

Appeal No: SC/103/2010  
Hearing Dates: 18<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup>, 24<sup>th</sup>, 25<sup>th</sup>, 26<sup>th</sup>,  
27<sup>th</sup> & 28<sup>th</sup> October 2011  
Date of Judgment: 29<sup>th</sup> November 2011

SPECIAL IMMIGRATION APPEAL COMMISSION

BEFORE:

THE HONOURABLE MR JUSTICE MITTING (Chairman)  
SENIOR IMMIGRATION JUDGE OCKELTON  
SIR STEPHEN LANDER

BETWEEN:

EKATERINA ZATULIVETER

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondents

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MR T OWEN QC and MS H LAW (instructed by Public Interest Lawyers) appeared on behalf of the Appellant.

MR J GLASSON and MR R WASTELL (instructed by the Treasury Solicitor) appeared on behalf of the Respondents.

MR A MCCULLOUGH QC and MR B WATSON (instructed by the Special Advocates' Support Office) appeared as Special Advocates.

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OPEN JUDGMENT

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## MR JUSTICE MITTING :

### Background

1. The appellant is a Russian national. She says that she was born on 8<sup>th</sup> August 1985 in Kabardino–Balkaria, in the North Caucasus, of Russian ethnic parents. Although the Secretary of State has not formally admitted this fact, it has not been challenged and we accept it to be true. We deal with her upbringing below. In September 2006, she was granted entry clearance as a student, pursuant to a multi-entry visa issued in Moscow valid from 5<sup>th</sup> September 2006 until 30<sup>th</sup> November 2007 (page 25 of the passport issued to her on 3<sup>rd</sup> April 2003). She entered the United Kingdom, via Manchester Airport on 10<sup>th</sup> September 2006. She was granted a Residence Permit P357602, since reported lost (passport page 17). It was replaced by a Residence Permit, issued at Sheffield on 1<sup>st</sup> May 2007, valid until 31<sup>st</sup> January 2008. (ditto). A further Residence Permit issued at Croydon on 24<sup>th</sup> January 2008 extended her leave to remain until 24<sup>th</sup> January 2009 (page 5 of a passport issued to her at the Russian Consulate in London on 8<sup>th</sup> January 2008). On 12<sup>th</sup> January 2009, she applied for leave to remain under the Tier 1 (Post Study Work) provisions of paragraphs 245V – 245ZA of the Immigration Rules. Her application was rejected on the ground that she failed to satisfy the requirement of rule 245X(e) and paragraphs 1 and 2 of Appendix C, because she did not demonstrate that she had the minimum level of funds (£800) required. She appealed against the decision. Her appeal was rejected by an Immigration Judge on 16<sup>th</sup> April 2009. Her application for reconsideration was rejected by a Senior Immigration Judge on 8<sup>th</sup> May 2009 and by a Deputy High Court Judge on 6<sup>th</sup> July 2009. By a letter dated 23<sup>rd</sup> July 2009, from Lin Homer, Chief Executive of UKBA to the appellant's MP (Simon Hughes MP) she was invited to submit a fresh application for leave to remain. She did so, this time successfully: a Residence Permit issued at Sheffield on 27<sup>th</sup> August 2009 granted her limited leave to remain in the United Kingdom as a Tier 1 (General) Migrant until 27<sup>th</sup> August 2012 (page 9 of the second passport).
2. On 2<sup>nd</sup> December 2010 the Secretary of State gave notice of her decision to make a deportation order against the appellant on the basis that her presence in the United Kingdom was not conducive to the public good for reasons of national security. She was detained on the same day and taken to Yarlswood Immigration Detention Centre. On 9<sup>th</sup> December 2010 she appealed against the decision to deport her to SIAC and applied for bail. Bail was granted, without opposition from the Secretary of State, on 13<sup>th</sup> December 2010. She applied successfully for her bail conditions to be varied. On 11<sup>th</sup> January 2011 the Secretary of State served an open statement setting out the reasons why she contended that certain bail conditions should be kept in place. The statement said nothing about the grounds upon which the decision to deport had been taken beyond the bare contention that she was assessed to be, and to be working as, an agent of the Russian Intelligence Services and that part of her role was to gather information of value to them from Michael Hancock MP, for whom she worked as a parliamentary researcher and assistant. In response, the appellant filed a detailed statement dated 27<sup>th</sup> January 2011 setting out her history and her response to the Security Service's assessment

that she posed a threat to national security. The statement runs to 257 paragraphs and 95 pages and has 267 pages of exhibits, principally her bank statements. By a three page document dated 23<sup>rd</sup> February 2011, the Secretary of State set out a summary of the open case against her. The Secretary of State's first open statement was filed on 7<sup>th</sup> March 2011, followed by three further open national security statements and a lengthy "generic" open statement. The appellant has filed six further statements, 26 statements by witnesses of fact and reports by three experts. The hearing took place over nine days, from 18<sup>th</sup> to 28<sup>th</sup> October 2011, during which two witnesses for the Secretary of State, ZZ and AE, and the appellant and one expert, Nick Fielding, gave oral evidence. In addition Michael Hancock MP gave brief oral evidence in a private and public session, at the request of the Commission.

3. The findings of fact and evaluative judgment set out below are made on the basis of the open and closed material which we have considered. To guard against inadvertent disclosure of matters which should properly be kept closed, we have not always been able to identify the material upon which open conclusions are based. Some of them may, accordingly, appear to the reader of this open judgment, only, to be inadequately supported by evidence and analysis. The support is to be found in the closed judgment.

### **The Law**

4. The determinative question is whether or not the appellant was and is a recruited agent of a Russian intelligence agency (a "Russian agent"). That is a question of past and present fact. If she was and is a Russian agent – who has not defected – it is obvious that her continued presence in the United Kingdom poses a threat to national security. Mr. Owen QC does not suggest the contrary. If she is not, her continued presence in the United Kingdom could not pose such a threat. In that event, a decision to deport her on conducive grounds could not be justified unless the decision can properly be based upon an assessment that she might be a Russian agent. Mr. Owen contends that only a positive finding that she was, made on the balance of probabilities, could justify a decision to deport. Mr. Glasson contends that the decision can and should be supported if the Commission is satisfied that there are serious grounds for considering that she is a Russian agent or that there is a real possibility that she is. Both rely on conflicting observations of the members of the Appellate Committee in *Secretary of State for the Home Department v. Rehman* [2003] 1AC 153.
5. *Rehman* does not provide a definitive answer to the question posed by this case. For present purposes, it definitively established three propositions: it was an error of law to hold that the decision of the Secretary of State had to be justified by individual facts proved to a high degree of probability; in assessing future risk, the Secretary of State was entitled, and the Commission was obliged, to take into account all relevant material, including that not proved to any particular standard; and great weight must always be given to the views of the Secretary of State and her security advisors on matters of national security. (Per Lord Slynn at paragraphs 22 and 26, per Lord Steyn at paragraph 29, per Lord Hoffmann at paragraphs 48, 49 and 57, per Lord Clyde at paragraph 63 and per Lord Hutton at paragraph 65). The House was,

however, divided on the question of the standard of proof by reference to which past events should be established. Lords Slynn and Steyn stated that “when specific acts which have already occurred are relied on, fairness requires that they should be proved to the civil standard of proof”: paragraphs 22 and 27. Lords Hoffmann and Clyde considered that the task of the Commission was ordinarily to determine whether or not there was a factual basis for the Secretary of State’s decision and whether her opinion was one which could reasonably be entertained: paragraphs 54, 57 and 63. Lord Hutton can be taken either to have agreed with both propositions or, expressly, with neither. Accordingly, save for the correction of the error of requiring past fact to be determined to a high degree of probability, *Rehman* does not determine the approach which should be adopted to past facts; nor does it determine the approach of the Commission to the assessment of future risk where that risk is solely dependent upon what has occurred in the past – as in this case.

