told [him] where he got the documents from"*.

[584] {Day10/30:14-16}.

[585] {Day14/83:22} to {Day14/84:14}.

[586] {Day13/98:10-12}.

[587] Mr Burke's extraordinary response was that *"I can see, looking at the statement now, in view of the questions you're asking, a fuller, more detailed explanation could have been forthcoming"* {Day13/102:10-12}. Nonetheless, he maintained that a reader of his statement should have worked backwards from his conclusion that he was not obligated to return the FRN Privileged Documents and that a full investigation had been carried out: {Day13/108:11-13}.

[588] {Day13/145:7}.

[589] {Day13/134:1-13}.

[590] {I/223} and {I/179}.

[591] {Day13/217:15-22}.

Adebayo] 'Don't solicit these documents, we don't need these documents'".[592] Such an instruction would make no sense if the FRN Privileged Documents had been provided anonymously. The slip reveals Mr Burke's story about his investigation and his conversation with Mr Adebayo as a fabrication.

203. Alongside Mr Adebayo, Mr Murray was the first point of contact for a number (six) of the FRN Privileged Documents.[593] Like P&ID, he hid behind Manuel's mantra: 'I know nothing'. He said that the Documents had been dropped off in envelopes to unidentified members of staff at ICIL's office and that he otherwise *"[did] not know how [he] came to have at hand those documents"*.[594] This explanation was later abandoned: Mr Murray said that he could not say for certain that the documents had been dropped off at the office because, in his words, *"I don't recall where any of [the] documents came from"*, and that when he had said that the documents had been provided anonymously he meant *"anonymous to me"*.[595] Even this, though, was false. Mr Murray did know the sources of at least some of the FRN Privileged Documents because he recorded them in the emails by which he passed the Documents on. For example, in his email of 19 September 2012, Mr Murray sent an FRN Privileged Document under the subject line *"Rem for Mick"*, with the attachment saved under the name *"Ex Rem"*.[596] This was a reference to Mr Dikko's then-secretary, Ms Aderemi. Mr Murray confirmed that he applied these descriptions himself.[597] He must have therefore known that this particular privileged document illicitly came from Ms Aderemi.[598]

204. Very importantly, despite disclaiming personal responsibility, Mr Murray accepted that it was a *"reasonable inference"* that FRN's defence notes had been leaked *"for corrupt motives"*. He said *"I must accept that I suppose, yes"*.[599] Likewise, although he denied any personal involvement, he accepted that *"someone [had] been involved in some corrupt activity"* in order to procure the FRN Privileged Documents *"before [they] got to my desk"*.[600] When asked whether a privileged note of a meeting had been procured corruptly, Mr Murray said *"Presumably so"*.[601] Mr Murray said that this *"might have been less than honest but it is the way we*

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[592] {Day13/212:9-10}.

[593] Namely those at FRN Privileged Documents SoF §§5, 11, 16, 17, 18 and 20 {A5/1/2}. Mr Murray was involved in the distribution of several more.

[594] {Day12/89:12} to {Day12/90:9}

[595] {Day12/93:20-24}; {Day12/94:12}.

[596] {I/48}. Addressed at FRN Privileged Documents SoF §5 {A5/1/2}.

[597] {Day12/117:19} to {Day12/118:2}.

[598] Indeed, Mr Murray had already accepted that the use of *"Ex Rem"* in the filename implied that the document had come to him from someone referred to as *"Rem"*: see KK's letter dated 1 June 2022 {O/326}.

[599] {Day12/129:13-17}, referring to {I/110}.

[600] {Day12/130:13-16}. See similarly {Day12/134:21} to {Day12/135:2}, accepting the proposition *"you must have realised at the time that [this document] has been obtained improperly as a result of corruption"*.

[601] {Day12/136:1-6}, referring to {I/123}, addressed at FRN Privileged Documents SoF §18 {A5/1/15}.

behaved".[602] Likewise in the following extraordinary exchange:[603]

> "Q: Again, this [{I/116}][604] is a document which, it is self-evident, you must have realised at the time has been obtained improperly as a result of corruption and you were behaving, in your words, less than honestly by keeping that to yourself and passing it up the line to dear old Mick. Correct? A: Correct."

205. Mr Murray's assumption that the FRN Privileged Documents had been procured corruptly was borne out in his policy of destroying the paper trails which would have traced them back to their sources.[605] Mr Murray's excuse was that he *"always suspected we would be raided and torn apart by the EFCC or DSS or someone … We certainly didn't want any of our staff to become embroiled in it because of the careless treatment of documents"*.[606] The obvious question is: embroiled in what? The documents would have been of no interest to even the most capricious prosecutor had they been provided openly and legitimately. The reason Mr Murray wished to remove any trace of the documents is that, as he knew, they were evidence of corruption.

206. Two other individuals who were the first point of contact for FRN Privileged Documents are Mr Smyth (for at least eight of them) and Adam Quinn (for at least one of them).[607] Needless to say they are part of P&ID's conspiracy of silence: neither has been called to provide any evidence about these Documents. Likewise, Mr Kuchazi, who has been caught red-handed distributing FRN Privileged Documents, kept schtum: he said he could not remember anything about them.[608]

207. There is, therefore, no first-hand evidence before the Court about the circumstances in which and reasons for which the FRN Privileged Documents came into the possession of P&ID. The best that the Court has is Mr Murray's self-serving denial that he himself was involved in corruption, but that he believes that they must have been procured through corruption before they reached his desk. That is an important admission from a man who was intimately familiar with Mr Quinn's and Mr Cahill's working practices.

Mr Andrew's 'best speculations' for why some of the FRN Privileged Documents might have been provided

208. Mr Andrew sought to salvage his own professional reputation – having failed to return the FRN Privileged documents or identify this to the Tribunal and FRN – by offering his *"best speculations"*,[609]

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602 {Day12/130:25} to {Day12/131:1}.

603 {Day12/134:21} to {Day12/135:2}.

604 Addressed at FRN Privileged Documents SoF §17 {A5/1/13}.

605 See, by way of just one example, {I/123} (*"Please confirm clean receipt so that I can delete"*). There are many more.

606 {Day12/109:22} to {Day12/110:1}.

607 As regards Mr Smyth see: FRN Privileged Documents SoF §§21, 24, 25, 26, 28, 53 and 58 {A5/1}. As regards Adam Quinn see: FRN Privileged Documents SoF §23.

608 {Day17/37:2}.

609 {Day5/144:7-8}.

based not on any actual knowledge or concrete evidence but rather a series of assumptions, for why the subset of the FRN Privileged Documents that the documentary record proves that he received might have been shared. These are the documents for which positive explanations have been tendered in the RFI Response at {A2/12} and {A2/13}. In cross-examination even these limited speculations unravelled. By way of example only:

a. Mr Andrew speculated that the documents set out at the FRN Privileged Documents SoF §§12, 14 and 15, which were leaked on 6 June and 18 July 2013, were probably provided to explain FRN's delay in engaging with the arbitration.[610] Yet there was no delay to explain: FRN was not in default of any deadline set by the arbitrators at this time. When this was pointed out to Mr Andrew, he changed his evidence and speculated that the documents might have been provided to explain the delay in Twenty Marina Solicitors coming on the record.[611] Yet FRN had engaged Twenty Marina Solicitors well before the deadline for serving a defence. Mr Andrew had no answer to this point. He fell back on the fact that he was only *"speculating as to why they were provided"*.[612] Quite.

b. Mr Andrew said he assumed that a draft of an advice sent to the President on or before September 2014 {I/173},[613] advising him that the merits of FRN's case were weak, had been leaked to demonstrate that good faith efforts were being made to progress settlement discussions.[614] When pressed in cross-examination, however, he accepted that *"there would be no reason that that would benefit FRN, to provide that to P&ID"*,[615] and that *"there are no circumstances in which it could be in FRN's interest for legal advice on the merits, particularly on the weakness of its position, to be provided to P&ID"*.[616] This explanation therefore also crumbled away.

209. A full list of Mr Andrew's explanations, to the extent that he has given any, and the reasons why they do not work, is set out in Annex 2.

210. It follows that (i) P&ID has not put forward any actual first-hand evidence about why it came into possession of the FRN Privileged Documents; and (ii) Mr Andrew's *"best speculations"* about why they might have done so must be rejected. They are nothing more than that and do not make sense on their own terms in any event: they are contrived and are falsely intended to mask the reality that it would have been obvious to those involved at the time that the Documents were being obtained as a result

610 Andrew 5 §§75-76 {D/6/21}.
611 {Day4/48:22} to {Day4/49:23}.
612 {Day4/49:19}.
613 FRN Privileged Documents SoF §31 {A5/1/26}.
614 Andrew 5 §99 {D/6/30}.
615 {Day4/109:2-4}.
616 {Day4/110:10-15}.

of corruption.

Alleged reassurances about the provenance of the FRN Privileged Documents

211. What, then, is the Court left with? Between them, Mr Burke and Mr Andrew put forward four reasons why – despite the numerous red flags for corruption and the absence of any evidenced explanation as to how the FRN Privileged Documents had been obtained – they felt comfortable being in possession of and not returning them, nor alerting FRN or the Tribunal to their existence, nor withdrawing from the case. None of these stood up:

a. ***"Nothing untoward":*** Mr Andrew's main line of defence was that Mr Adebayo and Mr Cahill had reassured him that there was *"nothing untoward"* going on.[617] Based on this explanation, he glibly said that he did not consider the FRN Privileged Documents to be a *"very important issue because we didn't have concerns about these documents, because we had an explanation for why they were being provided"*.[618] Mr Andrew also referred to a conversation with Mr Cahill and Mr Quinn where he was allegedly told that it was *"common practice in Nigeria for internal FRN documents to be shared with companies"*.[619] These are the slimmest of explanations for receiving a stream of an opponent's privileged documents throughout a US$6 billion arbitration. Mr Andrew did not purport to have any first-hand knowledge (subject to the two bad points below) to support what Mr Cahill and Mr Adebayo had told him, and had every reason to believe that they were not telling the truth because they were both implicated in what appeared to be a corrupt arrangement with FRN's lawyers, as any honest and disinterested solicitor would have realised and accepted. There were no notes or emails recording these alleged discussions,[620] and the truth is that they never happened. However, even if they had, they would amount to Mr Andrew blindly accepting Mr Cahill's and Mr Adebayo's assurances that there was nothing to see here because he knew what he was going to find if he lifted the lid any further.

b. **IPCO documents**: Mr Andrew and Mr Burke said that they took comfort from the fact that privileged documents had been sent to them during the course of the IPCO litigation. This, they said, supported the existence of a general practice of sharing internal documents in Nigeria.[621] Yet it transpires that, contrary to Mr Andrew's evidence,[622] the source of the IPCO documents was not

[617] Andrew 5 §60 {D/6/16}.
[618] {Day4/135:24} to {Day4/136:1}.
[619] Andrew 5 §46 {D/6/12}.
[620] {Day4/12:18-24}.
[621] Andrew 5 §47 {D/6/12}; Mr Burke: {Day13/134:21-23}.
[622] {Day5/4:16-20}.

Mr Malami or IPCO's Chief Executive Mr Adewunmi,[623] but rather the corrupt Dr Alimi.[624] Dr Alimi's brief was to settle the IPCO litigation, and he did so through *"spreading around"* tens of thousands of dollars of bribes.[625] Mr Andrew accepted that in light of these documents his understanding about the provenance of the IPCO documents had been incorrect;[626] that the revelation of Dr Alimi's involvement was *"alarming"*;[627] and that as a result *"the manner in which the IPCO documents were obtained is [not] of any assistance to me in suggesting there was some practice of voluntarily providing documents"*.[628] That, therefore, is the end of the IPCO point.

c. **Chief Ayorinde documents**: Mr Andrew relied on the fact that Chief Ayorinde had shared a handful of ostensibly privileged documents during the quantum stage of the arbitration.[629] Some of the documents do not appear to have emanated from Chief Ayorinde at all, as Mr Andrew accepted in cross-examination.[630] As regards the others, Mr Andrew agreed that these materials were different from the FRN Privileged Documents. They were shared openly and transparently, using Chief Ayorinde's own email address, directly to Mr Andrew. They were not leaked using aliases or shady middlemen. Nor did they contain any material that was or could be damaging to FRN's case. Mr Andrew accepted that this was a *"big difference"*.[631]

d. ***"It's Nigeria!"***: This was Mr Burke's constant refrain.[632] His reference point for this appeared to be the IPCO litigation.[633] But the fact that privileged documents were leaked in the IPCO settlement discussions through the corrupt Dr Alimi does not assist P&ID for the reasons given above. It is in any event common ground between the experts that Nigerian law provides broadly the same protection to confidential and privileged documents as English law.[634] Equally fundamentally, this was an English-seated arbitration, run by English lawyers and which had to be conducted in accordance with English public policy.[635] Mr Burke's clarion call of *"It's Nigeria!"* therefore does not

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[623] Ibid.

[624] See the email from Adam Quinn to Mr Smyth dated 11 October 2016 saying *"As discussed see attached two letters from Alimi today"* {H8/452.1}. The documents attached to the email are the ones which were later shared with Mr Andrew from the NWMAS email address: {H8/450}. See likewise the further document provided by Dr Alimi at {H8/456.1}.

[625] {H7/444.1}.

[626] {Day5/9:22-25}; {Day5/12:11-25}.

[627] {Day5/11:1}.

[628] {Day5/14:8-14}.

[629] Andrew 5 §48 {D/6/13}.

[630] {I/265}, addressed at FRN Privileged Documents SoF §52 {A5/1/50}. Mr Andrew accepted that P&ID had no positive reason to believe that the document had been provided by Chief Ayorinde at {Day5/16:12} to {Day5/17:8}.

[631] {Day5/20:21}.

[632] See e.g. {Day13/126:23-25} (*"I don't wish to be flippant with you, Mr Howard, but it depends how often you litigate in Nigeria"*); {Day13/178:9-10} (*"… as I have said, this is Nigeria. They are leaking these … documents through the route they do"*).

[633] {Day13/134:18-23} referring to the IPCO file being allegedly *"littered with documents which I couldn't attribute"*.

[634] See e.g. the Nigerian lawyers' joint memorandum §2.2.7 confirming that a Nigerian lawyer is not entitled to disclose privileged communications without the consent of his client; and §2.2.8 confirming that a public official is not entitled to communicate confidential facts or documents to outsiders {F4/3/39}.

[635] As Mr Andrew accepted at {Day4/3:18-22}.

work even on its own terms.

212. Neither Mr Andrew nor Mr Burke produced a single note or written record of their purported investigations into the provenance of the FRN Privileged Documents, their alleged 'ethics conversation' about them,[636] or of the reasons why they allegedly concluded that the Documents had been obtained properly. Mr Andrew accepted the importance of note taking,[637] but incredibly sought to justify the lack of notes by saying *"in the circumstances I was in I didn't consider it particularly important because I was satisfied with the explanation I had been given"*.[638] Mr Burke sought to pass the buck to Mr Andrew: he said that *"I was not retaining a client file of my own"* and *"I didn't keep a documentary record"* (despite the fact that he was acting on a direct access basis).[639] When asked by the Court about his practice of note-taking, Mr Andrew said that he recorded important matters in emails, referring to an alleged file of 7,000 privileged emails from the arbitration. To be clear, not a single one of those emails records there having been a discussion regarding the receipt of the FRN Privileged Documents or any ethical considerations, since P&ID has expressly waived privilege over all such communications.[640] To the extent that a note of any investigation or conversation or decision existed, therefore, it would be before the Court. There is none. That in itself is an extraordinary state of affairs, and the correct finding is that these alleged investigations and discussions did not take place. It is contrary to reasonable professional practice for a solicitor not to retain records of important conversations,[641] as such conversations (had they taken place) would have been, and indeed the documents identify Mr Andrew taking notes on other occasions.[642]

213. Moreover, it became clear during his cross-examination that Mr Andrew did not truly believe that there was a proper reason for being in possession of the FRN Privileged Documents. While maintaining that they had been obtained legitimately, he said that he was nonetheless not comfortable reading, receiving or using FRN's legal advice because *"the provenance of the documents was not completely clear"*.[643] That would make no sense if he was satisfied that the Documents had been provided lawfully and for proper purposes. In such circumstances privilege would have been waived and it would have been Mr Andrew's duty to review and deploy them as his client's interests demanded. In a yet further

[636] Mr Andrew at {Day4/134:21-22}.

[637] Mr Andrew at {Day4/11:1-4}.

[638] {Day4/11:16-18}.

[639] {Day13/121:11-12}; {Day13/132:1-5}.

[640] {O/164} and {O/169}.

[641] In *Prime London Residential Development Jersey Master Holding Ltd v Withers LLP* [2021] EWHC 2401 (Comm) [52], Judge Pelling QC described the failure to take notes as "*surprising and contrary to reasonable professional practice, particularly where decisions were being taken as to how to proceed in what had become a commercially sensitive situation"* {Z1/166.1/31}.

[642] See WhatsApp from Mr Burke to Mr Andrew dated 16.09.2019 {L/27/239} ("*Seamus can you make a file note of all of this please so we have a contemporaneous note of this development circulate by e mail so we get a time and date on it let us speak in the morning*").

[643] {Day4/42:1} to {Day4/43:25}; {Day4/46:10-24} (*"I did not feel comfortable reading the other side's legal advice … I could not be completely sure of the provenance of these documents. I had my client's explanation but I still didn't feel comfortable reading actual legal advice"*).

attempt to make sure that the FRN Privileged Documents did not see the light of day Mr Andrew and Mr Burke withheld them from P&ID's own solicitors on the record, Harcus Sinclair.[644] None of this is consistent with the professed position of Mr Andrew and Mr Burke that they had satisfied themselves that the Documents had been properly obtained. Their actions in this respect speak louder than their words.

214. The only correct inference for the Court to draw, based on the undisputed receipt of the FRN Privileged Documents by P&ID, the absence of any sensible explanation for that state of affairs, and the wall of silence otherwise presented by P&ID and Mr Adebayo, is that the Documents were obtained corruptly, as would have been known by those acting for P&ID at the time. The corrupt leakers included at least Mr Shasore and Ms Adelore, as P&ID's witnesses accepted: §196 above. But the exact identity of the leakers does not matter. The conclusion that arises from the evidence (or lack thereof) is that <u>at least some</u> members of FRN's legal team were party to corrupt arrangements with P&ID. Such a finding is fatal to the Awards, for reasons given below.

iv. Bribes paid to members of FRN's legal team

215. It follows from the above that members of FRN's legal team were indisputably corrupted. That is as far as FRN needs to go. It need not prove the precise nature of the corrupt arrangement(s) or the exact award(s) which the corrupt lawyers gained or stood to gain under them. Those details have *ex hypothesi* been concealed by P&ID. Nonetheless, FRN has identified a number of suspect payments to its lawyers at critical moments in the arbitration, many of which appear to have been made by Mr Adebayo or his sidekick, Wole Shonibare, in cash. These provide yet further support to FRN's case, should it be needed, that the lawyers were compromised.

216. There are two undisputed (or barely disputed) payments to FRN's lawyers:

a. <u>First</u>, Mr Adebayo made a payment of NGN 500,000 (around US$3,300) to Ms Belgore in the heat of the arbitration on 11 December 2014.[645] The payment has been uncovered because it was made electronically. Ms Belgore was an important member of FRN's legal team.[646] When the payment was discovered in 2022, Ms Belgore was suspended from her position and interviewed by the EFCC. Presented with the hard banking evidence she confessed that she had received the payment after a visit by Mr Adebayo on P&ID business to the MPR. During the visit Mr Adebayo asked for Ms Belgore's bank details and later made a transfer which was intended as 'a gift' for the entire legal

[644] See e.g. Mr Andrew at {Day4/37:13-14}.

[645] Bribery SoF §22(1) {A5/2/10}, citing the banking documents at {M/53/1} and {M/70/20}.

[646] See the various references to her providing advice and instructions in relation to the P&ID arbitration at FRN's opening submissions §30(l), footnote 109 {AA/1/27-28}.

unit {J/14/2}. P&ID's only answer to the payment is to feign ignorance and speculate that it might have been made because of a family connection between Ms Belgore and Mr Adebayo.[647] There is no evidence from Mr Adebayo to make good that case and it must be rejected for that reason. In any event, the familial connection between Ms Belgore and Mr Adebayo is remote in the extreme: she is a cousin connected only by marriage.[648] Nor do Ms Belgore's bank statements reflect any other traceable payments made to her by Mr Adebayo. Mr Burke's evidence, incredibly, was that despite speaking weekly to Mr Adebayo, he has never asked him about this payment.[649] The truth is that this was one of many bribes paid by Mr Adebayo on behalf of P&ID in the midst of a high-stakes arbitration. The idea that it was a familial gift is nonsense.

b. Secondly, P&ID's Notice of Arbitration having been sent on 22 August 2012, Mr Cahill all but admitted that Mr Quinn made a payment of (at least) US$2,000 to Mr Dikko, FRN's senior lawyer on the arbitration, between 2012 and 2013. Mr Dikko confessed to receiving such a payment, allegedly in order to fund a trip to the IBA conference in Dublin which took place on 30 Sept-5 Oct 2012, in his EFCC interview {J/16/2}.[650] Mr Cahill's response in his witness evidence was telling. He did not deny that the payment took place or express surprise at the allegation that Mr Quinn might have paid thousands of dollars, a large proportion of Mr Dikko's annual salary, to the head lawyer involved on the other side of a multi-billion-dollar arbitration. On the contrary, Mr Cahill said that it *"would not surprise [him]"* that Mr Quinn made such a payment, and that it reflected *"exactly the kind of home-town pride Mick would have felt"*.[651] Mr Cahill confirmed this in cross-examination and re-confirmed it in re-examination.[652] He could not see anything problematic about this. He said, *"It would only be dishonest behaviour I believe if Mick was seeking some specific benefit from Mr Dikko"*.[653] That is the evidence of a man who has become so steeped in corruption that he has lost all sense of propriety.

217. These two payments give the lie to P&ID's outrage at the allegation that they bribed FRN's lawyers. It has been caught red-handed paying such bribes, in addition to its history of paying bribes to Ms Grace Taiga, Ms Adelore, and Mr Dikko. That is all of a piece with P&ID's *modus operandi*, both as corrupters in general and, more specifically, as users of corrupt middlemen such as Mr Adebayo to squeeze money out of litigation. The WhatsApp message in which Don Etim asked for US$50,000 for

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[647] P&ID's opening submissions §539.2 {AA/2/158}.

[648] Mr Adebayo's sister, Bola, is married to Dele Belgore who is the cousin of Ms Belgore's husband, Suleiman Belgore.

[649] {Day14/57:4} to {Day14/58:20}.

[650] Mr Dikko's attendance at the IBA in September 2012 is corroborated by Mr Dikko's letter at {H5/134}, which also confirms that the trip was to be funded, as in previous years, by the NNPC.

[651] Cahill 1 §147 {E/17/41}.

[652] {Day10/196:12-14}, saying that, while he did not have first-hand knowledge of the payment, *"I accepted [it] because I didn't see it as being terribly unlikely"*.

[653] {Day10/141:21-23}.

Dr Alimi to *"spread around the places he will be going for us"* as part of his efforts to settle the IPCO case[654] proves that Mr Quinn and Mr Cahill were more than prepared to stoop to bribing lawyers in order to extract money from litigation against the Nigerian government. There is no reason to believe that they acted any differently in relation to P&ID's claim.

218. There is a further documented payment. On 27 February 2017 Mr Cahill sent a message to Mr Adebayo saying, *"Could do couple of grand on payment"*.[655] The timing is important. The offer of payment came just six days after Mr Adebayo had circulated an FRN Privileged Document.[656] It is to be inferred that the payment was intended to be passed on to the leaker of the document by way of a reward, or to reimburse Mr Adebayo for the reward that he had already paid. Mr Cahill sought to explain this away as a benevolent payment for Mr Adebayo who found himself short on cash during a business trip to Dubai.[657] This is an unlikely story: why would Mr Adebayo have embarked on a business trip for which he did not have the funds when he left? Most fundamentally Mr Cahill has not produced a single message, email or other document to corroborate his story.[658] If such documents existed, as they must if the story was true, they could easily have been disclosed, and Mr Adebayo could have, of course, given evidence on this point.

219. In addition, FRN has uncovered a series of large, round-figure cash payments to Ms Adelore and Mr Shasore at critical periods in the arbitration, in particular around the time of the settlement meeting in London on 21 November 2014 (addressed at §229.f below). A chronology of the deposits is set out in FRN's table at {AA/1.2}, which the Court is invited to read. This does not purport to be an exhaustive list of payments made by or on behalf of P&ID to the lawyers. P&ID were cash merchants. When Mr Adebayo, his sidekick Mr Shonibare, or someone else on behalf of P&ID such as Mr Nolan, delivered packets of cash to Ms Adelore and Mr Shasore it is improbable that they were all deposited into a bank account. The purpose of using cash for bribes is to avoid detection by keeping them out of the banking system. Most cash payments were therefore likely kept under the mattress, given to family members, or deposited in faraway bank accounts. The deposits identified by FRN are slips where P&ID and the recipients of the bribes have been caught out. They are likely to be the tip of the iceberg.

220. It is worthwhile drawing attention to a particular cluster of payments, which are set out in the chronology at {AA/1.2/4}:

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654 {H7/444.1}.
655 {L/25/19}.
656 {I/262}, attaching {I/263}. Addressed at FRN Privileged Documents SoF §52 {A5/1/50}.
657 Cahill 6 §34 {D/26/11}.
658 As he accepted: {Day10/83:5-12}.

05.12.2014		P&ID pays Mr Adebayo US$70,000 purportedly for *"Flights + Hotels"*.		{H7/323} {H9/234} {M/70/98}	
08.12.2014		US$70,000	Adelore	{M/35/43}	SoC §73.5 {A1/1/54}
08.12.2014		US$70,000	Adelore	{M/35/43}	SoC §73.5 {A1/1/54}
08.12.2014		US$60,000	Adelore	{M/35/43}	SoC §73.5 {A1/1/54}
08.12.2014		US$50,000	Shasore	{M/72/1}	SoC §71.4.2.1 {A1/1/50}
11.12.2014	NGN 500,000	Mr Adebayo makes an electronic transfer of NGN 500,000 to Ms Hafsat Belgore, after meeting her at the MPR's offices and obtaining her bank details.	Adebayo	{M/70/20} {M/53} {J/14}	SoC §35A and §71(2Aiv) {A1/1/29} and {A1/1/46}

221. The fact that this eye-watering series of cash payments (with Grace Taiga giving evidence that the salary for the MPR head of legal was approximately US$5,000 per year)[659] were bribes is corroborated by Ms Belgore's EFCC interview. In that interview she said that she received an NGN 500,000 payment after providing her bank co-ordinates to Mr Adebayo during a visit to the MPR {J/14/2}. This chronology fits together. Mr Adebayo visited the MPR for an (undocumented) meeting with Ms Adelore and Mr Shasore on or just before 8 December 2014, at which he handed them large sums of cash. He obtained Ms Belgore's bank details on that same visit. He then effected the payment several days later. It is also more than a coincidence that these payments were made in the immediate aftermath of the settlement meeting in London on 21 November 2014 and Ms Adelore's, Mr Shasore's and Mr Oguine's frenetic attempts to persuade their superiors to settle for more than US$1 billion thereafter: §229.f below.

222. In his opening submissions Lord Wolfson criticised FRN for carrying out an arbitrary matching exercise between cash withdrawals on the part of P&ID and Mr Adebayo on the one hand, and cash deposits by the lawyers on the other.[660] That is a fair criticism in this sense: it is a fool's errand to trace each and every cash bribe back to one or more cash withdrawal from an ICIL or Adebayo-related company. The purpose of using cash for bribes is that they cannot be so traced. Rather the key points are that: (i) P&ID were cash merchants and their *modus operandi* was to pay bribes in cash with minimal records to avoid detection (recorded as 'Dublin expenses' until 2012); and (ii) there was plenty of cash swilling about to fund the identified cash payments to Ms Adelore and Mr Shasore. That is amply shown by the cash withdrawals listed in the chronology at {AA/1.2}.

223. As can be seen from {AA/1.2} many of the corrupt cash payments appear to have been funded by cash withdrawals by Mr Adebayo and Mr Shonibare. Their involvement makes sense, since both were

659 Taiga 3 §34 {D/8/9}.
660 {Day2/74:19}.

instrumental in obtaining the FRN Privileged Documents from the very same lawyers.[661] Mr Cahill balked at the idea that Mr Adebayo was contributing his own money towards bribes.[662] Yet:

a. At the time of the bribes paid in 2014 and 2015 Mr Adebayo stood to earn riches beyond his wildest dreams in the event of a settlement. He was entitled to 50% of any settlement above US$1billion plus a bonus of US$60 million for one above US$950 million.[663] The sums of money that Mr Adebayo was paying to FRN's lawyers were *de minimis* by comparison. They were a logical investment.

b. Mr Adebayo funded the payment to Ms Belgore out of his own bank account: §216.a above.

c. Mr Adebayo was involved in setting unparticularised 'budgets' for this precise period (i.e. 2014 and 2015), much of which was attributed to the *"Calabar Gas Project"*: §190 above.[664] These were obviously budgets for bribes. The arrangement was that Mr Cahill would contribute around 50% of the required budget, in cash. The remainder had to be funded locally. The correct inference is that Mr Adebayo was funding at least some of the shortfall himself.[665]

d. Mr Adebayo received a series of shady payments, for which he had no contractual entitlement and some of which were papered over by false invoices, between 2012 and 2018: §189.b above. In addition, he was paid US$750,000 out of the VR proceeds in November 2017: §189.d above. To the extent that Mr Adebayo was putting his hands into his own pockets, therefore, he was being reimbursed by P&ID.

e. The documents demonstrate that Mr Adebayo has indeed been contributing to P&ID's costs in line with his (now diluted) 10% shareholding in recent years.[666] Mr Cahill's only response to this, having said that it was farcical to suggest that Mr Adebayo was contributing his own resources, was that he had not seen the document showing this before.[667]

f. Mr Adebayo has not given any evidence, or provided a single document, to rebut the inference that he and his companies were the source of the cash for the payments to Ms Adelore and Mr Shasore set out at {AA/1.2}. In particular, he has given no evidence about why vast sums of cash were being

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[661] FRN has pleaded that Mr Adebayo paid bribes to members of FRN's legal team: SoC §§71(2Aiv) {A1/1/45-46}, 71(2Aviii) {A1/1/47} and 71(2Ax) {A1/1/48}.

[662] {Day10/55:8-11} ("*He never contributed anything*").

[663] See the schedule to the Settlement Brokerage Agreement at {H9/65/9}.

[664] Citing {H6/192} and {H7/73}.

[665] Although it would of course not assist P&ID if some or all of the shortfall for bribe money was funded by ICIL group companies.

[666] Spreadsheet entitled "*Payments – 18 Nov 2019*" {H9/306} row 20.

[667] {Day10/56:4} to {Day10/59:9}.

withdrawn from his companies' bank accounts in this period.[668] If there was an innocent explanation, he could easily have given it, whether by a witness statement or through disclosure of documents.[669] His silence entitles the Court to infer that there is no such explanation.

224. P&ID has offered no explanation for the eye-watering cash deposits on Ms Adelore's account – up to US$200,000 in a single day[670] – save to point to an EFCC interview in which she said that she engaged in unspecified trading for *"supplies to sell in Wuse market"*.[671] This is an excuse of the crudest kind, which could be used by anyone to hide the receipt of corrupt payments. If Ms Adelore was engaged in genuine trading it is difficult to see why it would be exclusively in large, round-figure sums of cash. Moreover, these are incredible sums for her to legitimately be depositing when compared to her modest government salary. The proper inference is that the cash deposits represent the proceeds of bribes paid to her.

225. Finally, the bank accounts of Mr Shasore have revealed a raft of suspect payments to various individuals at the time of the arbitration. Whilst in light of the other evidence it is unnecessary to prove that these payments were further corrupt payments made by Mr Shasore in concert with P&ID's Mr Adebayo, the evidence strongly suggests they in fact were. In any event, these transactions deprive P&ID's description of Mr Shasore as *"a distinguished practitioner of previously unblemished reputation"* who has become *"collateral damage"* of all credibility.[672] It may be true that Mr Shasore is of previously unblemished reputation because he has never previously been caught, but the documents show him to be a corrupt and corruptible lawyer. The payments are as follows:

    a. Mr Shasore made payments of US$100,000 each to Ms Adelore and Mr Oguine just prior to their solo trip to a settlement meeting in London on 21 November 2014, following which all three individuals began lobbying their superiors to settle for US$1.1 billion. The fact and timing of the payments are undisputed.[673] Incredibly, P&ID argued in their opening submissions that *"A kickback is more than a plausible reason, whether we like it or approve of it or not, why a lawyer might make a payment to his client"*.[674] It thus now appears to be common ground that these were corrupt payments. The only question is: were they further payments to Ms Adelore and Mr Oguine connected to assisting P&ID in relation to the GSPA dispute? In light of their coincidence with the flurry of activity around the

668 For example, on 20 March 2015, Mr Shonibare withdrew US$174,900 from the account of Mr Adebayo's company, Trenko: {AA/1.2/5}.