6. We must therefore return to first principles to determine the approach which we should take. We start with two considerations, of which the first derives from the speeches in *Rehman* and the second is based on the experience of the Commission since *Rehman*: the ultimate task of the Commission is evaluative; and the circumstances which give rise to a decision to deport or exclude on conducive grounds for reasons of national security are many and varied – as is the evidence, information and intelligence upon which we make our evaluation. This suggests that a degree of flexibility of approach may be required. Experience has shown us that attempting to make findings of past fact on balance of probabilities is invariably a good starting point. In every case since *Rehman* (apart from certification cases, in which there was a statutory threshold of reasonable suspicion) we have been able to make findings of past fact on balance of probabilities; but it is not impossible to envisage circumstances in which a decision to deport or exclude would be upheld even where no such finding adverse to an appellant could be made. For example, a decision to exclude a possible assassin, based only on information provided in good faith by a friendly state, could be upheld even if the factual basis for the reporting could not be established on the balance of probabilities. In such a case, a decision adverse to an appellant would be more likely to be made if he did not participate constructively in the appeal – as sometimes happens. A significant feature of *Rehman*’s case was that he does not appear to have done so. In such cases, Mr. Glasson’s suggested tests, which are derived from two sources - the wording of Article 1F of the Refugee Convention and the approach of tribunals to claims of past persecution by those seeking asylum – might be appropriate: they are tests to be applied in circumstances in which the facts cannot always readily be determined. It does not follow that the same tests should apply in a case in which the evidence, information and intelligence deployed by the Security Service is matched by a constructive response, supported by detailed evidence, by an appellant. In such a case, we may well be able to reach secure findings of fact upon which our evaluation can be made. In some cases, the exercise can closely resemble the traditional approach of a court determining a civil case (albeit under unusual procedural rules).

7. This case falls into the latter category. We have been able to make findings of fact on the balance of probabilities on critical questions and, having done so, to reach a confident conclusion about the basic question of fact: is the appellant a Russian agent?
8. In answering that question and in evaluating the risk, if any, posed by the appellant to national security, we have not adopted the self-denying ordinance proposed by Lord Hoffmann in *Rehman* in paragraph 57 of his speech. We do not, with respect, accept his founding premise that the Secretary of State “*has the advantage of a wide range of advice from people with day to day involvement in security matters which the Commission, despite its specialist membership, cannot match*”. For the reasons explained in paragraphs 3 – 11 of *Al-Jedda* SC/66/2008, 7<sup>th</sup> April 2009, we believe that we are able to, and do, give more careful and detailed scrutiny to the risk posed by an individual appellant to national security than the Secretary of State can reasonably be expected to do. We have routinely applied the approach favoured by Lord Woolf, at paragraph 44 of his judgment in *Rehman* and Lords Slynn and Steyn in paragraphs 22 and 23 and 30 of their speeches. We will adopt the same approach in this case.

### **The appellant’s upbringing**

9. In paragraphs 23 – 50 of her first witness statement the appellant has given a detailed account of her upbringing and the circumstances of her family between 1985 and 2002. She supplemented it by oral evidence. It was supported by a detailed witness statement made on 14<sup>th</sup> March 2011 by her father Andrei Zatuliveter and by a witness statement dated 15<sup>th</sup> March 2011 by a long-standing friend of his, Valery Mikhaylovich Kovalev. Their account has been considered by a well qualified expert in post-Soviet Russia, Scott Newton, now a lecturer in the laws of Central Asia at the School of Oriental Studies. He describes the account given by Andrei Zatuliveter as “an entirely convincing and credible account of the fortunes of a typical Russian family in the times, places and circumstances alleged”. This evidence was not challenged or even qualified by any material produced by the Secretary of State. Mr. Glasson did not cross-examine the appellant upon it. We have no reason to doubt its general truthfulness and can, accordingly, summarise it briefly.
10. Andrei Zatuliveter, now 53, was a mining engineer in the Tyrnyauz mining complex in Kabardino-Balkaria until the collapse of the Soviet Union in 1991. He married Natalia Repina in 1978. They have two daughters, Polina, now 32 and the appellant. In 1992, as a result of local hostility to ethnic Russians in Kabardino-Balkaria, the family fled to Mineralnye Vody. They bought the shell of a modest semi-detached bungalow on the outskirts of Mineralnye Vody, where Andrei and Natalia Zatuliveter still live. He joined his elder brother in a business venture based on trading cables, conductors and steel. It was successful. At its height, it employed about 50 people. It provided a good income for Andrei Zatuliveter, sufficient to permit him to buy two flats in Mineralnye Vody and Stavropol, to send his family on holidays abroad and to pay for the education of his two daughters including, in the case of Polina, a university education in the United Kingdom. His time of prosperity ended

after his brother died in July 2000. He and his brother's widow and the general manager (Kovalev) were forced out of the company by the other shareholders in February 2003. He then worked in more modest businesses – horse breeding, double glazing and tiling.

11. The education of his daughters was a high priority. There was no difficulty in securing it for Polina: the company paid for it. In unchallenged oral evidence, the appellant said that, as a schoolgirl, she drew up a list of what she was good at and bad at and asked her father what it suggested she should do for a career. He said, “diplomat”. He confirmed the thrust of this account in paragraph 31 of his first witness statement. He investigated the possibility of sending her to study at the Moscow State Institute of International Relations (MGIMO) – the institute from which most of the upper cadre of the Ministry of Foreign Affairs was and is recruited. He discovered that the cost was prohibitive and decided, instead, to send the appellant to study at the newly opened International Relations School of the St. Petersburg State University. She sat and passed the entrance exams in the summer of 2002 and began a four year Bachelor of Arts degree in European Studies in August 2002, when she had just turned 17. To fund her degree course and living expenses in St. Petersburg, Andrei Zatuliveter sold the flat in Stavropol and a car. Mr. Newton describes the value placed on education by the appellant's family as typical of Russian middle class families of the period; and the choice of the International Relations School of St. Petersburg State University for an aspiring diplomat as a logical second best to MGIMO.
12. This undisputed evidence establishes to our satisfaction that there was nothing in the appellant's family background which would have suggested to a Russian intelligence agency that she would be predisposed to accept an offer of recruitment as an agent or officer; and nothing to suggest that her university education was financed by a Russian intelligence agency so as to place her under an obligation to accept such an offer.

### **The Russian Intelligence Services**

13. There are three Russian intelligence agencies: the Federalnaya Sluzhba Bezopasnosti (FSB); the Sluzhba Vneshney Razvedki (SVR); and the Glavnoye Razvedyvatelnoye Upravleniye (GRU). The GRU are the Russian Military intelligence agency. Nothing in the material which we have considered suggests that it is likely that the appellant was an agent of the GRU. They can be dismissed from consideration. Henceforth we will refer to the Russian Intelligence agencies as the FSB/SVR. The SVR is the Russian foreign intelligence agency. It is primarily responsible for gathering information and intelligence overseas on a variety of topics, including political intelligence, by its so-called “PR line”. It operates principally through officers in Russian Embassies or Consulates enjoying diplomatic status. The FSB is the internal security agency. It is the largest, best resourced and most powerful of the three intelligence agencies. Vladimir Putin became its director in 1998. In May 2000, two months after his election as President of the Russian Federation, he placed it under his direct control. Its principal responsibilities are counter-terrorism (principally focussed on the Caucasus), counter-intelligence, monitoring the activities of foreign nationals in Russia

and oligarchs; but its role is not confined to internal security. A law passed in 2006 allows it to “eliminate threats from extremists overseas” on the authorisation of the President. It has an overseas role and a department to co-ordinate overseas activities: the Department of Operational Information in the Service for Operational Information and International Relations. It is, in the words of Mr. Fielding, in response to a question from Sir Stephen Lander, an extremely capable organisation, whose methods and techniques are highly advanced. That summary is a brief synthesis of the views of the Security Service and of Mr. Fielding and is not, we believe, controversial.

### **The FSB/SVR in St. Petersburg**

14. The assessment of the Security Service is that the FSB/SVR have a substantial presence in St. Petersburg and in St. Petersburg State University, including the School of International Relations. Their tasks would include monitoring Russian students who had contacts with resident foreign students and with significant foreign visitors; and they have, and would not hesitate to use, means of securing the co-operation of Russian nationals in gathering intelligence about them. Mr. Fielding’s view is that St. Petersburg has never been “a primary hunting ground” for the FSB/SVR: they favour Moscow and, in particular, the MGIMO. He accepted in oral evidence that these remarks, in paragraph 28 of his report, were primarily directed to the recruitment of intelligence officers (i.e. full-time members of staff of the agencies). He said that it was “hard to believe” that they were capable of monitoring the large number of Russian students in St. Petersburg, out of a total number of 32,000, who had contacts with foreign students. The appellant adamantly denies any knowledge of the FSB/SVR in St. Petersburg and describes as “ridiculous” and “like something from the Soviet days” the suggestion that they would be interested in every student at St. Petersburg who met a foreigner. She repeated this denial on several occasions in her oral evidence. William Bowring, Professor of Law at Birkbeck College has taught at many universities in Russia including St. Petersburg State University and has, since 1998, regularly encountered its students. He describes the School of International Relations as highly regarded and thoroughly professional, with an enormous number of international links and partnerships. The majority of students whom he has met were progressive in their politics and Western orientated. He describes the Security Service’s assessment that it is “near impossible” that the appellant could have avoided the attention of the FSB/SVR in St. Petersburg as “improbable”. His view is supported in the concluding paragraph of the witness statement of Ruslan Shamgunov, an associate professor at the School of International Relations in St. Petersburg who supervised the appellant’s research work throughout her degree course, who states simply that things have changed since Soviet days.
15. We accept that they have. The impression formed by Professor Bowring is inconsistent with tight state control of the student body. It does not, however, follow that the FSB/SVR would have had no knowledge of or interest in the appellant’s interaction with foreigners in St. Petersburg, especially towards the end of her time there. We would not go as far as the Security Service in concluding that it is “near impossible” that she could have avoided their

attention in St. Petersburg; but we are satisfied that it is more likely than not that she would have come to their attention there. Whether or not that had any practical consequence for them or her depends upon subsequent events, which we analyse below.