669 In this respect FRN's expert evidence that the use of cash, especially on this scale, is not normal in Nigeria went unchallenged and must be accepted: §50 above.

670 On 8 December 2014: {AA/1.2/4}.

671 Ms Adelore's EFCC interview at {J/72/3} (internal p.10), referred to by Lord Wolfson at {Day2/92:15} onwards.

672 P&ID's opening submissions §19 {AA/2/9}.

673 Bribery SoF §§62 {A5/2/24}; 72 {A5/2/27}.

674 {Day2/80:14-17}. See similarly Mr Burke at {Day13/162:1} to {Day13/163:25}, accusing Mr Shasore of *"outrageous behaviour"*.

November 2014 settlement meeting, the involvement of Ms Adelore and Mr Oguine in desperately persuading their superiors to settle for US$1.1 billion, the stream of FRN Privileged Documents that were leaked around this time, and the fact that P&ID are serial bribers, the answer must be, on the balance of probabilities, 'yes'.

b. Mr Shasore made an unexplained payment of US$300,000 to his fellow partner Mr Ukiri in the same critical window, on 14 November 2014.[675] The payment followed an email dated 28 October 2014 in which Mr Ukiri sent an FRN Privileged Document to Mr Adebayo {I/179}. The contents of the email are important: it is a direct message from Mr Ukiri to Mr Adebayo under the subject line *"See attached as discussed"* and is otherwise blank. It is therefore clear that Mr Ukiri was in contact with P&ID through Mr Adebayo via undocumented channels. In those circumstances the inference must be that Mr Ukiri was acting as a conduit between Mr Shasore and P&ID, was privy to their corrupt relationship, and was being paid for his role in doing so and for his silence.[676] Mr Ukiri told the EFCC that the payment was a partnership distribution {J/72.1}. That is debunked by Mr Shasore's banking records which show routine partnership payments being made by his law firm, not by other individual partners, under the reference *"Partners' drawings"*, as one would expect.[677] Moreover, if this was a regular partnership payment it is unclear why Mr Ukiri would have been singled out for a share of the bounty. Mr Shasore does not appear to have made payments to any other partners at the time.

c. Mr Shasore made a further payment of US$150,000 to Mr Alegeh. The story of Mr Alegeh's involvement is set out at Bribery SoF §§86-88 {A5/2/29-31}. In short, Mr Alegeh was instructed as co-counsel in the arbitration but did not do any work other than provide an opinion for which he was paid by the NNPC. On 28 November 2014, seven days after the London settlement meeting, Mr Shasore made a payment of US$150,000 to Mr Alegeh, following which he was promptly removed from all email chains relating to the arbitration and settlement negotiations. The payment was intended to bump Mr Alegeh off the case to pave the way for a corrupt settlement. Mr Shasore had no other financial interest in pushing him off the case, since his own fee was fixed. P&ID says that FRN's case *"implicitly requires Mr Alegeh to have been a party to the corrupt scheme"*.[678] That is incorrect. FRN's case is that Mr Alegeh was being paid to recuse himself in order to clear the way for Mr Shasore to negotiate a corrupt settlement and share in the spoils. That does not turn on Mr Alegeh

[675] Bribery SoF §94(3) {A5/2/32}.

[676] P&ID argue that it is implausible that Mr Ukiri was paid US$300,000 for leaking a single document: P&ID's opening submissions §500 {AA/2/142-143}. But the fact that Mr Ukiri was engaged in a channel of communication with Mr Adebayo suggests that his role went beyond being the conduit for a single document. This is simply the communication by which Mr Ukiri has been caught out.

[677] See by way of example {M/20}, row 1355, on 22 August 2015: *"Partners' Drawings August 2014 Mthly Salary"* NGN 1,900,000.

[678] P&ID's opening submissions §498.1 {AA/2/142}.

having knowledge of Mr Shasore's corrupt intentions.

226. P&ID contends that any attempt to link the above payments to it must fail because they were funded by Mr Shasore's fee for the arbitration rather than funds provided by P&ID or Mr Adebayo.[679] It is true that the payments followed Mr Shasore's receipt of US$1.2 million on 7 November 2014. In that most literal sense his fee may well have been the immediate source of funds for the payments. But that is not the relevant question. The question is: were the payments made as part of the corrupt arrangements reached between Shasore and Mr Adebayo on behalf of P&ID? In FRN's submission the answer, on the balance of probabilities, is 'yes'. Each of the payments was made at a critical time in the arbitration, to individuals closely involved in the P&ID matter (two of whom – Mr Ukiri and Ms Adelore – were in direct contact with Mr Adebayo,[680] and Mr Adebayo and Mr Shasore themselves were clearly contacts)[681] in circumstances where Mr Shasore was lobbying the government to settle for US$1.1 billion without any proper basis, where there are records of large, round-figure cash receipts into Mr Shasore's accounts, where FRN's lawyers were involved in the repeated leaking of privileged material, and where P&ID and Mr Adebayo are established to have been serial bribers.

v. The conduct of the arbitration

227. P&ID contends that FRN's lawyers conducted the jurisdiction and liability stages of the arbitration honestly and in FRN's interests. Working backwards, they say that it is therefore impossible that they were corrupted. This looks at the allegation through the wrong end of the telescope. It is naïve in the extreme to suggest that, if one or more of FRN's lawyers had been corrupted, they would have revealed this by outwardly 'throwing in the towel' or otherwise conducting themselves in an overtly compromised manner: this is a caricature of corruption. It is moreover the wrong legal approach. If, for example, it is established that a corrupt payment has been made to Ms Belgore or Mr Dikko (as was indeed the case), it is no answer for P&ID to contend that they did a sterling job for FRN in the arbitration.

228. Attempting to isolate the corrupt behaviour of an agent who has been bribed from his non-corrupt behaviour is an unreliable and pernicious exercise. As Chitty LJ said in *Shipway v Broadwood*, *"it is an immaterial inquiry to what extent the bribe or the offer of it influenced the person to whom it was given or offered. A contrary doctrine would be most dangerous, for it would be almost impossible to ascertain what had been the effect of the bribe"*.[682] Mr Andrew agreed that the problem with corruption is that *"it is very difficult to tell whether*

[679] P&ID's opening submissions §491 {AA/2/138}.

[680] See {I/223} and {I/179}, showing direct email communications and prior conversations between Mr Ukiri and Ms Adelore, respectively, and Mr Adebayo.

[681] {L/31/2} being a reference in 2019 to Mr Adebayo meeting with Mr Shasore.

[682] *Shipway v Broadwood* [1899] 1 QB 369, 373 {Z1/5.01/5}, emphasis added.

someone is acting in the true interests of their principal or whether they are acting in the shadow interests of their shadow principal".[683] As a result, he said that, if it became apparent that a member of P&ID's team had been in FRN's pocket, he would *"assume"* that they had carried out at least some acts in FRN's interests *"even if I couldn't identify it"*.[684] Yet an enquiry into the conduct of FRN's allegedly corrupted lawyers is the mainstay of P&ID's case.

229. Even if it were necessary to undertake a back-to-front exercise of identifying improper conduct on the part of FRN's lawyers, which it is not, there are a number of clear red flags, including:

a. The persistent leaking of FRN Privileged Documents, many of which were harmful to FRN's interests. There is no plausible explanation for this other than that the leakers were in P&ID's pocket.

b. The failure of FRN's legal team to take the step of seeking disclosure from P&ID, which would have enabled them to scrutinise the contents of Mr Quinn's witness statement as to P&ID's preparedness to perform.[685]

c. The failure of Mr Shasore to apply to cross-examine Mr Quinn at the pre-hearing conference.[686]

d. Faced with the Tribunal's Procedural Order No.9 requiring them to serve *"a statement of any primary facts alleged in the evidence of Mr Michael Quinn which are challenged"*,[687] Mr Shasore, presumably on instructions from Ms Adelore, choosing to take issue with only six irrelevant points of challenge.[688] The result was that the truth of Mr Quinn's statement was treated as agreed for the remainder of the arbitration.[689] It is impossible to see how FRN's lawyers could properly have allowed this to happen, *a fortiori* without <u>any</u> meaningful scrutiny of the contents of Mr Quinn's witness statement. P&ID speculates that Mr Shasore may have chosen not to dispute Mr Quinn's evidence because the question of P&ID's readiness to perform was irrelevant to the issue of liability. But (i) that is wrong as a matter of law;[690] and (ii) in any event and most importantly, FRN had been ordered to

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683 {Day3/133:19} to {Day3/134:1}.

684 {Day3/135:4-7}.

685 In light of P&ID's evasion and obstruction to date, the question of whether this would in fact have been granted, and if so, would have led to documents being provided that would have led to the discovery that such aspects of Mr Quinn's evidence were perjured, is of course entirely different.

686 Liability Award §27 {G/31/6}.

687 {G/23/2}.

688 The points were so irrelevant that P&ID was content not to rely on them: P&ID's liability submissions §26 {G/29/6}.

689 As recorded by the Tribunal in its Final Award at §§33-34 {G/49/8} and 51 {G/49/14}.

690 It is common ground that P&ID's readiness to perform was relevant at least to quantum: P&ID's opening submissions §481.2 {AA/2/134}, citing *Flame SA*. P&ID's readiness to perform was also relevant to quantum: see FRN's opening submissions §401 {AA/1/163} citing the Court of Appeal's ruling in *Acre*. P&ID's only response is to suggest, for reasons that are not entirely clear, that *Acre* was wrongly decided by the Court of Appeal: P&ID's opening submissions footnote 128 {AA/2/135}. The earlier cases with which *Acre* are said to be inconsistent were themselves cited by the Court of Appeal in its ruling. In any event, *Acre*

identify all parts of Mr Quinn's factual evidence which it disputed. It was in those circumstances foolish in the extreme to accept, without qualification, Mr Quinn's evidence on issues which would on any view be relevant at the quantum stage.

e. Mr Shasore's actions in 'bumping off' his co-counsel on the case, Mr Alegeh, by paying him US$150,000: §225.c above.

f. The lawyers' frantic efforts to settle the case in late 2014 and early 2015. The whole episode is set out in detail at §169 of FRN's opening submissions and is not repeated here {AA/1/71}. Following a series of meetings, including the London meeting on 21 November 2014 and further undocumented meetings with Mr Adebayo, Mr Shasore, Ms Adelore, and Mr Oguine embarked on a campaign to persuade their superiors to settle the case for US$1.1 billion.[691] This was extraordinary in circumstances where none of them had taken any meaningful steps to value the claim on the evidence. Mr Andrew and Mr Cahill told the Court that it was fantastical to believe that P&ID could achieve a settlement of US$1 billion (or thereabouts) before liability had been established.[692] What, then, was the magic of P&ID's settlement facilitator, Mr Adebayo, that enabled him to persuade Mr Shasore, Ms Adelore and Mr Oguine otherwise and to all lobby for precisely this in late 2014 and early 2015? The answer, of course, is corruption.

230. P&ID's overall argument is that FRN's conduct of the arbitration was *"lacklustre"* but honest; and that the Awards were the product of FRN failing to invest sufficient money on quantum experts.[693] That is wrong for the reasons above but is in any event based on a false premise: that allegedly *"lacklustre"* conduct of the arbitration at the quantum stage is mutually exclusive with the corruption of the lawyers at the liability stage. In this sense, the hundreds of pages of P&ID's written opening submissions, devoted to allegedly showing that the root cause of the Awards was poor judgment or inefficient administration, are a diversion. The question the Court must ask itself on the evidence is whether one or more of FRN's lawyers were corrupted. For the reasons above, they plainly were.

vi. Corruption of FRN's lawyers as a ground for setting aside of the Awards

231. It is common ground that there is no such thing as a half-corrupt lawyer.[694] It follows that, as soon as

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has since been endorsed twice, by the Court of Appeal in *The Trademark Licensing Co Ltd v Leofelis SA* [2012] EWCA Civ 985 at [25] {Z1/89.3} and by Phillips J in *Aircraft Purchase Fleet Ltd v Compagnia Aerea Italiana SPA* [2018] EWHC 3315 (Comm) at [111]-[112] {Z1/135.1/34}.

691 See e.g. Ms Adelore's advice dated 1 December 2014 at {H7/67}, Mr Oguine's advice dated 24 December 2014 at {H7/87}, Ms Adelore's advice dated 30 December 2014 at {H7/88}; the email from Ms Adelore to Mr Shasore sending a report of a combined recommendation to settle with the instruction *"Please let's have your endorsement"* {H7/60}.

692 Mr Andrew said it was his view that a settlement at this level was *"pie in the sky"*: {Day4/149:18} to {Day4/150:7}. Mr Cahill *"disagree[d] very strongly"* that settlement at US$1 billion was ever a realistic prospect: {Day10/20:19-20}.

693 See e.g. P&ID's opening submissions §4 {AA/2/4}; {Day2/5:7-10}; {Day2/158:16-23}.

694 §178 above.

one or more of FRN's lawyers entered into a corrupt relationship with P&ID of whatever kind, FRN was deprived of the undivided loyalty to which it was entitled and has thereby suffered substantial injustice.[695] If that is proven to have occurred the Awards must be set aside. P&ID's only answer to the allegation is to deny that it happened. It has not pleaded a case that the Awards could stand in the face of one or more of FRN's lawyers being corrupted. Rightly so. Even Mr Andrew agreed that, as a director of P&ID, he would not be able to take these enforcement proceedings any further if it was established one or more of FRN's lawyers had been corrupted.[696] The law of course follows suit. A judgment before the English courts could not survive the revelation that, for example, a junior associate on the opposing side's solicitor team or a member of its counsel team had been corrupted. There is no reason why an English-seated award should be treated differently. To do so would strike at the heart of the integrity of English arbitration and the proper administration of justice. It follows that, if the Court accepts (as it should) that P&ID, whether both directly and through Mr Adebayo as its settlement facilitator, entered into a corrupt arrangement of whatever kind with one or more of FRN's lawyers, that is the end of these enforcement proceedings.

vii. Receipt of the FRN Privileged Documents as a ground for setting aside the Awards

232. The FRN Privileged Documents were obtained as a product of the corruption. That corruption is, of itself, a reason for setting aside the Awards. But moreover, the fact that P&ID received a stream of FRN's privileged material throughout the arbitration is a further ground itself for setting aside the Awards in any event. P&ID disputes this. It says, with an unattractive arrogance, that whether or not P&ID obtained the FRN Privileged Documents by improper means *"ultimately matters little since the documents were utterly immaterial to the obtaining of the Awards".*[697]

233. This is wrong as a matter of both fact and law. As to the facts:

    a. As set out in the Privileged Documents SoF and Annex 2 to these submissions P&ID received an enormous volume of privileged material over the course of the arbitration. This gave it a fly on the wall insight into FRN's litigation strategy, its views on the merits (including its weaknesses), its proposed lines of defence, its exchanges with experts, and so on. There was barely any type of privileged material that P&ID did not receive over the life of the arbitration. The nature of the

[695] See FRN's opening submissions at §§448-451 {AA/1/194-195} and §§474-488 {AA/1/205-215}. Contrary to Mr Andrew's assertion before Sir Ross Cranston in Andrew 3 §17 {E/18/5} that "*it was apparent, from an early stage that the Nigerian Government simply had no real defence to the claim",* in light of the evidence that has now emerged of perjury and bribery in connection with the entry of the GSPA, it cannot be contended by P&ID that the outcome of the case was inevitably the result in favour of P&ID that in fact occurred. Moreover, had the Tribunal known of such corruption during the arbitration, it would have radically altered the dynamic, with P&ID's claim dismissed as an abuse: see FRN's opening submissions §487 {AA/1/214}.

[696] {Day4/27:11-13}. Repeated at {Day4/96:6-8}.

[697] P&ID's opening submissions §1022 {AA/2/286}.

documents obtained and the advantages they provided are set out in detail at §§484-486 of FRN's opening submissions and are not repeated here {AA/1/211}. These documents were self-evidently of use to P&ID.

b. By way of example only, Mr Andrew accepted that, according to the documents, Mr Cahill had been using the advance notice gained from the information leaked by the *"friend"* within the MPR to P&ID's *"advantage*", with Mr Andrew advising based on this information.[698] Similarly, he accepted that on 6 May 2015 P&ID rejected FRN's settlement offer having knowledge from the leaked privileged information that FRN was in fact prepared to go above the US$400 million being proffered.[699]

c. The FRN Privileged Documents were frequently and consciously distributed to members of P&ID's legal team, and their relevance and utility was often expressly acknowledged in the contemporaneous emails: FRN's opening submissions §484 {AA/1/211}. Mr Murray acted as a *"relevance filter"* for the FRN Privileged Documents, meaning that he only passed on privileged material which appeared to be relevant based on reading the header or the first couple of lines of the document.[700] He agreed that he would not have troubled members of P&ID's legal team with FRN Privileged Documents unless they were of *"particular relevance"* to the tasks of counsel in the arbitration.[701] The cover emails by which the FRN Privileged Documents were circulated amongst those acting for P&ID were on a number of occasions themselves marked *"privileged"*,[702] *i.e.* contemporaneous acknowledgement that the documents were being circulated for <u>use</u> in connection with the arbitration.

d. Fundamentally, as Mr Burke and Mr Cahill accepted, receipt of the FRN Privileged Documents such as {I/113}, the 'Defence wording' document, gave P&ID a *"fly on the wall insight into what FRN has or has not discovered by way of potential defences"*.[703] The receipt of the FRN Privileged Documents thus allowed P&ID to monitor in real time what lines of defence had come to the attention of FRN and its lawyers, and any steps that FRN might be taking, and shape its own strategy accordingly. For example, P&ID's discovery from a leaked FRN Privileged Document that the Minister at the MPR was suggesting the replacement of Mr Shasore caused consternation within P&ID.[704]

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[698] {Day4/70:21} to {Day4/71:24}.

[699] {Day4/114:24} to {Day4/115:17}. Mr Shasore communicated a settlement offer of US$400m on 6 May 2015 {H7/230}, which was immediately rejected {H7/231}, with P&ID having received FRN's privileged document {I/208} earlier that day undermining the actual offer made.

[700] {Day12/103:24} to {Day12/104:13}.

[701] {Day12/105:21-25}.

[702] FRN Privileged Documents SoF 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}, and 31(1)(iii) {A5/1/27}.

[703] See Mr Burke at {Day13/127:12-16} and {Day13/130:2-16} and Mr Cahill at {Day10/24:21} to {Day10/25:25}.

[704] Privileged Documents SoF §20 {A5/1/16}, with {I/133} with subject "*urgent email for Mick*" attaching {I/134} on 11 September 2013 and the body of the email stating "*Please pass attached to Mick asap … please confirm clean receipt so that I can delete",*

Moreover, of particular importance, P&ID could be sure, as a result of their fly-on-the-wall vantage point, that FRN had not cottoned on to the fact that P&ID had done no preparatory work for the GSPA, and that it had not identified that the GSPA had been procured by bribes.[705] Tellingly in this respect Mr Cahill said *"I will not deny that it would be of interest to know … if it was in advance of time what [FRN's] position was [in terms of whether it had any defences]"*.[706]

e. Mr Andrew also said that it was *"notable"* that the vast majority of the FRN Privileged Documents were *"provided at times when there is some sort of activity going on in the arbitration that was noteworthy"*.[707] That suggests that they were being provided precisely because they were of value to whatever *"activity"* was going on at the time. Indeed, the reality is that the privileged documents were being covertly provided *both* to give P&ID insight into what was going on within FRN and to inform its strategy, and as part of the corrupted individuals showing P&ID that they were indeed following through in acting in P&ID's interests.[708]

234. As regards the law and its application to the facts, see FRN's opening submissions at §§474-488 {AA/1/205}. What follows is a short summary.

235. First, P&ID relies on the Court of Appeal's ruling in *Hamilton v Al-Fayed*.[709] The case concerned the taking of opposing counsel's opening speech and some draft cross-examination questions from a rubbish bin, i.e. some specific documents at a specific point in time. There had been no collusion between the legal teams. On the particular facts, the Court of Appeal held that (i) the receipt by Mr Al-Fayed's team of these limited documents had not adversely affected the other side's ability to cross-examine,[710] and (ii) knowledge of the fact that Mr Al-Fayed had purchased the documents would not have affected the jury's view of him because, in the unusual circumstances of the case, Mr Al Fayed was running a case that was damaging to his own credit (i.e. that he had bribed a politician).[711] P&ID appears to agree that the facts of this case are different but contends that this is *"merely a question of fact*

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and Mr Burke himself stating *"Call me"* when forwarding this chain to Mr Andrew {I/135}, attaching {I/136}. P&ID has identified no legitimate reason for how it came to be provided with this document: {Day4/72:8} to {Day4/73:8}. Whilst Mr Andrew sought to suggest that no conversation between him and Burke took place {Day4/75:14} to {Day4/77:8}, Mr Burke claimed to have a vivid recollection of immediately calling Mr Andrew {Day13/157:10} to {Day13/167:4}. It is clear that this Court was not being given the full picture by P&ID's witnesses of the perceived importance of this email or what subsequent discussions ensued. At the very least, this is an example of information being used to improperly inform P&ID of what at the time were confidential and privileged matters within FRN's camp.

[705] See Burke at {Day13/130:2-16}.

[706] {Day10/25:2-4}.

[707] {Day4/92:20-24}.

[708] For example, Mr Andrew accepted that the privileged memo of the 21 November 2014 settlement meeting (Privileged Documents SoF 36 {A5/1/32}) was leaked by the negotiating trio of Ms Adelore, Mr Shasore and Mr Oguine {Day4/149:2} to {Day4/150:1} and that it itself was advice that should not have been shared {Day4/167:16} to {Day4/168:10}.

[709] P&ID's opening submissions §1023 {AA/2/286}, citing *Hamilton v Al Fayed* [2001] EMLR 15 {Z1/38}.

[710] *Al-Fayed* at [109]-[123] {Z1/38/35}.

[711] *Hamilton* at §125 {Z1/38/39}.

and degree".[712] On one level that is a truism. Whether the test of substantial injustice is met is always a question of fact and degree. The facts of this case are at the extreme end of the spectrum insofar as they involve the receipt of a stream of privileged materials of different kinds over many years, with that material being shared with P&ID's legal team, fundamentally undermining any respect for FRN's right to privilege. It would be capricious and unrealistic to expect FRN to prove the precise ways in which P&ID adapted its case strategy in response to a constant flow of privileged material across party lines over several years. One cannot extrapolate from the *Hamilton* ruling that, in the very different circumstances of this case, FRN must identify the precise effect caused by individual document(s) on specific pleadings, written submissions or passages of oral argument. That would be unreal and would reward P&ID for the pervasive nature of their improper behaviour. Here, the scale of what went on was such that there was a blanket disregard for FRN's right to legal professional privilege and a gross undermining of the administration of justice, such that substantial injustice should be determined to exist.

236. 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. As set out above, the Court should find that there is evidence of the FRN Privileged Documents being used to give insight to those acting on behalf of P&ID and to inform its strategy, and the self-serving evidence of P&ID's witnesses that they did not consider the FRN Privileged Documents to be of use should be rejected.

237. Third, contrary to the facts of *Hamilton v Al-Fayed*, 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, which of itself is sufficient to establish substantial injustice.

238. Moreover, P&ID's failure to disclose that it had obtained FRN's privileged materials was in breach of both P&ID's own duties[713] and those of its legal advisors, Mr Andrew and Mr Burke, who had personally received a significant number of the documents.[714] There was a dispute in P&ID's opening submissions about whether Mr Andrew and Mr Burke were under an obligation to alert FRN or the

[712] P&ID's opening submissions §1029 {AA/2/288}.

[713] Mr Andrew and Mr Burke both accepted that P&ID was under an obligation to co-operate and arbitrate in good faith: {Day3/156:16-19} and {Day13/69:17-20}.

[714] The documents shown by the documentary record to have been received by Mr Andrew and Mr Burke are set out in Privileged Documents SoF {A5/1}. In fact, whilst no record exists of which others he was shown, Mr Burke accepted he would also be shown documents in person: {Day13/79:14-16}, {Day13/82:14-22}, {Day13/123:3-7} and {Day13/176:11-15}. Moreover, as clear from their witness statements, both Mr Andrew and Mr Burke knew that those acting for P&ID were obtaining documents of this type whether or not they were all sent on to Mr Andrew and Mr Burke.

Tribunal to the existence of the FRN Privileged Documents.[715] That is resolved by guidance in the form of the BSB written standards for the conduct of professional work {Z3/5/94} that a barrister who comes into possession of a document obtained by means other than normal and proper channels, including *"if the document appears to belong to another party, or to be a copy of such document, and to be privileged from discovery or otherwise to be one which ought not to be in the possession of his professional or lay client"* must *"at once return the document unread to the person entitled to possession of it"* unless he is *"satisfied that the document has been properly obtained in the ordinary course of events"* (§§7.1-7.2).[716] If the client refused to permit this, the lawyer would be professionally embarrassed.

239. For the reasons already given Messrs Andrew and Burke cannot possibly have been satisfied that the FRN Privileged Documents had been properly obtained. The correct finding is that they both knew that the privileged material was being obtained illicitly as a result of the corruption of FRN's representatives. But tellingly, even on their own false evidence, their professional obligations to return the FRN Privileged Documents to FRN were engaged: (a) Mr Burke invented in his oral evidence that he had been told that the documents had been provided "*anonymously*",[717] but even if so, he could not have been satisfied that the provider of the documents had any authority to provide them to P&ID as he accepted;[718] (b) the same applies to Mr Andrew, who admitted even on his own case that he could not be sure of the provenance of the documents,[719] that the sharing of these documents *"might not have been strictly authorised"*,[720] that it would be wrong for a lawyer to hand over documents without authority,[721] and that the documents he had seen included material which it was self-evident P&ID should not be seeing.[722] Mr Andrew and Mr Burke were therefore under a duty to return and reveal the documents to FRN and the Tribunal, but they recognised that this might *"prove controversial"* or generate a satellite dispute or complaint,[723] and therefore dishonestly failed to do so. Mr Burke's and Mr Andrew's wanton disregard for their professional duties is further demonstrated by the CBN memo, which they both received on 7 September 2019, and which was plainly illicitly provided, but which they failed to return to or raise with FRN at any time, even concealing their involvement in their

[715] See P&ID's opening submissions §1042, footnote 259, denying the existence of such a duty but acknowledging that certain cases appear to have held otherwise {AA/2/296}.

[716] Mr Andrew confirmed that his duties as a solicitor did not differ significantly: {Day3/155:9} to {Day3/156:12} and {Day4/3:10-22}. Mr Burke accepted that this corresponded with his own understanding of his obligations: {Day13/64:15} to {Day13/71:20}.

[717] {Day13/97:1-7} cf. {Day13/181:18-20}. No mention of this appears in his witness statements.

[718] Mr Burke admitted that he "*couldn't establish the provenance of any of these documents*" {Day13/143:24-25} and that if a document had been provided anonymously, it followed that he could not be satisfied that it was provided by a person with any authority at all to have in fact provided such a document: {Day14/3:2-9}, see also {Day14/6:19-22} and {Day14/59:18-24}.

[719] {Day4/42:10-14} and {Day4/64:22} to {Day4/65:2}.

[720] {Day3/158:23} to {Day3/159:5}.

[721] {Day3/145:16} to {Day3/147:22}.

[722] See, for example, {Day4/57:23} to {Day4/58:6}, {Day4/88:3-7} and {Day4/110:10-15}.

[723] Burke 1 §15(a) {D/1/5}, {Day13/109:1-13} and {Day13/112:19} to {Day13/113:1}.

recent witness statements.[724]

240. Indeed, Mr Andrew's efforts to ascertain which pre-arbitration documents had been obtained *"officially"* and *"unofficially"*[725] with a view to deciding which to append to Mr Quinn's witness statement[726] is revealing.[727] Mr Andrew said that he wanted to deploy both categories of document but was *"checking whether that might cause a problem in the arbitration"*.[728] The potential *"problem"*, he said, was that use of the unofficial documents might have generated satellite litigation or *"cause[d] the other side to complain about it, and I did not think that we should take that risk"*.[729] But of course FRN could only have complained about the 'unofficial' documents being deployed if they had been obtained without authority.[730] Had they been shared with authority there could be no controversy about their use, and P&ID could readily have explained that to the Tribunal. Instead, this was all part of actively concealing P&ID's track record of having illicitly obtaining documents from corrupted officials.

241. Had Mr Andrew or Mr Burke returned the FRN Privileged Documents as they should have done, and had that, as they anticipated, prompted a complaint by FRN, the Tribunal would have become aware that there had been pervasive and improper leaking of privileged material behind party lines. In those circumstances it could have struck out P&ID's claim for abuse of process.[731] Equally importantly, and in any event, the Tribunal would have decided P&ID's claim in the knowledge that it had been complicit in serious and concealed wrongdoing. That would have fundamentally affected the Tribunal's assessment of P&ID's credibility including the honesty of its factual evidence.[732] For that reason alone, the receipt and improper suppression of the FRN Privileged Documents caused substantial injustice to FRN.

viii. Section 73

242. P&ID does not contend that FRN could, let alone should, have identified (i) the fact that its lawyers had been corrupted; or (ii) the wrongful receipt of the FRN Privileged Documents, during the course of the arbitration. No issue therefore arises under s.73 of the 1996 Act.

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[724] {O1/38.1} and {Day14/81:2-23}. Mr Andrew accepted there could be no possible legitimate basis for it to have been shared {Day4/173:13-21} and could not deny that it was obtained by bribery: {Day4/175:12-19}, {Day4/176:17} to {Day4/178:8} and {Day5/28:11} to {Day5/33:16}. Mr Burke falsely claimed to have conducted an investigation {S/1/13} (lines 8-15), of which no evidence whatsoever exists, and is utterly implausible given neither Mr Cahill or Mr Andrew were able to suggest in their own evidence that the CBN Memo had been legitimately obtained.

[725] Contrary to the witnesses' self-serving evidence.

[726] See the emails at {H6/200}, {H6/205}, {H6/224} and {H6/223}.

[727] {Day4/77:23} to {Day4/86:21} and {Day13/186:21} to {Day13/196:10}.

[728] {Day4/83:19-20}.

[729] {Day4/84:7-8}.

[730] {Day13/188:17-22}.

[731] The relevant principles are set out at FRN's opening submissions §487 {AA/1/214}.

[732] See the authorities cited at FRN's opening submissions §251 {AA/1/97}.

F. SUPPRESSION OF EVIDENCE

243. P&ID has used multiple ways and means to suppress evidence which would have provided yet further proof of wrongdoing and corruption. This would justify the Court in striking out P&ID's enforcement application and its defence to FRN's set-aside application. Realistically, FRN recognises that the Court will wish to give judgment on the merits of its set-aside application, and FRN wishes it to do so. Nonetheless, P&ID's actions have created gaps in the evidence from which the Court is entitled to draw adverse inferences. [733]

244. One of P&ID's most outrageous ploys to keep evidence from the Court is its inducement of Mr McNaughton. Mr McNaughton was a whistle-blower and, by his own admission, a *"disgruntled employee"*.[734] He had an alleged entitlement to back-pay from one of the ICIL companies many years previously. The merits of that claim do not much matter. What is important is that he sent an email to VR on 20 January 2020 explaining that he had been *"witness to many illegal activities"* during his work for ICIL including contract fixing and *"illegal payments"*.[735] The email described a series of corrupt events including rigged tenders, bags of cash being paid to MoD officials from the Abuja office, and bribes paid to governors.[736] These were very specific allegations: either Mr McNaughton was a fantasist or they were true. Mr McNaughton made it clear to VR that he was prepared to act as a witness in these proceedings.[737]

245. In response it was agreed between Mr Andrew and Richard Deitz that someone from *"Brendan's camp"* should reach out Mr McNaughton.[738] Mr Cahill understood that he was thereby being instructed to *"get on and deal with McNaughton"*.[739] He enlisted his associate David Hallett to reach out, and carefully stage-managed the approach. In particular, Mr Cahill suggested that Mr Hallett pretend to conspire with Mr McNaughton to *"jointly extract some funds together. You might hint that you yourself were not happy with how you finished up, perhaps blaming Neil Murray"* {H9/344.1}. This was a charade of the kind in which Mr Cahill specialises.

246. An email containing yet further allegations of corruption was sent by Mr McNaughton to Mr Cahill

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[733] The relevant principles are summarised in FRN's Opening Skeleton §§492-498 {AA/1/216}.

[734] {H9/329/4} (*"If you give this email to Brendan Cahill he will probably tell you I am just a disgruntled ex employee which is true"*).

[735] {H9/328/1-2}.

[736] {Day14/113:15} to {Day14/114:18}.