### **The appellant's first three years at St. Petersburg; 2002 – 2005**

16. It is a fact of some significance that the appellant had only just turned 17 when she began her degree course. In her first year, she applied for an internship in the Ministry of Foreign Affairs, of which there were a limited number open to students at her School. She failed to make the grade. She rapidly realised that she would not become a diplomat. Nothing remarkable occurred in her first year. In her last three years, she lived at the unoccupied flat of her cousin. She sub-let the second bedroom to other female students, successively a Russian, a Canadian, a German and two Swiss nationals, with whom she has kept in touch. On 29<sup>th</sup> June 2003, she flew from Pulkovo (St. Petersburg) airport to visit her sister Polina in the United Kingdom, returning on 3<sup>rd</sup> August 2003. (first passport page 33). On 10<sup>th</sup> April 2004, she flew to the United Kingdom for her sister's marriage, returning on 24<sup>th</sup> April 2004 (ditto). In July 2004, she worked in the St. Petersburg branch of an Austrian bank. On 1<sup>st</sup> August 2004, she went to study for a month at the Diplomatic Academy in Vienna, returning on 29<sup>th</sup> August 2004 (ditto). In paragraph 67 of her witness statement, she said that in 2005 she could not afford travel or studies abroad, but instead showed 20 Austrian students around the sights of north-west Russia. The statement that she did not travel abroad is wrong: her passport shows that she flew from Pulkovo airport on 7<sup>th</sup> July 2005 and returned on 28<sup>th</sup> July 2005. There is an un-cancelled Swiss tourist visa valid from 5<sup>th</sup> July to 28<sup>th</sup> July 2005 on page 30 of the passport, which may explain where she went. The Security Service do not read anything of significance into this discrepancy. Nor do we. All that it does is to demonstrate that her memory, remarkably good in many instances, is, in others, imperfect.
17. During each of her first three years, the appellant was keen to participate in conferences and activities that brought her into contact with foreigners. In her first year, still only 17, she was selected to chaperone the Serbia and Montenegro delegation to the Parliamentary Assembly of the Commonwealth of Independent States. She befriended the most junior man in the delegation. After he left, they kept in touch, exchanging emails which she describes as "flirtatious" and the prelude to a romantic relationship which did not, in fact, develop. A possible trip to Montenegro was cancelled and she heard no more from him.
18. In her second year – in fact it was at the beginning of her third - (2004) she met a Dutch diplomat in his mid-thirties, "L". She says that he invited her to dinner and, next evening, to the theatre. He invited her to Moscow before he left. She did not initially accept, but was persuaded by her friends that she should go. She caught the train to Moscow and spent the night with him in a hotel room there. In paragraph 71 of her first witness statement, she says that when he left in the morning to go to work, he behaved very strangely, first trying to pay her for the night that they had spent together and then taking everything he could from the room – as if she were a prostitute or thief. He

paid her return fare to St. Petersburg. They conducted a desultory communication by email but, after a few months, when he said that the relationship was going nowhere, it ceased.

19. This is a remarkable tale. She was closely cross-examined by Mr. Glasson about it. He suggested to her that L's actions on leaving the hotel room suggested that he suspected that she was a Russian agent. Yet it is the fact that it was the appellant who first disclosed the relationship in these proceedings. She is unlikely to have done so if she had something to hide.

### **The appellant's Klimt diary**

20. In paragraph 4 of her first witness statement, the appellant said that she had "never kept a long hand diary in which I described and recorded my daily life". In her fifth witness statement dated 11<sup>th</sup> July 2011, she said that she had found a personal diary in which she had written sporadically. She exhibited photocopies of its pages, written in Russian, French and English, and produced the original on the first day of the hearing. The first entry is dated 1<sup>st</sup> November 2004 and the last 24<sup>th</sup> April 2007. She explained that she did not remember it until she had come across it "earlier this month" (by which she may mean June, rather than July, because of the time required to have the entries professionally translated) amongst her things. The diary is, in our view, a very important document. As witness ZZ stated, in response to Mr. Owen, there are three possible explanations for it: it is genuine; it is contemporaneous, but the entries are false; or it is a recent fabrication. The Security Service did not ask to see the original until it was produced on the first day of the hearing. Witness ZZ accepted that it was an oversight on her part not to subject it to analysis before then. On the basis of an offer to undertake an analysis of the ink in which the entries are written, at a cost of \$24,000, by an American expert, Mr. Owen submitted that a test to determine the age of the entries could and should have been undertaken. We doubt that any such analysis would have yielded a worthwhile result. The final position of the Security Service, as expanded by witness ZZ, is that it does not necessarily accept that the diary entries are genuine, but also does not accept that, even if they are, it undermines their assessment about the appellant's brief relationship with L and, more importantly, her longer affair with Mr. Hancock.
21. The first entry in the diary dated 1<sup>st</sup> November 2004, concerns L. The appellant would then have been 19. In translation, it reads:

"I am starting my new diary from sadness. I am alone again.  
Why?"

I met L (his first name appears in the original) a month ago.  
Wonderful feelings, fantastic time spent together – *Havana*,  
theatres, the Neva, then Moscow, the National Hotel...it's so

easy to get used to good stuff...only afterwards it's very hard to do the opposite. I know, I shouldn't love him but my heart is empty and demands to get filled with something.

Each day I get a stronger feeling that I was not more than a toy, a doll for him. But I don't want to be a doll.

He plays with my heart (in French). It happens to me every time. Why can't I simply allow myself to love the person who loves me? Is it because it's too simple? Then, what is life if everything always has to be complicated?

I need to understand for myself what I feel to L. It's not easy. I'll try this way:

- |   |   |
|---|---|
| - I certainly like him.                                   | - I am sure I don't love him and won't allow myself to do so.               |
| - Everyday I keep thinking of the time we spent together. | - We won't meet again.  |
| - I read (and desperately wait for) his letters           | - It's the fifth day that he doesn't write me. He might be very busy or ... |

I know one thing for certain: it had been a wonderful time, a great life experience and I'll never forget nor regret these days even if I never see him again."

The next entry is dated 1<sup>st</sup> December 2004 and describes the unexpected arrival of a "letter" from L and her euphoric reaction to it, including the following:

"I dream he'll come soon. Then I dream that in summer we'll meet in Germany; then that we move together to live in Latin America because he's appointed there as a Consul or Ambassador. And there we have a splendid house, and I'll study in the State University of Buenos Aires (Oh God!)."

There are further entries about L dated 12<sup>th</sup> December 2004, 1<sup>st</sup> January 2005, 23<sup>rd</sup> January 2005, 5<sup>th</sup> March 2005 and finally, 21<sup>st</sup> March 2005. The last entry refers to his letter ending the relationship:

"This was the memorable day that had to come sooner or later by all logics. We've split up. He sent me a letter in which he had put it all. I must admit, he'd put it all very diplomatically.

I feel as if someone has poured a bucketful of cold water on me...

Well, at least now everything is history. A new life starts...”

In between these entries, is one on 6<sup>th</sup> March 2005, in which she names four potential “victims who must ask me to a date during March” and gives thumbnail descriptions of them. Other entries for March describe her interaction with some of them.

22. These entries have the ring of truth. They are the entries of an immature, calculating, emotional and self-centred young woman – in our judgment, an accurate characterization of the appellant then, and allowing for greater maturity, now. There are also minor indications of authenticity: the wrongly dated year (2004) on the second entry for 2005 (11<sup>th</sup> January) – a common mistake in documents dated at the beginning of the year; and the entry on 5<sup>th</sup> March 2005 identifying L’s whereabouts and destination on that and the following day, running the risk, if the entry is fabricated, that it could be checked. The remaining entries for March 2005 describe, in excruciating detail, the failure of her attempts to ensnare a “victim” by the end of the month. They, too, have the ring of truth about them. Finally, there is no doubt that the physical diary which, originally, had entirely blank pages, is genuine and was printed or published in the year printed on a back page, 2003. For all of these reasons, we are satisfied, at least on the balance of probabilities, that the diary entries for 2004 and 2005 are contemporaneous. We can conceive of no rational explanation for them other than that they genuinely record the appellant’s feelings on the dates of the entries. They amount to convincing real evidence that the appellant has told us the truth about her encounter with L. The diary entries do not wholly exclude the possibility that she was targeted by the FSB/SVR to seduce L; but they are a powerful contra-indicator. Further, the Security Service does not place great store by the appellant’s relationship with L. Removing it from the equation, would not produce a material change in their assessment. Adding it did not, and does not, materially strengthen it.

#### **2006 – Mike Hancock MP and Bradford**

23. Mike Hancock has been the Member of Parliament for Portsmouth South since the General Election in 1997. (He won the seat in a by-election in 1984 for the SDP, but lost it at the 1987 General Election). He has a long-standing interest in defence matters and Russia. He has belonged to numerous committees and all-party groups of the House of Commons. From February 1999 until his resignation last month, he was a member of the Defence Select Committee. From 2001 to 2009 he was the Vice-Chair of the All Party Parliamentary Group on Russia, and from then until 6<sup>th</sup> July 2010, its Chair. On that date, Chris Bryant, MP was elected in his place and he became Vice-Chair. According to Mr. Bryant, he has consistently expressed views supportive of the Russian Government. A Guardian on-line report of 5<sup>th</sup> December 2010 (1/1/1) is in similar vein. The same report spoke of him frequently being accompanied on Council of Europe and Alliance of Liberals and Democrats for Europe meetings in Strasbourg by one or more glamorous young Russian and Ukrainian women. The Security Service’s assessment is that he would have been of long-standing interest to one or more Russian intelligence agencies. We unhesitatingly accept that assessment.

24. In April 2006, Mr. Hancock was part of a delegation of British Members of Parliament attending the Parliamentary Assembly of the Commonwealth of Independent States in St. Petersburg. The appellant had volunteered to chaperone delegates. She says that she was selected, at her request, to chaperone the French delegation, but when she arrived at the airport, discovered that the one French delegate who had arrived had done so the day before. Accordingly, with the approval of the university authorities, she met and travelled back with the British delegation. In her first witness statement, she said that Mr. Hancock tried to get her attention on the drive back to St. Petersburg and later, at the conference, invited her and another girl for coffee. He advised her to go to Strasbourg to work at the Council of Europe and asked her out for dinner. She accepted. He made it clear from the beginning that he was interested in her romantically and invited her to his hotel room for the night. She refused. She claims to have been flattered by his attention. After the conference ended, they kept in almost daily touch by SMS and telephone calls. She also received an invitation to Strasbourg from the Alliance of Liberal Democrats in Europe, (“ALDE”) signed by Peter Kallenberger, its secretary. In paragraph 6 of his witness statement, Mr. Kallenberger confirms that he was asked by Mr. Hancock to offer the appellant a traineeship, but did not do so, because the Alliance already employed a trainee. At the end of May 2006 (the appellant puts it in June, but nothing turns on her error as to the date) Mr. Hancock invited her to Moscow. She said in her witness statement and in her oral evidence that she accepted, to practise her English. Parliamentary records show that he flew to Moscow on 29<sup>th</sup> May 2006. She met him at the airport and they drove to a hotel which she cannot now identify. They stayed together for three or four days and began a sexual relationship. She appears to have made no secret of it. A friend and classmate at the School of International Relations, Ksenia Gorlevaya, in paragraph 13 of her witness statement says that she told her about her relationship, was open about it and “very up front” about her feelings for Mr. Hancock. Although she puts no time upon the disclosure of the affair, the impression which we have is that it was quite soon after it began.

25. Entries in the Klimt diary, if genuine, provide a compelling account of the start of the affair and of the appellant’s motives in beginning it. Apart from a single entry on 23<sup>rd</sup> December 2005, in which the appellant complains about her mood, there are no entries between 29<sup>th</sup> May 2005 and 29<sup>th</sup> April 2006. The latter reads:

“So, here is the result of the conference at the Tavrichesky Palace on 28/04/06:

Mike Hancock, MP wants both to help me and to sleep with me. He offered me to go with him to Strasbourg at the end of June. I said yes. Is there any danger in it?

- To sleep with him – no danger
- What if we don’t get to Strasbourg – he can’t miss the session of the Council of Europe

- The trip will be of no use to me – there will be SOME use anyway
- The “public opinion” – nothing I can do about it.

So, apart from the public opinion there is nothing to fear for. And when was the last time I paid attention to the public opinion? Can’t remember...perhaps, always...

Now I absolutely need:

- To forget about it because otherwise I won’t be able to concentrate on the rest;
- English language; it still *leaves much to be desired* (in English)
- State exams: need to study the basics so that I can say at least something
- The dissertation – must finish it really well
- French language: what shall I do without it in Strasbourg?
- If all goes well, if I pass my exams well then I’ll go to Strasbourg and, possibly, I’ll get a very good chance in life, who knows.”

The next entry is three days later on 1<sup>st</sup> May 2006:

“For three days I’ve been waiting for some news from Mike – and there’s nothing. I’ve sent him a letter to his parliamentary mailbox. The earliest he’ll get to the Parliament is tomorrow. But he might go to his constituency and then it will be ages before he receives my letter.

So there are only five points on my list and I can’t stick to any of them – just forget about it all.

And if I don’t complete No. 1 then I won’t be able to complete all the rest. Vicious circle.

I can’t forget about it, it’s in my head all the time...what to do?”

If genuine, these entries provide a reliable clue to the appellant’s motive in accepting Mr. Hancock’s invitation to Moscow: to further her ambition to gain experience, at first hand, of Western European politics and, possibly, to get “a very good chance in life”. To do that, she was perfectly happy to conduct an affair with Mr. Hancock – and to accept his invitation to Moscow, to see what happened. “Practising her English” was not her main aim.

26. The next entry in the diary – for 10<sup>th</sup> June 2006 – is of critical importance:

“I am in love...And he’s gone to Iraq today. I worry a lot, don’t know what to do, what to do with myself. Yes, he had told me that most probably he won’t be able to either call or to write me. I wish there were at least some news. I stay at home all day. (Two friends) invited me to go to the opening of *Leto Bar* but I didn’t: What if he calls me? My darling Teddy Bear. There is no one more tender and more sincere than you. You are the first person in the world who is prepared to give me everything (well after my parents).

I so want to see you, to feel you with all my naked body. Let the moment of our next meeting come the soonest possible. I love you, my King Louis!!!

At the moment I’m living through a wonderful time. My love, my friends and I’ve passed my exams. Only the dissertation is left. What a nuisance! Mike is in Iraq. Why did he have to go there at all? My darling, my love, please get back soon and send me some news.

(Three friends) Ksiusha (Ksenia Gorlevaya) – they all make my life such fun. They love me and I love them. They are great!

Oh Mike, why don’t you call me?? I need to know that you are well. Please, call.”

This entry must either be a contemporaneous and truthful statement of the appellant’s feelings or a subsequent fabrication. If it is genuine it is, in our firm view, inconsistent with the appellant, aged 20 having been tasked beforehand to seduce a 60 year old MP. The entry also contains a revealing false statement: “He’s gone to Iraq today”. He hadn’t. The report of the Defence Select Committee published on 10<sup>th</sup> August 2006 records that the Chairman and five members visited Basra and Baghdad between 5<sup>th</sup> and 8<sup>th</sup> June 2006. Mr. Hancock was not amongst them. Parliamentary records show that he visited Paris on 6<sup>th</sup> June 2006. The entry, if genuine, demonstrates that he misled her about his whereabouts, deliberately or unintentionally. He said in evidence that he might have intended to go to Iraq but changed his mind when something else cropped up at the last minute. We doubt that explanation. From the diary, and from abundant other evidence, it is plain that the appellant was an inveterate and insistent communicator with the men in her life. If genuine, the entry is really only consistent with her being told immediately before 10<sup>th</sup> June that he was going to Iraq on 10<sup>th</sup> June.