[737] {H9/328/6}.

[738] {H9/344/1}. As confirmed by Mr Andrew at {Day5/103:25} to {Day5/104:2} and {Day5/127:14} (*"He had been asked at the time to reach out"*).

[739] Mr Cahill at {Day10/185:21} to {Day10/186:2}. Mr Burke confirmed that he also understood that to be the position: {Day14/123:24} to {Day14/124:1}.

on 29 September 2020.[740] This included particularised allegations that ICIL companies had been involved in serial corruption, with the terms "PR" and "Dublin expenses" used as codewords for bribery in the records, and that Ms Taiga had been paid a NGN 2 million bribe in respect of an MoD contract awarded to an ICIL company, Albion Marine. Significantly, various of the allegations were backed up by two contemporaneous spreadsheets which revealed "PR" payments to Ministers and their wives, Ambassadors, Senators, and Army Generals on a dizzying scale.[741] The documents were on their face genuine, and P&ID has not disputed their authenticity. These spreadsheets presented the clearest possible evidence of corruption, yet still nobody asked Mr Cahill to provide a line-by-line, or even a high-level, explanation of their contents.[742] Instead VR, Mr Andrew and Mr Burke left Mr Cahill to work his magic with Mr McNaughton. Mr Andrew confirmed that the only reassurance obtained by him and VR was a bare denial of the allegations by Mr Cahill, and that he *"[did not] know why after that, no other steps were taken to speak to Mr McNaughton"*.[743]

247. Following protracted correspondence between Mr McNaughton, Mr Hallett and Mr Cahill in which Mr McNaughton acknowledged that he would, in return for his payment, *"make a legal undertaking not to disseminate any information on ICIL work practise or activities by any individual working for ICIL"*,[744] the same effect was achieved by Mr Cahill agreeing to pay Mr McNaughton an up-front payment of £10,000, with the remainder of his money structured to only be paid contingent upon P&ID's success in this claim.[745] In other words, like many of the other characters in this sorry story, Mr Cahill tied Mr McNaughton's interests into P&ID's successful pursuit of its US$11 billion claim, thereby inducing him not to provide incriminating evidence.[746] Mr Burke knew about and was delighted with the deal. He sent an email to Mr Cahill saying *"Well done you"* {H10/44.1}. When asked about this, Mr Burke said *"I was pleased that he'd [Mr Cahill] managed to resolve this potential difficulty"*.[747] This is extraordinary, disreputable conduct by a barrister of King's Counsel.[748]

248. Once compromised, Mr McNaughton was instructed to rebuff any approach by FRN's solicitors,

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[740] {H10/19}. The content of this was promptly shared with Mr Andrew and Mr Burke, in a way intended to avoid a written record of this {L/20/398}. The email was addressed to Mr Cahill but Mr Andrew confirmed that the material found its way to VR although he was unable to say exactly when: {Day5/121:21}.

[741] The two spreadsheets are at {H10/20} and {H10/21}.

[742] Mr Cahill agreed at {Day10/181: 24} to {Day10/182:6}. Kobre & Kim confirmed they never sought to contact Mr McNaughton: {O/435/2}.

[743] {Day5/110:24} to {Day5/111:3}.

[744] {H9/402/1} and {H9/410}.

[745] See the email chain at {H10/44} recording the terms of the agreement, including a £10,000 up-front payment and between £97,000 and £157,000 payable upon settlement of P&ID's claim. The £10,000 was duly paid: {H10/47}, with the settlement agreement having been returned on 8 July 2020 at {H9/491}.

[746] {Day14/136:25} to {Day14/137:5}.

[747] {Day14/132:9-10}.

[748] {Day14/123:10-15}, {Day14/128:4-14}, {Day14/128:24} to {Day14/129:7}, {Day14/131:4-10} and {Day14/133:1-7}.

MdR,[749] which he duly did by ignoring MdR's approach of 21 March 2022 {H10/122.01}, with a bonus payment improperly mooted for his doing so.[750] He likewise rebuffed a token approach by P&ID's own solicitors, KK, with Mr McNaughton responding: *"I have 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"*.[751]

249. Mr Cahill, with the blessing of P&ID,[752] thus procured that a potential witness, with highly material evidence,[753] and who was in a prime position to testify about his and Mr Quinn's corrupt activities and to decode the mountain of "PR" and "Dublin expense" spreadsheets before the Court, withheld his evidence. Mr Andrew candidly accepted that this was a good result: *"it was in the interests of P&ID for Mr McNaughton not to be giving evidence in these proceedings"*.[754] P&ID's only answer is to contend that Mr McNaughton would not have given evidence anyway because FRN said in its hearsay notice that it could not reasonably be expected to call him.[755] But FRN's hearsay notice (first served on 29 April 2022)[756] came after Mr McNaughton had failed to engage with MdR's approach to be interviewed. Had Mr McNaughton not been induced to remain silent, FRN would indeed have wished to call him. On any view, it would have obtained his documents.

250. The above constitutes a perversion of justice,[757] but in any event, the result of P&ID's actions is that a material witness is not present before the Court. To the extent that it is needed in light of the already overwhelming evidence of corruption, the Court is entitled and asked to infer from this episode that the allegations in Mr McNaughton's emails, particularly regarding the track record of ICIL companies in corruption, the meaning of the terms "PR" and "Dublin expense", and the allegation of the corrupt payment to Ms Taiga for the Albion Marine contract, are true.

251. In addition, P&ID has carried out a crude campaign of failing to obtain and make available and/or destroying incriminating documents and communications. This entitles the Court to draw further adverse inferences. Thus:

    a. As already explained (§33 above) P&ID has justified its failure to obtain Mr Adebayo's documents

[749] {H10/112/1}.
[750] {H10/125}.
[751] {H10/120}.
[752] When asked, Mr Andrew declined to deny that Mr Cahill had authority to deal with Mr McNaughton. He said *"Q: Well, he [Cahill] had authority to deal with Mr McNaughton, didn't he? A: He had been asked to reach out to him"* {Day5/128:2-4}. Mr Burke confirmed that his understanding was that P&ID was leaving it to Mr Cahill and Mr Hallett to deal with Mr McNaughton: {Day14/123:24} to {Day14/124:1}.
[753] {Day14/117:20} to {Day14/118:8}.
[754] {Day5/130:17-18}.
[755] P&ID's opening submissions §50 {AA/2/20}, referring to FRN's hearsay notice §2(o) {D/21/2}.
[756] {D/18}.
[757] FRN's opening skeleton §497 {AA/1/218}.

under a false pretext that he was a mere arm's length contractor. When Mr Adebayo was questioned by the EFCC, Mr Smyth said to Mr Cahill *"I assume Tunji has deleted all emails between us from his phone"*.[758] P&ID sought to explain this away as a measure to protect Mr Adebayo against the rigours of the EFCC.[759] This is a flimsy excuse which proves too much. If Mr Adebayo's emails showed a genuine and legitimate business relationship with P&ID including, for example, genuine flows of money to Mr Adebayo for investment in his own gas project, no amount of spin could turn them into incriminating evidence. The reason that Mr Smyth *"assumed"* that Mr Adebayo had had the nous to delete messages from his phone is because they were, as everybody involved knew, incriminating. The Court is asked to infer as much, in particular that Mr Adebayo's documents, if disclosed as they should have been given his role and indeed status as P&ID's agent, would have revealed that Mr Adebayo's role as P&ID's representative included bribery of FRN's lawyers on behalf of P&ID during the arbitration, and that one of the products of this was the FRN Privileged Documents being obtained. Indeed, Mr Adebayo's failure to voluntarily make his documents available, notwithstanding his huge financial interest and involvement in relevant matters, speaks volumes.

b. Mr Cahill and his associates also took steps to ensure that communications with Grace Taiga and her family members were deleted. Extraordinarily, Mr Burke, who purports to have been in a lawyer-client relationship with Ms Taiga, told Mr Cahill in November 2019 that *"She must delete any contacts with you"* and, subsequently, *"don't forget to get grace to delete her watsapp messages. Getting paranoid"*.[760] Mr Burke accepted that is would be wholly improper to ask a client to delete emails,[761] but incredibly claimed that this was justified via the well-worn excuse that he was protecting Ms Taiga from the EFCC.[762] That is a bad excuse for the reasons already given: if there was nothing improper to hide, there would have been no need for deletions. Tellingly, in December 2019, four days after the commencement of this fraud challenge, Mr Cahill sent a message to Mr Smyth saying *"Pls remind me to check tomorrow if all Aisha etc communications have been deleted"*.[763] Likewise Mr Cahill told Ise Taiga *"she [Grace] needs to delete all earlier messages urgently"*.[764] It was suggested by Mr Burke that there was no intention to withhold WhatsApp messages from this Court because the messages would remain on the devices of Mr Cahill, Mr Smyth, etc.[765] In fact there are many examples of messages having been

[758] {H9/233}.
[759] P&ID's opening submissions §52 {AA/2/21}.
[760] {L/28/387}; {L/28/392}.
[761] {Day14/93:19} to {Day14/94:2}
[762] {Day14/95:1-8}.
[763] {L/6/537}.
[764] {L/29/306}.
[765] Mr Burke at {Day14/97:4-14} and {Day14/99:5} (*"Nothing was deleted this end"*).

deleted at both ends:[766] see for example the string of *"Deleted by the sender"* messages at {L/30/18} following a message from Ms Taiga expressing concern at the revelation of *"some facts and new relationships hitherto unknown to me"*.

c. Further and equally concerningly, despite giving evidence on behalf of P&ID and having an expectation of sharing the proceeds if P&ID succeeds, Ms Taiga has outright refused to provide her documents, including emails from her personal account, despite KK agreeing with FRN to request them.[767] In its letter of 16 March 2022, KK blithely confirmed that no member of the Taiga family had responded to its requests for documents and that *"our client [P&ID] has no obligation to take any further steps in this respect"*.[768] Having chosen to present this stonewall, the Court is entitled to infer, should further evidence be needed, that Ms Taiga's documents and deleted communications would have revealed yet further evidence that she was in a corrupt relationship with P&ID at the time of the GSPA and throughout the arbitration, with the continued payments and promised share of proceeds made on behalf of P&ID to procure her silence.

d. A conspicuous example of evidence suppression was revealed to FRN only part way through this trial. P&ID wrote to FRN disclosing four messages from Mr Nolan to Mr Cahill on 7 September 2019, each of which stated *"Deleted by the sender"*.[769] When asked why these messages had been disclosed in the midst of trial, P&ID confirmed that they were understood to be the immediate means by which Mr Cahill obtained the CBN memo.[770] It is thus clear as day that Mr Nolan knew that the CBN memo had been obtained improperly and took conscious and deliberate steps to cover his tracks. FRN and the Court do not know how many further deleted messages exist which would have shone light on the provenance of the CBN memo or any of the other FRN Privileged Documents, because it is impossible to tell from the face of such messages what they are about.

e. Mr Cahill repeatedly told the Court that he had handed over all of his documents for inspection.[771] That is wrong. It is true that a number of WhatsApp threads, resplendent with deletions,[772] were recovered from Mr Cahill's devices, many of which came from a backup on Ken Smyth's laptop (which, one suspects, Mr Cahill did not realise existed). But there was, amongst many others, a key omission: Mr Cahill had since February 2019 been using an iPhone X. That phone was seized by

[766] Indeed, as acknowledged at §5 and Appendix 1 of Quinn Emanuel's letter dated 19 January 2023 {O/962/5}, Mr Burke's own WhatsApps with Grace Taiga and Ise Taiga since 2019 contain messages permanently deleted at both ends and which are now irrecoverable.

[767] {O/204}, {O/216} and {O/273}.

[768] {O/273}.

[769] The deleted WhatsApps and surrounding missed calls, all dated 7 September 2019, are at {H9/227.01}, {H9/227.02}, {H9/227.03}, {H9/227.04}, {H9/227.05} and {H9/227.06}.

[770] {O1/78/1}.

[771] See e.g. {Day8/13:19} to {Day8/14:8}.

[772] See, for example, FRN's opening submissions footnote 1215 {AA/1/224}.

the Irish Gardai in December 2021, and will hold his communications, including Signal messages, between February 2019 and that date. Yet Mr Cahill has point-blank refused to procure this phone for imaging and disclosure.[773] Mr Cahill's reason for withholding his consent is no doubt that the device contains incriminating messages. Mr Cahill has also provided no disclosure relating to the Gardai investigation into him,[774] whilst KK failed to obtain documents relating to other ICIL group companies, including from offshore service providers, on the basis that such documents were not within P&ID's own control.[775]

f. P&ID has moreover destroyed most or all of its hard copy documents. For example, Mr Ebubeogu told Ken Smyth on 11 August 2016 that *"all the files relating to P&ID were burnt"*.[776] Whether this was innocent or sinister (and FRN submits the latter in light of P&ID's track record of destroying incriminating documents), the Court can be certain that it does not have all of P&ID's documents before it. This means, for example, that the Court cannot test Mr Cahill's assertion that, despite the plain wording of an email, Mr Tijani never in fact sent his hard copy P&ID file via DHL.[777] The correct inference, in light of P&ID having burnt its documents, is that the email meant what it said, and the file was in fact sent.

G. CONCLUSION AND RELIEF

252. For the reasons given above the Awards must be set aside.

253. In his opening submissions Lord Wolfson referred to the Nigerian general elections which took place in late February 2023. He said: *"Who the next lot are, and whether they will take a more objective view of the situation than the people who got Nigeria into the mess in the first place, remains to be seen"*.[778] This was a thinly-veiled reference, no doubt on instructions, to the fact that the current administration had refused to settle the case but that their successors might take a different approach. That submission must now be seen through a very different prism. Evidence has emerged that Mr Cahill and his associates have form in using corrupt middlemen in Nigeria to procure settlements, most alarmingly through the corrupt Dr Alimi who was appointed to settle the IPCO case by *"spreading around"* cash to suggestible officials, and the ongoing solicitation of privileged material through backchannels during these very proceedings. For that reason, FRN will be respectfully asking the Court to deliver a judgment as soon as reasonably possible.

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773 {O/542} and {O/569/2-3}.
774 P&ID were ordered to request such documents {C/29/2}, but no documents were provided {O/415}.
775 {O/459}, referring to (*inter alia*) paragraph 2 of Kobre & Kim's letter of 15 August 2022 {O/381}.
776 {H8/407}.
777 See {H5/368} and Mr Cahill's denial that the file was ever sent at {Day8/143:8-12}; {Day8/144:6-9}.
778 {Day2/14:3-6}.

254. P&ID does not say anything in its opening submissions about remedies. Its pleaded case is that the Court should remit the claim to the original Tribunal.[779] FRN has explained why that is wrong at §§517-518 of its opening submissions {AA/1/235}. All of the factors weigh against remittal including the serious and abusive conduct of which P&ID, *ex hypothesi*, will have been found guilty; the fact that it has taken active steps to destroy documents and interfere with witnesses; the wholesale corruption and abuse of the arbitration process, through its obtaining of FRN's privileged documents and corruption of FRN's lawyers; the overwhelming case on bribery which would have afforded a defence to the claim at the liability stage; the fact that, once Mr Quinn's perjured evidence is taken out of the picture, P&ID would have no factual evidence before the Tribunal and would not be permitted to adduce afresh evidence; and the length of time that has passed since the Awards (which is the result of P&ID's continuing concealment of its own wrongdoing, as Sir Ross Cranston found in his judgment).[780] What should not, with respect, be allowed to happen is that P&ID string out the question of relief to a later hearing in the hope that, in the meantime, a Dr Alimi-type figure is able to *"spread around"* some further cash. The Court has all of the material and evidence that it requires to decide the issue of relief and is invited to do so in its main judgment.

MARK HOWARD KC
PHILIP RICHES KC
TOM FORD
TOM PASCOE
SEBASTIAN MELLAB

2 March 2023

[779] Defence §81.2 {AA/1/235}.
[780] Cranston Judgment §265 {C/12/42}.