27. The appellant returned to St. Petersburg after her trip to Moscow. A Schengen Visa was issued to her in St. Petersburg on 16<sup>th</sup> June 2006 valid from 23<sup>rd</sup> June to 19<sup>th</sup> December 2006 (page 29 of the first passport). It is likely that her application for it was supported by an invitation from ALDE, though not an offer of a traineeship.

28. In paragraph 82 of her first witness statement, she says that after she finished her exams her mother and she moved her things from St. Petersburg to her parent's home "and then I joined Mike for a holiday for two to three weeks". Her first passport and diary show that this statement is inaccurate. Stamps on her passport show that she flew from Pulkovo airport on 23<sup>rd</sup> June 2006 and returned on 1<sup>st</sup> July 2006 (page 33). The next entry in her diary, dated 13<sup>th</sup> July 2006 states:

"I'm at parents now, thinking of my trip to France. It was heavenly!

Paris, Luxembourg, Strasbourg, Germany, the chateau – all this with the one I love and the one who loves me. What can be better!!

And now – phonecalls and letters everyday. I can't bear being apart until our next meeting on July 25<sup>th</sup> in Brussels."

By then, she must have removed her belongings from St. Petersburg. The stamps on her passport show that on 25<sup>th</sup> July 2006 she flew from Sheremetsvo (Moscow) airport, returning from Brussels on an overnight flight on 30<sup>th</sup> and 31<sup>st</sup> July 2006 (pages 3 and 28). The entry for 25<sup>th</sup> July 2006 in the Klimt diary begins:

"At long last I'll see my love after a long separation. This time it will be in Brussels. I flew from Mineralnye Vody to Brussels with a Dutch lady whose husband works in Piatigorsk. So weird! Didn't know there were foreigners around here. The plane from Mineralnye Vody to Moscow was almost full of them..."

The remainder of the entry and that for the following day record intimate personal details, which it is not necessary to set out in this judgment. The next diary entry is for 9<sup>th</sup> August 2006 – the appellant's birthday. After complaining that half her friends did not remember it, she wrote:

"Polina rang up to tell me that she had been denied a credit. So I am not going to England straight away from Italy, and possibly won't go there at all. Don't know what to do and how to tell Mike about it. He had planned everything so well..."

29. This refers to her plans to study in England, to which we refer below. It also refers to a planned trip to Rome. The next entry to refer to that trip is dated 20<sup>th</sup> August 2006:

"We'll meet in five days and then I'll know what he thinks of it all" (A reference to her plans for her studies).

The stamps on her passport show that she flew from Sheremetsvo to Fiumicino (Rome) airport on 25<sup>th</sup> August 2006, returning on 1<sup>st</sup> September 2006. (pages 3, 28 and 27).

30. The Home Office copies of the appellant's two passports were only produced in the second week of the hearing after the appellant had given her oral evidence. At our request, she was recalled to deal with the whereabouts of the original of the first, cancelled, passport in the middle of closing submissions. Her answers were given without hesitation. She said, undoubtedly correctly, that the cancelled passport had been given back to her (by the Russian Consulate) and then provided by her to the Home Office, with her new passport (which had been issued on 8<sup>th</sup> January 2008) when she renewed her Residence Permit (see page 17 of the first passport and page 5 of the new passport). She did not know where she had then put the original of the cancelled passport, but immediately offered to go and find it and produce it to us if we required it, which we did not. This short passage of evidence, like several others of greater length, (e.g. her description of her work as an assistant to Mr. Hancock and the functioning of Parliament) was fluent and unrehearsed and gave the impression to us of being truthful.
31. At the same time as the beginning of her affair with Mr. Hancock, she was planning to study in Europe. She had received offers from two institutions providing courses in her preferred topic of study – peace studies and conflict resolution: the Austrian Study Centre for Peace and Conflict Resolution and Bradford University. Both offers were unquestionably made. She took up the second. Her reasons for doing so were financial and personal. By 2006, her father's financial resources were substantially exhausted. Her sister Polina, mindful of the large sum spent by him on her education said that she felt guilty that the appellant did not have the same opportunities as her. She agreed to borrow £10,000, repayable over four years, from a bank. She did so. She has produced the letter of offer dated 17<sup>th</sup> August 2006 by Abbey National and bank statements in which the payments for tuition fees to Bradford University are identified. Her evidence is confirmed by her husband Andrew Cowburn. It is unquestionably true. It provides a complete explanation for the first main reason for the appellant's choice of Bradford University: it was the only one which she could afford to attend. Her second main reason was to live with, or at least near, her sister. Her third was to be within reach of Mr. Hancock.
32. Entries in her diary dated 17<sup>th</sup> and 18<sup>th</sup> August 2009 are consistent with these events. (The misdating of the year is curious, but not sinister. When asked about it in her oral evidence, she did not at first notice the error. When it was expressly pointed out to her, she explained immediately that she had mild dyslexia as regards numbers. Her obvious inability to see the mistake and her unforced explanation when it was pointed out sounded plausible). They record a quarrel and its resolution:

17<sup>th</sup> August 2006

"I constantly think about my sister. Why did we have to quarrel? It wasn't even a quarrel but just a stupid situation. But now I don't know what to do. Ask her to forgive me? But what for? We definitely didn't understand each other. (*From here on – in French*) And what if she's going to tell all this to her husband? He won't let me stay with them any more. Oh my God! What shall I do? What shall I do? I can't stay here

at my parents. It's just impossible. I can't even get a job here. Why is it always like this? You try to do something well – but the result is always the same. I think Andy is so firm in his principles that if my sister tells him what I had written her about my problem, he won't be very happy. What shall I do? What shall I do?! It's the usual question one asks, isn't it? And I'm not the only one who needs the answer.

Should I wait? Or should I write her? Nobody can give me any advice. I must decide everything myself.”

18<sup>th</sup> August 2006

“It's been a very good day. First of all, my sister has written to me and it means that she isn't angry with me at all. I adore my sister! Now we need to wait for a reply from the bank, that's all. To easy to say...

Secondly, I told Mike about my problems. I didn't give the details but in any case I've done it. Which means – I have been honest. He has to know, it's only fair. He reacted well but said he'll talk to me about it. Even if he isn't going to like this situation, I have been honest with him. And that is the most important for me.

Therefore, all my relationships have been sorted, but what will happen next is hard to tell, you never know...Oh, the future, the future!

Good night my darling!”

The last entry is timed at 1.09 am, when it would still have been the evening of 17<sup>th</sup> August 2006 in the United Kingdom. The letter from Abbey National would not have arrived until the next day at the earliest – hence the need to wait for the reply from the bank. Part of the reason for the “quarrel” can be inferred from paragraph 14 of Polina Cowburn's statement: she was aware of the appellant's relationship with Mr. Hancock “and for a very long time could not accept it” – she was wasting her youth on an old man. The appellant knew what she felt about the relationship. Her husband undoubtedly disapproved of it, as he makes clear in paragraph 12 of his statement. The second reason was the health problem to which she refers in paragraph 40 of her witness statement of 11<sup>th</sup> July 2011 which no doubt shocked her sister and brother-in-law. It was that which she explained to Mr Hancock.

33. Polina Cowburn, who should know, states that the appellant and Mr. Hancock were “definitely in love”. She had no doubt that their relationship was genuine.
34. We are satisfied, at least on balance of probabilities, that the diary entries for 2006 are genuine, for the following reasons:

- i) Like those for 2004 and 2005, they fit the character of the appellant – immature, calculating, emotional and self-centred.
  - ii) They fit facts which can be established by documents which are unquestionably genuine – the cancelled passport and the Abbey National letter.
  - iii) As witness ZZ accepted, the entries for 2007 are consistent with entries in her appointments diary for that year, the authenticity of which is not in issue, and with her bank statements (c.f. her complaint about lack of money in the entry for 9<sup>th</sup> April 2007). It is not possible that false entries could have been inserted in a gap of several pages between true entries on either side.
  - iv) Our belief that she told us the truth about the whereabouts of her cancelled passport, without which accurate re-creation of the events described in the entries would have been impossible.
  - v) If the entries are false, they have been fabricated with great skill and subtlety, e.g. recording something which the appellant says that she is still reluctant to acknowledge: that Mr. Hancock misled her about his whereabouts on 10<sup>th</sup> June 2006.
  - vi) The Security Service could have called for the original at any time after copies were exhibited to the appellant's witness statement of 11<sup>th</sup> July 2011. If the entries are fabricated, she ran the risk that they would be subjected to scientific analysis and shown to be false.
35. The picture painted by the diary entries is inconsistent with the Security Service's assessment that she was, most likely, tasked actively to pursue the offer of a relationship with Mr. Hancock. The most likely explanation, and one which we find to be proved on the balance of probabilities, is that, however odd it might seem, she fell for him. Whether or not she was then tasked by a Russian intelligence agency, exploiting a genuine relationship, to obtain sensitive information about the United Kingdom is a related, but different, question which we address below.

### **September 2006 to December 2008**

36. The appellant's plan to live with her sister did not last long. As her sister confirms in paragraph 13 of her witness statement, the appellant and her husband found it hard to get on, so that she asked her to move out to student accommodation. The appellant says that she did so in October 2006. Both say that she could afford to do so, just, because she was now receiving an allowance from Mr. Hancock. In addition, from September to December 2006, she was paid £96 per week for part-time work in the admissions department of the University. Nevertheless, as her bank statements show, her financial circumstances were straitened. She says that she obtained a parliamentary pass and became an unpaid intern for Mr. Hancock in November 2007. We are satisfied that her recollection is mistaken and that this occurred in November 2006. This permitted her to spend time with him at

his London flat, when she was not studying at the University for her Masters Degree. She also travelled extensively in Western Europe with him, as the stamps in her cancelled passport and entries in her appointments diary show.

37. From 30<sup>th</sup> May to 14<sup>th</sup> June 2007 she made the first of three visits to Russia – she says, to visit her parents in Mineralnye Vody. There is no record of any payment for air tickets in her bank statements. She says that Mr. Hancock paid for them as a present to her. We have no reason to doubt that evidence. Her appointments diary notes, on 30<sup>th</sup> May 2007, “To Moscow”. An inbound stamp on her first passport confirms her arrival at Sheremetsvo airport on that date (page 3). On 31<sup>st</sup> May 2007, there are two notes: “French Embassy” and “16.35 – Flight to MV”. We have no doubt that both entries record events that actually occurred. She did visit the French Embassy in Moscow on 13<sup>th</sup> June 2007 as the stamp on page 19 of her cancelled passport shows. The visit is recorded in her appointments diary for that date. On 12<sup>th</sup> June 2007, she has noted in English, “Back from Moscow”, by which she must have meant “Back to Moscow”, because she attended the French Embassy on the next day. On 14<sup>th</sup> June 2007, she flew from Sheremetsvo airport to Heathrow, as the stamps on pages 3 and 16 of her cancelled passport show. There is a contemporaneous entry “Flight to London” in her appointments diary. We have no reason to doubt her account of this trip. It would have left time for her to have been interviewed by an FSB or SVR officer in Moscow on her way out to see her parents and on the way back or in Mineralnye Vody. It does not, of course, follow that she was.
38. The appellant’s finances improved strikingly in August 2007. Two payments were credited to her bank account: £998.20 on 6<sup>th</sup> August 2007 and £1894.82 on 5<sup>th</sup> September 2007. This preceded a visit by her mother to her sister Polina between 6<sup>th</sup> September and 20<sup>th</sup> September 2007 (see the exit and entry stamps at Sheremetsvo airport on page 3 of her mother’s cancelled passport). Her mother’s purpose was to see her first grandchild, who was born to Polina on 9<sup>th</sup> July 2007. The two sums of money were transferred to the appellant by her father, as a present for her and to enable her to spend money on her mother. He has satisfactorily explained the source of this money in his second witness statement of 24<sup>th</sup> October 2011. This, plus Mr. Hancock’s allowance and £150.42 paid for part-time work at Sports Direct at the end of December supported her until the end of the year.
39. After completing her Masters Degree, until July 2008, the appellant performed successive unpaid internships at the Human Rights NGO “Article 19”, during which she contributed to an article critical of Russia, at a UK based think tank, “Policy Network”, for two to three weeks and at the European Security and Defence Assembly in Paris, from March to May 2008. She says that she was paid 350 euros per month, in arrears and paid rent for a small room of the same amount, but there is no trace of either in her bank statements.
40. In July 2008, Mr. Hancock’s researcher resigned. Mr. Hancock offered the appellant a three month’s probationary period and then a permanent contract. From 8<sup>th</sup> July 2008, when £500 was paid into her account by bank giro credit from a House of Commons account, that provided her main source of income.

Her bank statements record net monthly payments in excess of £1000 at the end of each month.

41. As Mr. Hancock's parliamentary assistant, the appellant had access to all parliamentary materials of some sensitivity which he allowed her to see and to forums in which defence and policy issues were discussed by people who would have been of interest to the FSB/SVR, such as the International Institute of Strategic Studies and Chatham House. The Security Service have produced a lengthy annex derived from the appellant's account commenting on the avenues which would have been open to her in which to gather sensitive information and to meet individuals who might be of assistance to the Russian State. Most of the information would not have been protectively marked and there is no open suggestion that any individual was successfully talent spotted by the appellant. The appendix to the re-amended second open statement does no more than identify the opportunities. However, as both Security Service witnesses accepted, the same opportunities would have been open to, and exploited for innocent purposes by, a politically ambitious young woman with her considerable networking skills. We unhesitatingly accept the Security Service's assessment that the FSB/SVR would be very interested in obtaining the product of her activities – and that it is not at all far fetched that a Russian agent would set about gathering intelligence etc. in the manner admitted by the appellant. That would, however, be of little use to the FSB/SVR unless she was able to make periodic reports to her handlers. In this context, Mr. Fielding makes the powerful and, in open, unanswered observation that there is no evidence that she ever did so. Her parliamentary activities, contacts and networking cannot provide a reliable answer to the basic question: was she a Russian agent? The answer to that question must be sought elsewhere.

## **Boris**

42. "Boris" is the name which we have given (in place of the appellant's potentially confusing "U") to a Russian diplomat whom she met in London in the circumstances described below. The Security Service assesses that she may have met a Russian intelligence officer operating from the diplomatic mission in London at Parliament or Portcullis House on 19<sup>th</sup> December 2008. Although not acknowledged to be the same person, we will treat them as if they were a single individual named Boris. The initial assessment was that Boris had met her and that his meeting was consistent with an initial attempt to cultivate her as an agent. Mr. Fielding makes the obvious, indeed, unanswerable, point that for a Russian intelligence officer to attempt to recruit an individual who was already a Russian agent would have been a very serious error on the part of the intelligence officer. A great deal of time and effort has inevitably been devoted to this topic. As in the case of any issue which is gone over repeatedly, later accounts lack spontaneity. What follows, which is substantially based on the appellant's account, is what we believe happened. The appellant encountered Boris on at least two occasions in 2008, of which at least one was at the International Institute for Strategic Studies. On 3<sup>rd</sup> October 2008, while she was waiting for a train at the nearby Temple underground station, Boris approached her and asked her, in English where

she was from. When she replied that she was from Russia, they spoke in Russian. They got into the same carriage. She got out at Westminster. During that short journey, they exchanged business cards. Hers contained her name, working address and telephone number and identified her as a parliamentary assistant to Mr. Hancock. As she got out at Westminster, he said that her job was a “dream job for every Russian”. Several weeks later, just before Christmas 2008, he emailed her to propose lunch or coffee. She accepted. Between those dates, as she was getting off a bus and crossing the road in front of Portcullis House, he telephoned her about the invitation. It did not in fact take place.

43. The appellant says that she cancelled the invitation, giving as her excuse, that she could not meet Boris, because her sister or niece was ill and she would be going to her house for Christmas. She describes this excuse as “lame”. She says that the true reason for cancellation was that Mr. Hancock had told her not to meet Boris, an instruction which she obeyed. She is convinced that she did not tell Mr. Hancock Boris’s name. In a private session, from which the public and media, but not the appellant or her representatives were excluded, Mr. Hancock gave a lengthy and elaborate explanation of his reasons for doing so based upon what another person had told him during 2008. We undertook to Mr. Hancock that we would say nothing in this open judgment which might lead in any way to the identification of that individual. Accordingly, all that we can say is that we did not believe Mr. Hancock’s explanation. It is possible that he did tell the appellant not to meet Boris, but not possible that he did so for the reasons which he gave. Our reasons for rejecting his evidence on this question are set out in the closed judgment.
44. Although the appellant encountered Boris again on one or more occasions at the Institute for International Strategic Studies and, possibly at Chatham House, the invitation was not renewed. She recalls telling him about the problems she was experiencing in renewing her Residence Permit (set out in paragraph 1 above) and being invited to the Russian Embassy for the Russian National Day in June 2010, apparently at his instigation: he told her, at the reception, that he had personally made sure that she was on the guest list. We have only her word for this part of the history, but have no positive reason to disbelieve it.
45. The Security Service’s assessment is that if Boris did not renew his invitation that is an indicator that she was already a Russian agent: otherwise, it would be highly unlikely that, as an intelligence officer, he would have ceased to make further contact with such an attractive target. We do not, on balance, accept this assessment. On the balance of probabilities, the Boris episode, taken as a whole, does not support the conclusion that the appellant was, by 2009, a Russian agent.