ANNEX 1 - DUBLIN EXPENSES CONNECTED TO THE GSPA

Date	Description of Dublin expense in record	Event coinciding with Dublin expense	Identity of withdrawer
14 May 2008	NGN 10,000,000 (c.US$84,000) withdrawal by Michael Quinn labelled *"Dublin expenses"* **{H10/108.1}, {H6/157}**	Gas Investors Roadshow on 15 May 2008 **{H1/290.1}**	M Quinn
15 May 2008	NGN 250,000 withdrawal labelled *"Dublin Expenses"* **{H10/108.1}, {H6/157}**	Ibid.	Unknown
15 May 2008	NGN 100,000 withdrawal labelled "*Dublin Expenses*" **{H10/108.1}, {H6/157}**	Ibid.	Unknown
1 Aug 2008	NGN 4,000,000 withdrawal labelled "*N. Murray - Dublin expenses*" **{H10/108.1}, {H6/157}**	Around the time that Mr Quinn purports to have been in early discussions with Dr Lukman: Quinn 1 §56 {G/9/15}	Neil Murray
31 March 2009	US$20,000 and NGN 100,000 withdrawn under the labels "*Papa Quin – Dublin expenses*" **{H6/158}**	P&ID meeting with various MPR officials including Mr Tijani and Dr Lukman on 1 April 2009 and dinner at Chopsticks with Mr Tijani that evening {H1/503}; {H10/109} April tab, row 35	M Quinn
1 April 2009	NGN50,000, NGN150,000 and NGN 100,000 withdrawals labelled "*P&ID – Neil/Papa – marketing*", "*P&ID- Neil/Papa - Marketing*" and "*Neil – Dublin expenses*" **{H4/116}**, **{H6/158}**	Ibid	M Quinn and "Neil"
1 April 2009	NGN200,000 withdrawal, consisting of two separate NGN50,000 and NGN150,000 withdrawals labelled "*P&ID – Neil/Papa – marketing*" and "*P&ID- Neil/Papa - Marketing*" **{H4/116}**	P&ID meeting with the technical team of the MPR including Mr Tijani on 1 April 2009 **{H1/503/1}**	M Quinn and "Neil"
20 July 2009	NGN 100,000 withdrawal labelled "*Dublin Expense*" **{H6/158}**	Ibid.	M Quinn
22 July 2009	NGN 100,000 withdrawal labelled "*Dublin Expense*" **{H6/158}**	Ibid.	Adam Quinn
6 Aug 2009	NGN 2,450,000 withdrawal labelled "*P&ID- Project mobilization*" and *"PR"* **{H4/116}**, **{H4/321}**	P&ID write to the MPR nominating Michael Quinn, Neil Hitchcock, and Muhammad Kuchazi on 5 August 2009 **{H2/277}**	Unknown
18 Aug 2009	NGN 22,000,000 withdrawal labelled "*Jim - Dublin expenses*" **{H6/158}, {H10/109}**	P&ID meeting with the Joint Operating Committee ('JOC') appointed under the GSPA on 18 August 2009 **{H2/317}**	James Nolan
18 Aug 2009	NGN 100,000 withdrawal labelled "*Neil -Dublin expenses*" **{H10/109}, {H6/158}**	Ibid.	"Neil"
19 Aug 2009	NGN 200,000 withdrawal labelled *"PR"* and "*Papa/Nicholas- Gas project expenses.*" **{H4/116}, {H4/321}**	Ibid.	M Quinn
25 Aug 2009	NGN 50,000,000 withdrawal labelled "*Jim –Dublin Expenses*" **{H10/109}, {H6/158}**	Meeting between Neil Hitchcock, Grace Taiga and Mr Tijani, to discuss the terms of the GSPA on 27 August 2009 **{H2/353}**	James Nolan
26 Aug 2009	NGN 2,500,000 withdrawal labelled "*Cash via Yinka (Staff) PR*" **{H4/327}**	Ibid.	"Yinka" (Neil Hitchcock's PA)
31 Aug 2009	NGN 3,500,000 withdrawal labelled "*Cash transferred via Yinka PR*" **{H4/327}**	On 1 September 2009 Mr Hitchcock sends a draft GSPA to the MPR: **{H2/372}** **{H2/373}**.	Ibid
3 Sep 2009	NGN 1,000,000 withdrawal labelled "*Papa/Kuchazi – Dublin expenses*" **{H10/109}, {H6/158}**	P&ID meeting with the JOC on 3 September 2009 **{H2/385}** **{H2/389}**	M Quinn / Kuchazi
3 Nov 2009	NGN 500,000 withdrawal labelled "*N. Hitchcock- Dublin Expenses.*" **{H2/497/1}**	On 6 November 2009, Mr Tijani requests a meeting with P&ID **{H2/497}**	Neil Hitchcock
23 Nov 2009	Two withdrawals of US$5,000 each labelled *"Papa – Dublin expenses"* **{H10/109}**	Meeting between P&ID and Dr Lukman on 24 November 2009 at which "*important and crucial decisions will be taken*" **{H3/1}**	M Quinn

25 Nov 2009	NGN 100,000 labelled "*Papa – Dublin Expenses*" **{H6/158}** on the same day as Ms Aderemi, Ms Taiga's secretary, deposits NGN 100,000 into her account.	Run-up to execution of GSPA.	M Quinn / Kuchazi
25 Nov 2009	NGN 200,000 withdrawal labelled *"Gas Project – Papa – Dublin expenses"* **{H4/327} {H10/109}**	Ibid.	M Quinn
3 Dec 2009	NGN 5,000,000 withdrawal labelled "*Hitchcock – Dublin Expenses*" **{H5/445}**	Ibid.	Neil Hitchcock
7 Dec 2009	NGN 50,000 withdrawal labelled "*Papa - Dublin expenses*" **{H10/109}**	Ibid.	M Quinn
7 Dec 2009	NGN 50,000 withdrawal labelled "*P & ID- Papa- Marketing*" **{H4/116}, {H10/109}**	Ibid.	M Quinn
8 Dec 2009	NGN 200,000 withdrawal labelled "*Papa- Dublin epxenses. [sic]*" **{H4/116}**	Ibid.	M Quinn
8 Dec 2009	NGN 200,000 withdrawal labelled "*P & ID- Papa- Marketing*" **{H4/321}**	Ibid.	M Quinn
18 Dec 2009	NGN 900,000 withdrawal labelled "*Papa - Dublin expenses /Christmas expenses*" **{H10/109}**	Ibid. Grace Taiga writes to Dr Lukman on 18 December 2009 advising that the GSPA be signed: **{H3/108}** and on 19 December 2009 Mr Cahill says that the GSPA had been "*brought to min by Grace*": **{H3/109}.**	M Quinn
23 Dec 2009	US$500,000 withdrawal labelled *"Jim - $500,000 Dublin expenses"*	Run-up to execution of GSPA.	James Nolan
23 Dec 2009	Withdrawals of NGN 3,600,000, NGN 988,500, NGN 1,000,000, and NGN 200,000 labelled "*Jim – Dublin expenses*", and a withdrawal of NGN 2,220,000 labelled "*Dublin expenses*" **{H10/109}**	Ibid.	James Nolan / unknown
23 Dec 2009	The withdrawal of NGN 200,000 labelled "*Jim/SA Minister – Dublin Expenses*" on 23 December 2009 **{H10/109}**	Ibid.	James Nolan
23 Dec 2009	NGN 300,000 withdrawal labelled *"Alhaji Isa- Jim- Dublin exps."* **{H4/321}, {H10/109}**	Ibid.	James Nolan
7 Jan 2010	NGN 1,200,000 withdrawal labelled "*Cash via Yinka- P&ID PR*" **{H4/327}**	Ibid.	Unknown
14 Jan 2010	NGN 350,000 withdrawal labelled "*Dublin Expenses – Mic – P&ID*" **{H4/321}, {H3/163.3}, {H4/116}**	GSPA signed on 11 January 2010 **{H3/140}**	M Quinn
14 Jan 2010	NGN 500,000 withdrawal labelled "*Dublin Expenses – Kuchazi*" **{H3/163.3}**	Ibid.	Kuchazi
12 Feb 2010	NGN 750,000 withdrawal labelled "*Papa- Cash for Gas project.-$5 000*" and *"PR"* **{H4/327}, {H4/321}**	Ibid.	M Quinn
18 Feb 2010	NGN 100,000 withdrawal labelled "*Papa- Dublin Expenses*" and *"PR"* **{H4/116}, {H4/321}**	Ibid.	M Quinn
18 June 2010	NGN 100,000 withdrawal labelled "*P & ID- Papa- Marketing*" and *"PR"* **{H4/321}, {H4/116}**	On 20 June 2010, Michael Quinn sends a letter to the MPR stating that substantial progress has been achieved including completion of the bulk of the detailed engineering and that all financing arrangements for the project have been implemented. **{H3/378}**	M Quinn
7 July 2010	NGN 1,560,000 withdrawal labelled "*Dublin Exps including Chinny's fare*" and *"PR"* **{H4/321}, {H4/116}**	P&ID attend a meeting with the MPR (including Tijani) and the NNPC on 5 July 2010 **{H3/392}**	Unknown
7 July 2010	NGN 760,000 withdrawal labelled "*Neil- Dublin Exps*" and *"PR"* **{H4/321}**, **{H4/116}**	Ibid.	"Neil"
9 Oct 2012	NGN 100,000 withdrawal from P&ID to Mr Dikko and/or Ms Belgore labelled as a "*Adam- Dublin Exps.*" **{H6/186.3}**	P&ID and FRN settlement meeting on 10 October 2012 attended by Mr Dikko and Ms Belgore **{H5/211}**	Adam Quinn

ANNEX 2 – THE FRN PRIVILEGED DOCUMENTS

SoF	Nature of documents and when first obtained	Lack of credible justification for P&ID being provided with the privileged content	Probable corrupted leaker[781] and basis
5	11.09.12 privileged MPR memo advising on P&ID's Notice of Arbitration {I/49} sent by Murray to ICIL email account on 19.09.12 stating "*confirm it reads ok so that I can remove from here*"{I/48}.	Murray "*presume[d] it was dropped into his office*" {Day12/121:20-21} as a "*truncated*" document {Day12/117:4-5}, with the hard copy going "*straight in the shredder*" {Day12/124:14}. In fact, P&ID's case is that it "*does not have any understanding as to how this document was obtained*" or who the source was: RFI Response, Annex One, Row 21 {A2/12/1}. Murray accepts he applied the file name but cannot say what it meant {Day12/119:13-18}. This all lacks any credibility, and should lead to the inference that the document was provided without authority and in breach of duty by an individual corrupted by those acting on behalf of P&ID. The same applies to each entry below.	Aderemi – see: subject "*Rem for Mick*"; file name "*Ex Rem*"; her leaking an "*advance copy*" of a letter (by email addressed to "*Papa*", signed "*Remmy*") {H5/195} and confidential documents to Adebayo (instructing him to "*keep it confidential*") {I/6.1}.
6	02.11.12 privileged letter from Dikko to AG advising on P&ID's Notice of Arbitration {I/63}. Sent by Ebubeogu to Smyth and ICIL email account on 05.11.12 {I/62}.	P&ID says that it "*does not have any understanding as to how this document was obtained*" or know the source: RFI Response, Annex One, Row 23 {A2/12/1}. Ebubeogu's email {I/62} states, "*Letter from NNPC to Hon. Attorney General of the Federation in respect of P&ID courtesy of Alhaji Kuchazi*". Mr Kuchazi incredibly claimed not to remember whether he obtained this document and had no evidence to explain how it was obtained {Day17/34:24} to {Day17/37:2}. This all lacks any credibility.	Official within MOJ – it is stamped by MOJ.
7	Privileged letter from MPR to NNPC dated 17.01.13 seeking information relating to the claim {I/69} sent by Lloyd Quinn to ICIL email account and Anita Quinn on 22.01.13 {I/68}.	P&ID says it "*does not have any understanding as to how this document was obtained*" or know the source: RFI Response, Annex One, Row 37 {A2/12/2}. This lacks any credibility.	Dikko – it is not stamped by NNPC. Quinn corruptly paid Dikko at least $2,000 {Day10/196:10-15}.
8	31.01.13 privileged letter from NNPC to MPR responding to RFI and noting that implementation of the GSPA is "*fraught with challenges*" {I/73}, sent by Lloyd Quinn to ICIL email account and Anita Quinn on 01.02.13 {I/72}.	P&ID says it does not know the source but "*understands"* these documents were *"provided to it by the Ministry of Petroleum Resources to demonstrate that efforts were being made to comply with the GSPA":* RFI Response, Annex One, Rows 38 and 41 {A2/12/2}. See also Andrew 5 §70 {D/6/19}. This explanation lacks any credibility: 1. As Andrew accepts, by February 2013, the arbitration had commenced and communications were by way of formal correspondence {Day4/33:22} to {Day4/34:1}, see e.g. {H5/194} and {H5/344}, and formal meetings, e.g. {H5/211}. The supposed understanding that back-channels were being used to legitimately supply these documents lacks credibility {Day4/34:2-7}. 2. Inconsistent with any contemporaneous belief that the documents were legitimately provided to demonstrate efforts to comply with the GSPA, P&ID averred in its letter to FRN dated 20.03.13 {H5/365/1} that it had "*not received any response at all"* to its letter of 14.01.13 {H5/289} on MPR's failure to perform. Andrew's failure to accept this did him no credit {Day4/38:17} to {Day4/39:25}. 3. Likewise, inconsistent with any contemporaneous belief that the documents were legitimately provided, as evidenced by Harcus Sinclair's letter of 01.03.13 {H5/342} and as Mr Andrew accepts {Day4/36:3} to {Day4/38:16}, Harcus Sinclair, P&ID's external lawyers, were <u>not</u> informed that P&ID obtained the privileged letter of 21.02.12 {I/80/2-4} revealing the appointment of Shasore.	Dikko – it bears manuscript comments addressed to "*D(Legal)*" (i.e. Dikko) and is stamped by MPR.
9 & 10	21.02.13 privileged letter from MPR to NNPC {I/80/1-2} requesting cooperation of NNPC's lawyers in defending the claim <u>and</u> privileged letter from MPR to AG dated 21.02.13 regarding the appointment of arbitrator and Shasore as Counsel and summarising NNPC's findings on "*the root of the problems*" with the GSPA's implementation {I/80/2-4} sent by Lloyd Quinn to ICIL email account and Anita Quinn on 27.02.13 {I/79}.		Adelore – 9 & 10 were MPR documents, but bear no stamp from the addressees. Adelore replaced Dikko as head of MPR Legal Unit {B/1/2} and indisputably leaked privileged content on two occasions (see SOF 36(8) & 44). Repeated for each Adelore entry below.
11	05.03.13 privileged letter (MPR to Shasore) seeking advice on arbitration {I/86}. Murray sent to ICIL email on 14.03.13, subject "*For Trevor*" {I/87}.	P&ID says it "*does not have any understanding as to how this document was obtained*" or know the source: RFI Response, Annex One, Row 42 {A2/12/2}. This lacks any credibility.	Adelore or Shasore – it is a letter from MPR to Shasore.
12 & 14	12.03.13 privileged letter from Shasore to MPR advising on arbitral procedure {I/94} <u>and</u> 21.05.13 privileged letter from Shasore to AG, MPR in copy, advising on formation	P&ID says it does not know the sources, but "*understands"* these documents were *"probably provided to it to explain the delay by the FRN in engaging with the arbitration"*: RFI Response, Annex One, Row 46, Row 47and Row 50 {A2/12/2-3}. See also: Andrew 5, §76 {D/6/21}). This explanation lacks any credibility:	Adelore – SoF 12 is stamped by MPR and SoF 14 is likely to have been leaked by the

[781] Mr Andrew accepts that it is possible that those sharing the documents received by him included Mr Shasore, Ms Adelore and Mr Oguine, amongst others {Day4/145:18-25}. Mr Burke accepted that "*with the benefit of hindsight [it] seems sensible*" that the leakers include the Head of MPR Legal Unit and FRN's counsel {Day14/65:13-23}.