## **2009**

46. The improvement in the appellant’s finances, which began when she started paid work for Mr. Hancock in July 2008 continued in 2009. Her income from that source was supplemented by a payment of £3,000 on 22<sup>nd</sup> June 2009 by an Azeri lobbying group, the European Azerbaijani Society. She was briefly

cross-examined about this by Mr. Glasson and, in response, gave a more detailed account of the work that she had done in her 7<sup>th</sup> witness statement dated 25<sup>th</sup> October 2011, to which she annexed photographs, taken while she was organising a photography exhibition on the Nagorno Karabak conflict. She had already said in her first witness statement that Mr. Hancock approached the society to suggest that they should pay her for her work. In response to Mr. Glasson, he confirmed that she had undertaken it and thoroughly deserved the payment which she received. We have no reason to doubt the evidence of the appellant and Mr. Hancock on this point. Her expenditure remained modest and, as far as we can tell, is fully accounted for in her bank statements. They also show that she was able to repay her sister £3,000 in instalments of £1,000 on 30<sup>th</sup> June, 3<sup>rd</sup> September and 7<sup>th</sup> December 2009.

47. She was also constrained to remain in the United Kingdom, by her visa difficulties. The last stamp in her new passport in 2008 was 17<sup>th</sup> August 2008 (page 7). Her bank statements show that she was in Switzerland. Her next foreign trip was to visit her parents in Russia at end of September 2009. Stamps in her passport show that she flew to Sheremetsvo airport on 25<sup>th</sup> September 2009 and back from Sheremetsvo to Heathrow on 5<sup>th</sup> October 2009 (page 8). Curiously, in paragraph 142 of her first witness statement, all that she was able to say was that she thought that she may have visited her parents in Mineralnye Vody sometime in September 2009, but was not certain and could not identify any stamp in her passport which would help. Nor were her parents certain. In his witness statement, her father said in paragraph 38 that she came home in the autumn of 2008 or 2009. She did not do so in 2008: there are no stamps in her passport after 17<sup>th</sup> August 2008 and her bank statements show a consistent pattern of expenditure in England until the end of the year. We have no doubt that the visit to her parents took place between 25<sup>th</sup> September and 5<sup>th</sup> October 2009 and not at any other time. As in 2007, there would have been time for her to be interviewed by FSB/SVR officers, but it does not follow that she was.
48. The appellant says that she was interviewed by a man called “Peter” in the autumn of 2009 who she thought was from “MI5” or “MI6”. She has given a detailed account of the interview which she says took place. For good reason, neither the Security Service nor the Secret Intelligence Service confirm or deny that interviews such as that referred to by the appellant have occurred. We do not intend to go behind that policy and will not make any comment in this judgment upon the interviews which the appellant says took place, whether with “Peter” in the autumn of 2009 or with other persons in 2010.

### **Brook Lapping, Y and the appellant’s trip to Moscow in April and May 2010**

49. Brook Lapping is a television production company. It planned to make a documentary television series about political relations between Russia and the West since the election of Vladimir Putin as President. The producer was Norma Percy. The appellant was recruited by Brook Lapping to assist in the project. She spoke about it in her first witness statement and has been cross-examined about it by Mr. Glasson. Two witnesses from Brook Lapping made statements on 24<sup>th</sup> January 2011, on which the appellant relies. The Secretary

of State was asked by the appellant's solicitors if she required them to attend the hearing to be cross-examined. She did not. There is no reason to doubt their unchallenged statements. According to Mr. Roxburgh the appellant was spotted by Norma Percy at an event in the House of Commons. The appellant describes that event – a screening of a film in Parliament on the conflict in Georgia – which she had organised. She participated actively in the question and answer session which followed. She says that she was then approached by Tim Stirzaker and asked if she was interested in working on a documentary on Russian – Western relations for Brook Lapping. Mr. Mitchell, Sales Director for the project, says that two colleagues reported back to him that they had met the appellant and been impressed by her competence in running the event. They wondered if it would be possible to tempt her away from the House of Commons to join the team as a junior researcher. He met her, discovered that her English was excellent and that she had a sophisticated knowledge of international relations and had met some potential contributors to the series. She said that she wanted to leave the House of Commons – that for her career, she had achieved all she could there. Brook Lapping was not, at that stage, willing to offer her permanent employment and Mr. Hancock apparently wanted a commitment that she would return to work for him after the General Election if he were returned. Mr. Mitchell says that her decision was that she would work for Brook Lapping during the election recess.

50. The appellant says that, in an attempt to impress Brook Lapping, she helped them on a voluntary basis from November 2009 onwards. At their request, she attended a dinner and conference at the International Institute for Strategic Studies organised by that institute and the Valdai Club on 8<sup>th</sup> – 9<sup>th</sup> December 2009. The topic was European security architecture. She says that she tried to make contact with Russians who attended the conference, unsuccessfully. Mr. Mitchell does not in his statement speak of this activity (we understand his reference to the appellant working for Brook Lapping “for a few days in London as we prepared for a research trip to Moscow”, to be a reference to events occurring immediately before departure, not in November 2009). Nevertheless, we have no reason to disbelieve the appellant's account of her motive – or, more likely, one of her motives – for attending the conference: it fits with all that is known about her networking activity.
51. At a reception at the Russian Embassy after the conference, the appellant says that she was introduced by a German lady that she had met at dinner the night before, to a 50 year old man, “Y”. He was introduced as a NATO official whose job title and function were then identified to her. They began to talk. They were interrupted by an elderly Russian lady of strong cold war views, which caused the appellant to break off the discussion. She later returned and remained in Y's company for the rest of the evening, talking mostly about her work and relations between Russia and the West. At the end of the evening, they exchanged business cards. The next day Y sent her a text message saying that it was nice to meet her. She found out about him on Google. Between the conference and Christmas they exchanged emails, which were friendly and funny. He attempted to send her a Christmas hamper, which she refused. Thinking that she had offended him, she sent a box of House of Commons chocolates and a card, for which he thanked her. Contact then ceased.

52. She says that while waiting to start work for Brook Lapping in late March or early April, she resumed contact with Y. By then, she had discovered, from the internet, that he had held a significant NATO position in Moscow before taking up his present office. She wished to interview him, for the purpose of the Brook Lapping project and asked if he would be in Moscow while the Brook Lapping team were there. Mr. Mitchell confirms that she did work of this kind in the days before they left for Moscow: internet research, telephone calls and the preparation of research briefs for interviewees. This provides some support for her explanation of her motive for re-contacting Y. She did so by emailing him saying that she had no excuse to do so, but wanted to find out how he was.
53. Y responded, saying that he was going to Moscow, but would return to Brussels before she would be there. They then began regular email and SMS contact. By the time she had got to Moscow, it was very frequent – up to 100 messages a day and had become flirtatious. In one such message, she said that she could not continue emailing him, because the Kremlin was calling to congratulate her on her achievement in disabling the work of half of NATO by distracting him.
54. As this relationship was beginning, her long-standing affair with Mr. Hancock was winding down. She said, for the first time in oral evidence, that in 2009 she had had a brief affair with the owner of an IT company and, at the beginning of 2010, with a part-time social worker and landlord. Mr. Hancock did not know about them; and she did not mention them in her written evidence, because they had nothing to do with these proceedings. We accept her reason for her reticence and her evidence about these affairs. In March or April 2010 Mr. Hancock asked her to leave his flat which she did. We suspect that his motive was, at least in part, to avoid the possibility of unwelcome media attention as the Election approached (there had been earlier unflattering newspaper articles about his girlfriends and a false poster campaign was conducted in his constituency during the Election by an individual against whom he was reported to have obtained an injunction in April 2010).
55. The appellant's trip to Moscow with Brook Lapping lasted from 13<sup>th</sup> – 27<sup>th</sup> April 2010. Mr. Mitchell briefly describes what she did in terms which we accept: principally, the preparation of research briefs and proof-reading and formatting documents in Russian. She stayed with friends in an unfashionable part of Moscow. She did not ask for time off for personal meetings and had no time to meet outsiders. Mr. Roxburgh noticed that she did not get on well with Norma Percy. In his view, she was bullied by her. As on previous trips to Russia, there would have been some time in which she could have been interviewed by FSB/SVR officers without her Brook Lapping colleagues knowledge. The appellant's stay in Moscow was undoubtedly curtailed by a family tragedy – the death on 26<sup>th</sup> April 2010, aged 15 days, of her younger niece. She immediately flew back to Manchester and went straight to her sister's house where she stayed until 8<sup>th</sup> or 9<sup>th</sup> May 2010. Her niece's funeral was on 13<sup>th</sup> or 14<sup>th</sup> May. Arrangements were made for the appellant's parents to come. Because they could not afford the ticket, Andrew Cowburn transferred £600 into her account, out of which she bought Aeroflot tickets for

them. These transactions are recorded in her bank statements. Unsurprisingly, these events were shocking and distressing for her.

56. On 17<sup>th</sup> May 2010 the appellant left her sister's home and caught the train to London. Before she left, Y began an exchange of emails which the Security Service were later to treat as significant. The appellant responded, telling him that she had not slept until 3am, that her niece had told her how much she loved her and that she had no idea how she would be able to get on with work, flat hunting and hundreds of other things she had to do in London. She said that she would be on the train by twelve. Her next message to him was brief:

“On the train. Bored: (anything interesting happening in NATO?:).”

There then followed a rapid exchange of light-hearted messages, which culminated in a question upon which the Security Service has placed considerable emphasis. To set it in its context it is necessary to set out the messages which preceded it.

Y (in response to the appellant's question about anything interesting happening in NATO?):

“Just returned from lunch. A little bit of gossip at the staff centre. Uneventful day so far. Except my friend just told me her son wants to join the army and fight in Afghanistan...she respects it but it is less than happy.

Again read about this 89 – year old guru. Apparently still living without food and water and in good health. We were joking over lunch about all the economies the Alliance could make if this discovery could be put to work: get rid of the staff centre, the restaurant, the cafeteria...”

The appellant:

“But having food is also important for communication purposes! You will miss out on talking to colleagues over lunch and making important contacts over seledka in Russian Embassy!

Just got the most disgusting coffee on the train:( ”

Y

“Life is really unfair to you. I am starting to worry whether I will be able to fully make up for all this injustice in just three days...”

The appellant:

“It's not an easy task. But it's not as difficult as it looks. Some asparagus, a nice steak, a glass of wine, fruity dessert, a walk under the moon and I'll be fine!:)”

Y:

“That’s doable!!!”

The appellant:

“See! I told you!:)”

Has Albright said anything interesting?”.

Y responded several hours later with the text of a public statement by Madeleine Albright.

57. The suggestion that the appellant’s two questions are examples of attempts to obtain sensitive information from a senior NATO official is, in our firm view, unfounded. The first question was plainly inconsequential and elicited an inconsequential reply. The appellant explained that her request about Madeleine Albright was made to show off – to demonstrate that she was up-to-date with NATO affairs to a man with whom she was intending to spend a weekend in Brussels. She said that she picked up the information about Madeleine Albright’s visit from a Twitter site which she followed. We have no reason to doubt her explanation. Further, her account of the innocence of her relationship with Y is confirmed by him. The appellant’s solicitors attempted to obtain a witness statement from him, but were told by him that he was not permitted by his employer to make a formal witness statement. He did, however, exchange emails with them and, during the course of the hearing, on 23<sup>rd</sup> October 2011, spoke to Tessa Gregory. She has produced the emails and the attendance note of her conversation. He said that the “Albright” message was the only occasion on which she had asked him about his work. When Miss Gregory explained that the appellant had said that she had sent the message to impress him with her knowledge he laughed and said that it made sense – and that it did impress him that she knew about the meeting. He said that as far as he was concerned, the appellant did not behave in any way suspiciously and did not try to collect information from him – if that was what she was trying to do, she did a very poor job.
58. The appellant travelled by Eurostar to Brussels on 21<sup>st</sup> May 2010, returning on 24<sup>th</sup> May 2010 (new passport pages 20 and 21). Their affair began then. She did not tell Mr. Hancock. In undisputed evidence, the appellant says that Y returned the visit to her in London in June. The appellant says that they intended to meet again, in July and then in August 2010, but did not do so. There is no evidence that they met again.
59. We draw no conclusion adverse to the appellant from her relationship with Y. The Security Service now accept that she has formed genuine emotional relationships with older men – founded, on her side, on a common interest in politics and international affairs, and their humour, sophistication and kindness. These factors together with Mr. Hancock’s decision to end their affair, suffice to explain her relationship with Y. We are satisfied, at least on balance of probabilities, that she did not set out to seduce him to obtain secret

or sensitive information from him at the instigation or for the benefit of the Russian State.

## Conclusions

60. The Security Service's assessment that the appellant was and is a Russian agent depends upon the cumulative effect of nine features identified in paragraph 34 of the generic statement. They seem to us, in reality, to amount to four assessments:
- i) It is almost inconceivable that the FSB/SVR would not have been aware of her potential to be of use to them and did not approach her with that in mind because of her presence and contacts and activities at the School of International Relations in St. Petersburg.
  - ii) Her interest in men in influential positions and her rapid consummation of affairs with them cannot simply be explained as unusual personal relationships, but must result from tasking by the FSB/SVR.
  - iii) The position which she achieved – mistress of and parliamentary assistant to Mr. Hancock – and the way in which she exploited that position, by extensive networking amongst influential people in the political and international relations world is as consistent with her being a Russian agent as an ambitious young woman with political interests.
  - iv) The Boris episode confirms that she was a Russian agent.
61. i) The first assessment has given rise to our greatest difficulty. We have already indicated that we accept that the FSB/SVR would have been interested in the appellant and would have regarded her as a potential source of valuable information. Further, they had ample opportunity to approach her. We do not regard it as inevitable that they would have done so before the affair with Mr. Hancock started in Moscow. They would then have had to have acted quickly. It is possible that they did not do so in time. If not, they would have had an opportunity to do so on any of her three trips to Russia. She is adamant that they did not. This was the one aspect of her evidence about which we had real reservations. Questions about the Russian intelligence agencies elicited defensive responses. She professed an ignorance of them inconsistent with her compendious and penetrating understanding of political and international affairs – a reaction consistent with an unwelcome approach in the past. She could have had, and could still have good reason for wishing to deny the making of an approach: she intends to return to Russia and spoke of a political career there; her parents have lived throughout in Mineralnye Vody; she must realise that the reach and power of the FSB in Russia is great. We gave her the opportunity, in a private session from which the public and media were excluded, of responding through her counsel in a way which would have permitted her obliquely to acknowledge that an approach had been made while being able to maintain to Russian questioners

that she had throughout denied that it had been. She understood our purpose. Her response was, politely, to decline the opportunity offered and to assert with what seemed to be genuine vehemence that she had never been approached. It is possible that her answer is true. We simply do not know.

- ii) We are satisfied that she was not tasked to seduce L, Mr. Hancock and Y. The relationship with L was little more than a late teenage crush. The relationship with Mr. Hancock was enduring and genuine on both sides. That with Y was short, but genuine and occurred at a time of great stress and emotional turbulence for the appellant. Nothing in the material which we have analysed suggests, let alone demonstrates, that the appellant exploited her relationships for the purposes of the Russian State.
  - iii) Her activities would have been of great interest to the FSB/SVR, but they are also entirely consistent with her being an ambitious young woman with an intense interest in politics and international relations. Further, they would have been of no use to the FSB/SVR unless their product was communicated to them, of which there is no open evidence.
  - iv) The Boris episode is more consistent with her not being a Russian agent than with her being one.
62. Our conclusion, at least on the balance of probabilities, is that she was and is not a Russian agent. Even if she was approached in Russia by the FSB/SVR, we have seen nothing which satisfies us that she was recruited as an agent or was tasked, or acted, as one. We have not reached that conclusion by a narrow margin. We are satisfied that it is significantly more likely than not that she was and is not a Russian agent. We cannot exclude the possibility that we have been gulled – but, if we have been, it has been by a supremely competent and rigorously trained operative. That does not fit all that we know about the appellant’s age, background and characteristics. Accordingly, we allow this appeal.
63. We add finally that the criticisms of the Security Service’s investigation, catchily summarised by Mr. Owen in his closing submissions, are unjustified. The investigation was thorough and competent. Although we have disagreed with the Security Service’s assessment, we note, and approve, another of Mr. Owen’s observations: that there were ample grounds for suspicion. The fact that they have been substantially dispelled does not mean that they were not reasonably held and properly advanced.