	of tribunal and fees {I/95} sent by Lloyd Quinn to the ICIL email and Anita Quinn on 06.06.13 {I/93}.	1. Given that Andrew was unable to identify who provided the documents, it was ludicrous for him to assert that they were being shared with ostensible authority {Day4/40:1} to {Day4/41:15}. 2. If he had understood the documents had been legitimately provided, his duty to his client required him to properly read them. However, Andrew's position was simultaneously (albeit falsely) that he did not review the documents in detail at the time "*once [he] had established they contained legal advice*" (Andrew 5, §77) {D/6/21}), because he "c*ould not be completely sure of the provenance of these documents"* {Day4/41:16}–{Day4/47:20}.	same person, having been circulated by Lloyd Quinn at the same time as SoF 12. However, if it is not Adelore, Andrew hinted it might have been Shasore: Andrew 5 §77 {D/6/21}.
15	Privileged letter from Shasore to AG, with MPR in copy, dated 16.07.13 requesting comments on P&ID's Statement of Case {I/106} sent by Lloyd Quinn to ICIL email and Anita Quinn on 18.07.13 {I/105}.	3. Had these documents been legitimately provided to explain delay in the arbitration, they would have been sent to Harcus Sinclair with a cover letter. Andrew's denial of this lacks credibility {Day4/47:21} to {Day4/48:21}. 4. When P&ID received the documents at SoF 12, 14 and 15 (on 6.6.13 and 18.7.13) FRN was not in default, having until 31 July 2013 to file its defence (see {H5/408}). There was no need to explain delay {Day4/48:22} to {Day4/50:14}. As to SoF 16 (document obtained by P&ID on 02.08.13), it is correct that FRN failed to file a defence on 31 July 2013, but Harcus Sinclair's letter to the Tribunal dated 06.08.2013 {H5/502} said that "*We have not received either a Statement of Defence or <u>any</u> communication to indicate the reason for the Respondent's default*" (emphasis added). This, and P&ID's failure to tell Harcus Sinclair about the privileged documents received, is inconsistent with it saying it understood they had been lawfully provided to explain delay {Day4/50:15} to {Day4/53:7}.	Shasore – it is not stamped by MPR or MOJ. Andrew hinted it might have been Shasore: Andrew 5 §77 {D/6/21}.
16	Privileged letter from TMS to MPR, Shasore in copy, dated 31.07.13 requesting information required to establish a defence of frustration {I/110} sent by Murray to Smyth on 02.08.13 with subject "*Defence Notes*" stating "*Please pass to Mick and Brendan immediately. Please also confirm received opened ok as I want to delete here*" {I/109}. Andrew suggested this document may have been obtained by Adebayo {Day4/58:17-22}.	5. Andrew accepts that the fact that Murray's email {I/109} referred to the need to delete the document at SoF 16 was "*a red flag possibly denoting something improper and it requires explanation. Absolutely"* {Day4/53:21} to {Day4/55:11}. 6. The document was deliberately doctored to conceal its provenance (compare {I/110} with {H5/485}). Andrew accepts that an internal document such as SoF 16 (which "*indicates the likely lines of defence*", as Cahill contemporaneously observed {I/112}) is not something one would expect to be revealed to the other side in proceedings {Day4/57:23} to {Day/58:6}. Burke accepts it gave P&ID a "*fly on the wall insight into what FRN has or has not discovered by way of potential defences*" {Day13/127:11-16}. 7. Murray accepts the reasonable inference that the leaker of the document at SoF 16 had corrupt motives {Day12/129:17} but says that any corruption was "*probably before it got to my desk*" {Day12/130:13-16}. He accepts this "*might be less than honest but it is the way we behaved*" {Day12/130:25} to {Day12/131:1}.	Adelore or Shasore – it is an email from Shasore's office to MPR Legal Unit (Hafsat Belgore). Andrew suggested it might have been Shasore {Day4/57:13-22}.
13	Hitchcock sent an email to Cahill on 21.03.13 {I/89} stating "*Can you please let Mick know that TJ is sending a complete copy of his P&ID file via DHL".* Cahill accepts that Tijani could have no proper business for providing his file to P&ID {Day8/143:8-12}; {Day8/144:6-9}. Cahill asserts that Tijani "*apparently volunteered*" the documents in the context of "*negotiating a price for the [Bonga Audit] work he was bidding for*" {Day8/144:6-9}. Cahill never told Tijani not to send his file ("*that's perhaps what I should have done"* {Day8/145:4-5}). This evidences that (i) in breach of rule 030419 of the Public Service Rules 2008 edition (Bamodu 1 §7.64 {F4/2/60}) Tijani retained public records and (ii) in breach of rule 030416 (Bamodu 1 §7.58 {F4/2/58}) Tijani disclosed confidential information obtained in the course of his official duties.		Tijani – P&ID referred to Tijani as "*TJ*" {H6/74}.
17	Privileged letter from Adelore to NNPC requesting information to establish a defence of frustration and the appointment of an expert <u>and</u> enclosing a privileged internal MPR memo regarding events to date and counsel fees {I/117} sent by Murray to Smyth on 07.08.13 stating "*let me know you have received and opened ok, so that I can delete*" {I/116}.	P&ID says it does not know the source, but "*understands that this document was provided to it to demonstrate that the Ministry of Petroleum Resources was doing its best to obtain factual instructions and engage in the arbitration*" (RFI Response, Annex One, Row 51 {A2/12/3}). See also Andrew 5, §80 {D/6/22}. This explanation lacks credibility: 1. There is no evidence of anyone from FRN lobbying Murray or P&ID for an extension of time as at 7 August when this was document was obtained. Instead, the Tribunal noted on 7 August that FRN had failed to serve a defence or seek an extension, and fixed a telephone conference for 21 August {H6/13/2}. 2. An internal document considering Nigeria's potential defences is not something one would expect to see being revealed to the other side in legal proceedings: see Andrew's evidence at {Day4/57:23} to {Day/58:6}. Further, Murray's email {I/116} referred to the need to delete the document, with Andrew accepting that such references to deletions were a red-flag possibly denoting something improper {Day4/55:3-8}.	Adelore – it is an unsigned draft authored by her (see her signature on the final version at {H6/3}).

		3.Murray accepts that this document was self-evidently obtained by corruption and that it was "less than honest" for him to circulate it {Day12/134:21} to {Day12/135:2}.	
18	Privileged instructions marked "*Attention: Olasupo Shasore*" from MPR, together with privileged minutes dated 13.08.13 of meeting between MPR and NNPC {I/124} sent by Murray to ICIL email account on 26.08.13 stating "*Please confirm clean receipt so that I can delete*" {I/123}.	P&ID says it "*does not have any understanding as to how this document was obtained*" or know the source: RFI Response, Annex One, Row 53 {A2/12/3}. This lacks any credibility. Murray accepts this document was self-evidently obtained corruptly and that it was "less than honest" for him to circulate it {Day12/136:1-6}.	Adelore – it is an unsigned document prepared by MPR Legal Unit.
19	On 15 August 2013, Cahill emailed Andrew and Burke relaying privileged information from MPR regarding the arbitration and settlement negotiations stating "*Latest information from our friend…"* {I/122}. Andrew accepts that: the reference to "*our friend*" (i) is to someone within MPR {Day4/68:3-6} and (ii) intentionally concealed the identity of that insider {Day4/68:14-22}; that P&ID was seeking to use "*advance knowledge*" to its "*advantage*" {Day4/70:17-23}; and that he advised "*in light of*" such knowledge {Day4/71:4-7}. Burke accepts that Cahill was saying he had a "*mole at the MPR*" {Day13/149:21-25} who was "*tipping [P&ID] off about internal discussions*" {Day13/150:22-25}. Cahill accepts that there was no proper reason for someone at MPR to reveal details of private and confidential meetings {Day10/149:1-17}.		Adelore – it is likely to be the same person as P&ID's "*Lady contact at the Min*" (see entry 22).
20	29.08.13 privileged letter from MPR to AG saying Alegeh should be appointed in preference to Shasore {I/134}. Murray sent to Smyth on 11.09.13, subject "*Urgent email for Mick*", saying "*please confirm clean receipt so that I can delete"* {I/133}. Cahill provided context to Andrew and Burke on 26.10.13 {I/137} evidencing yet further access to privileged information not apparent from the face of the letter.	P&ID says it "*does not have any understanding as to how this document was obtained*" or know the source: RFI Response, Annex One, Row 57 {A2/12/3}. This lacks any credibility. Andrew has no explanation of how or from whom this document could have been legitimately obtained: {Day4/72:8-23}. Murray explains his deletion of evidence as to the circumstances the document was obtained as "*standard procedure at this stage, I would have thought*" and accepts his conduct in relation to this document was "*less than honest*" {Day12/141:1-7}.	Adelore – it is an unsigned letter prepared by MPR and is not stamped by MOJ.
22	Cahill sent an email to Murray on 04.02.14 {H6/243} requesting him to "*try to find out discreetly from our Lady contact at the Min. Who did Exxon signed a new contract with? (I'm nearly sure it was NNPC). Grace might also know."* Murray accepts "*fully*" that Cahill was saying he had a lady contact at MPR who can be tapped up to provide information {Day12/20:1} to {Day12/24:25} to which he is "*probably*" not entitled {Day12/144:2}. Cahill alleges he is unable to say who the lady contact is {Day10/153:12-14}.		Adelore – Murray accepts it may be Taiga's successor (who at the time was Adelore) {Day12/145:3}.
23	Photo of crumpled 03.04.14 privileged letter from FRN's potential expert Prof. Sagay to Shasore advising that FRN "*appears to be in a very difficult legal position*" {I/148} sent by Adam Quinn to Smyth and Anita Quinn on 08.04.14 {I/147}. Andrew says Adebayo may be the source {Day4/94:10-22}.	P&ID says it "*does not have any understanding as to how this document was obtained*" or know the source: RFI Response, Annex One, Row 70 {A2/12/4}. This lacks any credibility. Andrew accepts that there is no reason it would be in FRN's interest for its lawyers disclose that their potential expert thinks FRN has a duff case {Day4/88:3-7} and that this document "*looks a bit odd on its face because it has legal advice and because it is a photograph*" {Day4/196:11-13}. Burke accepted that this was a document which on its face P&ID had no business having: {Day13/170:15-18} and {Day13/171:10} to {Day13/172:15}.	Shasore – given his receipt of the letter. Andrew and Burke accept it may be Shasore {Day4/93:5-7} and {Day13/171:17}.
24	Photos of 17.07.14 Shasore privileged opinion to AG re: "*lack of exonerating facts or any documentary evidence with which to defend the Claim"* {I/154}. Smyth and Adebayo sent to ICIL email on 19.07.14 {I/153} and 23.07.14 {I/155} respectively.	P&ID says it "*does not have any understanding as to how this document was obtained*" or know the source: RFI Response, Annex One, Row 73 {A2/12/4}. This lacks any credibility.	Shasore – it is not stamped by MOJ. Andrew accepts it may be Shasore {Day4/93:2} to {Day4/94:9}.
21 & 26	Photos of 04.10.13 privileged letter from Adelore to Shasore re: draft Notice of Preliminary Objection {I/160/8} and 15.08.14 privileged letter from Adelore to AG advising *"probability of P&ID getting an award is high*" and "p*ossible use of frustration/force majeure as a defence is doubtful*", advising settlement {I/160/1-7}. Smyth sent to ICIL email and Anita Quinn on 16.08.14 {I/159}.	P&ID says it "*does not have any understanding"* as to how these documents were obtained or know the source: RFI Response, Annex One, Row 77 {A2/12/4}. This lacks any credibility.	Adelore – SoF 26 is an unsigned draft bearing her name {I/160/7} and is not stamped by MOJ. SoF 21 is an unsigned draft authored by her (see her name on the draft at {H6/104/2}).
27	Photos of 15.08.14 privileged letter from MPR to NNPC noting the Minister's direction that NNPC settle all financial requirements to defend arbitration {I/162}. Smyth sent to ICIL email, Anita Quinn in copy, on 16.08.14 {I/161}.	P&ID says it "*does not have any understanding"* as to how these documents were obtained or know the source: RFI Response, Annex One, Row 78 {A2/12/4}. This lacks any credibility.	Adelore – it was prepared by MPR and is not stamped by NNPC.

25	Scan of 11.08.14 privileged letter (original marked "Restricted" {H7/376}) from AG to President relaying Shasore's advice at SOF 24, with AG advising that *"there are no legal grounds to defend the claim"* and to settle{I/165}. Smyth sent to ICIL email on 05.09.14 {I/164}.	P&ID says it "*does not have any understanding"* as to how these documents were obtained or know the source: RFI Response, Annex One, Row 82 {A2/12/4}. This lacks any credibility.	Unidentified official corrupted by those acting for P&ID.
28	Scan of 02.09.14 privileged letter from Oguine to Shasore supporting Shasore's advice to settle, advising MPR to file a defence to maintain leverage and on possible defences {I/166}. Smyth sent to ICIL email on 05.09.14 {I/164}.	P&ID says it "*does not have any understanding"* as to how these documents were obtained or know the source: RFI Response, Annex One, Row 83 {A2/12/4}. This lacks any credibility.	Shasore or Oguine – it is a letter from Oguine to Shasore.
29 & 30	Scan of privileged MPR memo from Adelore advising that Shasore be paid 30% of his fee and that FRN tell "*Tribunal of government's intention to settle*" {I/176} and scan of 22.09.14 MPR memo from Adelore {I/176}. Smyth sent to ICIL email account on 24.09.14, subject *"Two documents from Lloyd*" {I/174}. Subsequent draft of latter document found at Kuchazi's home{I/285} and {I/282}.	P&ID says it "*does not have any understanding"* as to how these documents were obtained or know the source: RFI Response, Annex One, Row 87 {A2/12/4}. This lacks any credibility. Mr Kuchazi likewise incredibly claimed not to remember whether he obtained this document and had no evidence to explain how it was obtained {Day17/34:24} to {Day17/37:2}.	Adelore – both documents are unsigned drafts prepared by her (see her name on the further versions at {H10/194} and {H6/458/2}).
31	Scan of privileged draft brief to President advising that "*the Government has a feeble defence to the claim"* and inviting the President to approve the pursuit of settlement negotiations {I/173} sent by Smyth to ICIIL email account on 24.09.14 with subject *"Two documents from Lloyd*" {I/174}.	P&ID says it does not know the source but "*assumes that this document was provided to it in order to demonstrate that good faith efforts were being made, within the slow bureaucracy of the Nigerian government, to obtain the authorisation necessary to embark upon settlement discussions":* RFI Response, Annex One, Row 85 {A2/12/4}. Andrew's explanation was similar (Andrew 5, §99 {D/6/30}).This explanation lacks credibility. Andrew accepts it could not be in FRN's interests for P&ID to be given advice on the weakness of FRN's defence {Day4/108:8} to {Day4/110:15}.	Adelore – the document emanates from MPR (see similarities with the subsequent MPR document at {H7/261}).
32	Photos of privileged internal 13.10.14 MPR memo from Adelore recommending that settlement team should comprise Shasore, Oguine and herself {I/178}. Lloyd Quinn sent to Anita Quinn on 13.10.14 {I/177}.	P&ID says it "*does not have any understanding"* as to how these documents were obtained or know the source: RFI Response, Annex One, Row 88 {A2/12/4}. This lacks any credibility. The document was deliberately truncated to conceal its provenance (compare {I/178/4} with {H6/487/4}).	Adelore – it is an unsigned draft prepared by her (see her name on the final version at {H6/487/4}).
33	Privileged 24.10.14 letter from Shasore to AG advising that P&ID may seek a direction in peremptory terms and requesting that AG provide "*the status of [his] decision to contact the claimant (and inform the tribunal) to initiate meetings towards the settlement of this matter to avoid another adverse decision against the [FRN] for continued default"* {I/181} sent by Ukiri (Shasore's associate) to Adebayo on 26.10.14 with subject "*See attached as discussed*" and forwarded to Cahill on 28.10.14 {I/179}.	P&ID says it does not know the source but that it "*understands that this document was provided to it in order to demonstrate that genuine efforts were being made to initiate settlement discussions and that the FRN was not seeking to delay progress of the arbitration*": RFI Response, Annex One, Row 89 {A2/12/4}. Mr Andrew gave a similar explanation (Andrew 5, §88 {D/6/25}), but this lacks credibility. As Andrew accepts, the very premise of the document is that instructions had <u>not</u> yet been provided to disclose to P&ID and the Tribunal FRN's intention to settle. Its sharing by FRN's external lawyers was (at least) "*technically unauthorised*" {Day4/105:14-22}. Authorisation to communicate that intention was received only on 12 Nov 2014 {H7/23.1} with the intention conveyed to the Tribunal only on 13 Nov 2014 {H7/25}. P&ID the document in Oct 2014, <u>well before</u> authority to communicate any intention to settle had been given. Cahill accepts it is obvious that Shasore's advice to AG is not something that should be shared with P&ID {Day10/156:1-15}.	Shasore via his associate Ukiri. Ukiri had little involvement in the case but received a large suspicious payment from Shasore around this time (see SoF 33(3) {A5/1/29}).
34 & 35	Scan of 10.11.14 privileged letter (Shasore to AG) advising on Tribunal's powers {I/191/3} <u>and</u> scan of 11.11.14 privileged letter (AG to MPR) reiterating opinion that MPR *"does not have a good defence*" and "*steps should be taken to …a negotiated settlement"* {I/191}. "*Saheed Akanji"* sent to Adebayo, forwarded to ICIL email on 17.11.14 {I/190}.	P&ID's case is that it "*does not have any understanding"* as to how these documents were obtained or who the source was: RFI Response, Annex One, Row 93 {A2/12/5} and that it does not know the identity of "*Saheed Akanji*": RFI Response, 3B {A2/11/3}. This lacks any credibility.	Adelore or Shasore – SoF 35 (which encloses SoF 34) is stamped by MPR. "*Saheed Akanji*" was in contact with Shasore (see SoF 34(3) {A5/1/31}).
36	Email between Adelore, Oguine and Shasore with subject "*RPT-PID-LONDON.doc*" dated 28.11.14 {H7/62} attaching 11-page privileged draft report following settlement meeting in London on 21.11.14 advising that	P&ID says it "*does not have any understanding"* as to how this documents was obtained or know the source: RFI Response, Annex One, Row 96 {A2/12/5}. Andrew claimed for the first time in cross-examination that this document was provided to persuade P&ID to reduce its offer to US $1.1bn. This lacks any credibility. Andrew accepts that it would not normally be in a client's best interests for a lawyer to tell the other side	Shasore, Adelore or Oguine – all copied to the email {H7/62} forwarded by Adebayo {I/195}. Andrew

	$1.5bn was a "*reasonable offer"* and recommending settlement at $1.1bn {H7/61} forwarded to Adebayo and he forwards the report {I/196/1} to ICIL email account, with Andrew in copy, with subject "*Fwd:RPT-PID-LONDON.doc*" on 29.11.14 {I/195}.	what he is going to advise {Day4/166:22} to {Day4/170:8}. Moreover, it was plain on the face of the document that it was an unsigned draft {I/196/11}, being shared without authorisation. Adebayo deleted the email chain to conceal its provenance {I/195}.	accepts the possibility that *"those people were involved in sharing documents because they were all part of the Government's negotiating team*" {Day4/145:16-23}..
36 (8)	P&ID internal document recording that on 08.01.2015 Adelore gave Adebayo access to a Ministerial minute instructing that the case be settled at a lower cost {H7/112.1}.		Adelore.
37 & 38	17.03.15 privileged letter (AG to MPR) {I/198/1} enclosing 10.03.15 privileged letter (Shasore to AG) noting *"salient points"* in P&ID's Reply and advising *"Notwithstanding our line of defence, [FRN] is still liable for failure to supply the requisite gas"* {I/198/2-3}. Shonibare (Adebayo's employee) sent to Cahill on 07.04.15, "*Please find attached as instructed by Mr Adebayo*" {I/197}.	P&ID's case is that it "*does not have any understanding"* as to how these documents were obtained or who the source was: RFI Response, Annex One, Row 97 {A2/12/5}. This lacks any credibility.	Adelore – SoF 37 (which encloses SoF 38) is stamped by MPR.
39	23.04.15 privileged letter (MOJ to MPR) with MPR manuscript comments: "*negotiated settlement should be pursued while preserving the legal defense,*" enclosing 17.03.15 privileged letter from AG {I/206/1} and 10.03.15 privileged letter from Shasore regarding defence {I/206/2}. Adebayo sent to ICIL email on 27.04.15 {I/205}.	P&ID's case is that it "*does not have any understanding"* as to how these documents were obtained or who the source was: RFI Response, Annex One, Row 99 {A2/12/5}. This lacks any credibility.	Adelore – it is stamped by MPR.
40	Privileged letter from Adelore to Shasore dated 06.05.15 instructing Shasore to offer a figure of $400m and negotiate a figure lower than $500m {I/208} sent by Shonibare (Adebayo's employee) to Cahill, with Andrew and Adebayo in copy, on 06.05.15 stating *"Please find attached as instructed*" {I/207}.	P&ID says it does not know the source but it "*understands that this document was provided to it in order to convey the FRN's settlement offer as a matter of urgency*": RFI Response, Annex One, Row 100 {A2/12/5}. Andrew advanced a similar explanation (Andrew 5, §93 {D/6/26}). This explanation lacks credibility: 1. On 6 May 2015, Shasore was instructed to, and did, formally convey a without prejudice offer of $400m by instalment at 6.24pm {H7/230}. However, this offer was undermined by the fact that, 5 hours earlier, P&ID had received the privileged document at {I/208} revealing FRN's bottom line. 2. Andrew accepts that it would be wholly improper for a lawyer making an offer to reveal that the client was in fact prepared to pay more, and that a lawyer doing this on the face of it would be acting in the interest of the opposing party, not his client {Day4/112:6} to {Day4/113:24}. 3. Andrew falsely sought to claim that this privileged document was shared as part of a strategy to provoke an acceptable offer but accepts this explanation was not the one given in his witness statement {Day4/117:4} to {Day4/119:20}. 4. The explanation that the privileged document was understood to have been shared to communicate the offer as a matter of urgency is patently false given the actual offer was made on the very same day, and Andrew's failure to accept this did him no credit {Day4/119:21} to {Day4/120:6}.	Adelore – it is an unsigned draft prepared by her. However, if it is not Adelore, Andrew thought it was Shasore {Day4/115:22-25}.
41	Photos of 07.05.15 privileged MPR memo from Adelore, noting: she requested Shasore offer $400m; P&ID rejected this and insisted on $850m; FRN's defence was feeble; and MPR's options were to allow the case to proceed, exposing it to a potentially higher liability, or to settle matter to save time, cost and mitigate the liability {I/212}. Sent from ICIL email on 07.05.15 to Smyth {I/211}.	P&ID says it "*does not have any understanding as to how this document was obtained*" or know the source: RFI Response, Annex One, Row 102 {A2/12/5}. This lacks any credibility.	Adelore – it is an unsigned draft prepared by her.
42	Scan of 07.05.15 privileged letter (MPR Perm. Sec. to Minister) noting his direction to seek a figure not higher than $500m and this was rejected; and seeking instructions to	P&ID says it "*does not have any understanding as to how this document was obtained*" or know the source: RFI Response, Annex One, Row 103 {A2/12/5}. This lacks any credibility.	Adelore or Shasore – it is an internal MPR document. It was circulated by "*Saheed*

	seek extension for FRN to make informed decision on settlement or alternatively for approval of P&ID's offer of $850m or other directions {I/214}. "*Saheed Akanji*" sent to Adebayo on 08.05.15, forwarded by Adebayo to ooldtn@gmail.com on 08.05.15 {I/213}.		*Akanji*" who was in contact with Shasore (see SoF 34(3) {A5/1/31}).
43	25.05.15 privileged letter from President to MPR and NNPC marked "*restricted*", noting that he "*can not approve at this time*" {I/216/1}, enclosing privileged 18.05.15 MPR letter to President advising that FRN's defence is "*feeble*" and seeking approval to settle at $850m {I/216/2-7}. "*Saheed Akanji*" sent to Cahill on 26.05.15 {I/215}.	P&ID says it "*does not have any understanding as to how this document was obtained*" or who the source was: RFI Response, Annex One, Row 104 {A2/12/5}. This lacks any credibility.	Adelore or Shasore – it is stamped by MPR. It was circulated by "*Saheed Akanji*" who was in contact with Shasore (see SoF 34(3) {A5/1/31}).
44	11.12.15 privileged email from Shasore to Adelore {I/223}, attaching draft letter of engagement from KPMG to TMS dated 31.08.15 {I/224} forwarded by Adelore to Adebayo using flakeytee@yahoo.com at 00:12 on 17.12.15 and forwarded by Adebayo to Andrew and Cahill {I/123}.	P&ID says it "*does not have any understanding as to how this document was obtained*" or know the source: RFI Response, Annex One, Row 108 {A2/12/5}. However, Andrew's purported explanation for P&ID having received this document was that "*it 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*" (Andrew 5, §113 {D/6/33}). In cross-examination, Andrew elaborated, saying Adelore might have leaked the letter to show that FRN was in a position of strength {Day4/123:17-21}. This lacks any credibility. The document was not sent lawyer to lawyer, or through any official channel, but instead at half past midnight by Adelore to Adebayo without cover letter and plainly improperly, with Andrew's failure to accept this doing him no credit {Day4/121:25} to {Day4/124:11}.	Adelore – as is common ground: P&ID's Opening Skeleton {AA/2/289}.
45	27.10.15 privileged opinion from TMS to Adelore advising on merits of potential challenge to liability award {I/220}. Shonibare sent to Adebayo {I/219}, forwarded on 10.11.15 by Adebayo to Cahill, Andrew in copy, stating "*FYI PLEASE LETS DISCUSS*" {I/219}.	P&ID says it "*does not have any understanding as to how this document was obtained*" or know the source: RFI Response, Annex One, Row 106 {A2/12/5}. This lacks any credibility. Andrew implicitly accepted this was a document that should have not been provided, saying "*the letter in 2015 written by Mr Shasore to the Ministry in relation to the possibility of a section 68 challenge, in the English High Court*" "*had detailed legal advice*" and was "*not something [he] read from beginning to end, as soon as [he] realised what it was*" {Day4/44:9-15}.	Shasore – it is not stamped by MPR.
46 & 47	22.12.15 privileged letter (Shasore to MPR) re: tribunal and counsel fees {I/231} and draft witness statement of Adelore in English set-aside proceedings {I/230}. "*Rachael Mulero*"[782] sent to Adebayo {I/229}, forwarded by Adebayo to Cahill and Andrew on 23.12.15 {I/229}.	P&ID says it "*does not have any understanding"* as to how these documents were obtained or know the source: RFI Response, Annex One, Row 122 and Row 110 {A2/12/5}. This lacks any credibility.	Adelore – SoF 47 was prepared by her. SoF 46 bears manuscript MPR comments.
48 & 49	01.02.16 privileged letter (Stephenson Harwood to Adelore), TMS in copy, giving advice on quantum phase and appointment of experts {I/245/2-5} and 04.02.16 privileged letter (TMS to Adelore), AG in copy, listing potential quantum experts {I/245/6-8}. Adebayo sent to Cahill, Andrew and P&ID's Nigerian counsel on 10.02.16 {I/245/1}.	P&ID says it "*does not have any understanding"* as to how these documents were obtained or know the source: RFI Response, Annex One, Row 112, Row 113 and Row 111 {A2/12/5}. This lacks any credibility.	Shasore – Shasore's office was a party to both letters. SoF 48 is not stamped by MPR. SoF 49 is not stamped by MPR or MOJ.
50	21.03.16 privileged letter from TMS to MPR, with NNPC in copy, advising on next steps in the quantum phase and the appointment of experts {I/247/1} sent by "*Tokunbo James*"[782] to Andrew and ICIL email account on 24.03.16 {I/246}.	P&ID says it does not know the source, but "*assumes that this document was provided to Mr Adebayo by somebody in FRN or its settlement team as part of the ongoing line of settlement communications*" (RFI Response, Annex One, Row 114 {A2/12/5}). See also Andrew 5, §108 {D/6/32}. This lacks credibility. Andrew says he presumed "*Rachel Mulero*", "*Tokunbo James*" and "*Smith James*" worked for Adebayo but has no explanation who they are {Day4/129:8} to {Day5/130:13}. He accepts that using aliases was unusual and suspicious {Day4/131:3-11}. The use of aliases when sending highlights that sending the documents was illegitimate and without authority. Andrew's contrary assertion does him no credit {Day4/133:25} to {Day4/134:10}.	Shasore – it is not stamped by MPR or NNPC.

[782] Andrew presumes "*Racheal Mulero*", "*Tokunbo James*" and "*Smith James*" worked for Adebayo but has no explanation of who they are {Day4/129:8} to {Day5/130:13}.

51	07.04.16 privileged letter (TMS to MPR), with Adelore and NNPC in copy, advising on steps in Nigerian Courts and quantum phase {I/256}. "*Smith James*"[782] sent to Andrew and ICIL email on 14.04.16 {I/255}.	P&ID says it "*does not have any understanding as to how this document was obtained*" or know the source: RFI Response, Annex One, Row 118 {A2/12/6}. This lacks any credibility. The TMS letterhead and signature appear to have been deliberately removed to hide the source of the document (compare {I/256} with {H8/196}).	Shasore – it is not stamped by MPR or NNPC.
52	Privileged letter from Ayorinde to MOJ and MPR in copy, dated 13.02.17 advising on the Award and next steps {I/265} sent by Adebayo to Cahill on 21.02.17 {I/262}.	P&ID says it "*does not have any understanding as to how this document was obtained*" or know the source: RFI Response, Annex One, Row 121 {A2/12/6}. This lacks any credibility. Andrew accepts that Ayorinde was not said to have legitimately supplied this document; that the source was Adebayo; and that P&ID had no evidence how it was obtained {Day5/14:25} to {Day5/17:8}. Cahill replied to Adebayo on 27.02.17 stating he "*Could do couple of grand on payment*" {L/25/19}.	Unidentified official corrupted by those acting for P&ID.
53	Privileged email from Ayorinde to MOJ and MPR dated 26.06.17 sent by Smyth to Cahill on 28.06.17 {I/268}.	P&D says it "*assumes that Chief Ayorinde forwarded his email to his client to somebody at P&ID in order to try to keep settlement discussions ongoing*": RFI Response, Annex Two, Row 31 {A2/13/2}. Andrew advanced a similar explanation (Andrew 5, §119 {D/6/34}). This lacks credibility: 1. Andrew accepts that his examples in Andrew 5 §48 {D/6/13} of Ayorinde sharing information – e.g. sharing authorisation to enter settlement negotiations (see {H9/10} attaching {H9/11}) or instruction to contact P&ID to revisit draft stay agreement {H9/89.1} – involved open correspondence sent lawyer to lawyer (Ayorinde or his firm to Andrew) and did not contain information that might be damaging to FRN's case {Day5/17:12} to {Day5/18:25}. Andrew accepts that this is very different {Day5/20:1-21} from other instances of sharing privileged internal communications and that P&ID had no explanation for sharing of other Ayorinde documents via back channels {Day5/14:25} to {Day5/17:8}. 2. Andrew accepts that this document was provided by Adebayo or Smyth; that such individuals were not willing to explain how such document had been obtained; and that, at most, his evidence consisted of "*an assumption*" {Day5/23:7} to {Day5/25:15}.	Unidentified official corrupted by those acting for P&ID.
54	Information from "*confidential sources*" on the likelihood of FRN agreeing to settle at $2bn sent by Adebayo to Cahill on 28.06.17 {I/271}.	P&ID says it does not know the source, but *"assumes that the information in this document was obtained by Mr Adebayo by taking soundings from his contacts on the ground in Nigeria":* RFI Response, Annex Two, Row 26 {A2/13/2}. See similar explanation at Andrew 5, §120 {D/6/34}. Given other evidence of corruption involving Adebayo, the inference is that again Adebayo obtained this information from corrupted insiders.	Unidentified official corrupted by those acting for P&ID.
55	Privileged memo between AG and MPR described in a WhatsApp from Adebayo to Cahill on 23.04.18 {I/271.1}	P&ID's case is that it "*does not have any understanding as to how this document was obtained*" or who the source was: RFI Response, Annex Two, Row 29 {A2/13/2}. This lacks any credibility.	Unidentified official corrupted by those acting for P&ID.
56	Privileged memo to the Governor of the Central Bank of Nigeria dated 30.08.19 {I/278/1} sent by Cahill to Smyth on 07.09.19 {I/272/1}. Cahill suggests it might have been obtained by Adebayo {Day10/114:22-24}.	P&ID says Cahill received this document unsolicited and, when he realised it was confidential, he did not use or circulate it: Defence §78L {A1/2/66}. This is false: later disclosure shows it was sent by Nolan to Cahill ({H9/227.03}, {H9/227.04}, {H9/227.05}, {H9/227.06}) and by Cahill to Smyth who sent it to Andrew and Burke {O1/38.1} and {Day14/81:2-23}. Cahill accepts there is no honest reason why anyone should be leaking this document {Day10/115:17-21} and that he knew this document was necessarily dishonestly obtained {Day10/119:5-9}. Andrew accepts it contains information which it would be against FRN's interest to share and that there could be no possible basis for it to be leaked {Day4/173:13-21}. Andrew could not deny that it was obtained by bribery {Day4/175:12-19}, {Day4/176:17} to {Day4/178:8} and {Day5/28:11} to {Day5/33:16}. Burke falsely claimed to have been satisfied after carrying out an investigation into this document {S/1/5} (line 20) to {S/1/13} (line 16), but no evidence exists of such investigation. It is implausible given neither Cahill or Andrew could suggest in their own evidence that the CBN Memo was legitimately obtained so could not have satisfied Burke of this.	Unidentified official corrupted by those acting for P&ID.
57	Privileged opinion to the President sent by Don Etim to Cahill on 04.09.20 {I/279}.	P&ID has put forward no explanation. Cahill accepts that there could be no doubt that this document is not one that should have been passed on to him {Day10/7:2-8}.	Unidentified official corrupted by those acting for P&ID.