Neutral Citation Number: [2021] EWHC 3188 (Admin)

Case No: CO/1189/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/11/2021

Before:

MR JUSTICE GARNHAM

- -

Between:

THE QUEEN **(on the application of HANY YOUSSEF)**	**Claimant**
- and -	
THE SECRETARY OF STATE FOR FOREIGN, COMMONWEALTH AND DEVELOPMENT AFFAIRS	**Defendant**
- and -	
HM TREASURY	**Interested Party**

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- -

Dan Squires QC and Tim James-Matthews (instructed by **Birnberg Peirce**) for the **Claimant**
Sir James Eadie QC and Maya Lester QC and Malcolm Birdling (instructed by **Government Legal Department**) for the **Defendant**

Hearing dates: 13th & 14th October 2021

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Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and others, and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 11:30am on 26 November 2021

Mr Justice Garnham:

INTRODUCTION

1. Hany Youssef, the Claimant in these proceedings, is an Egyptian national who has lived in the UK since 1994. On 29 September 2005, Mr Youssef was designated a "sanctioned person" by the United Nations Al-Qaida and Taliban Financial Sanctions Committee ("the 1267 Committee"). As a consequence, he has been subject to a comprehensive financial sanctions regime for more than 15 years.

2. His designation was initially given effect in the UK by Orders in Council made pursuant to the United Nations Act 1946 ("the 1946 Act"), namely the Al-Qaida and Taliban (United Nations Measures) Orders 2002 and 2006 ("the 2002 UN Order" and "the 2006 UN Order"). Those Orders were quashed by the Supreme Court, in *Ahmed v HM Treasury* [2010] 2 AC 534. Subsequently, the Claimant's assets were frozen pursuant to EU Council Regulation 881/2002 which had direct effect in the UK. Following the UK's withdrawal from the EU, EC 881/2002 ceased to have domestic effect.

3. Since 31 December 2020, the legal basis for the continuation of the asset-freezing regime upon the Claimant has been the ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019 ("the 2019 Regulations") made under the Sanctions and Anti-Money Laundering Act 2018 ("2018 Act"). Regulation 5 of those Regulations provides that any person designated by the UN Sanctions Committee is to be subject to the asset-freeze provisions from the end of the transition period following the UK's departure from the EU.

4. The Claimant advances two grounds of challenge. First, he says that the scheme of the 2018 Act and 2019 Regulations, insofar as it does not allow him access to a court which can review effectively the imposition of the asset-freezing regime upon him, is contrary to the right to "*a fair and public hearing*", guaranteed by Article 6(1) ECHR, "*which requires, at a minimum, that a court has the power to conduct an effective review of a person's designation pursuant to the sanctions regime*".

5. Second, he says that that scheme, "*insofar as it precludes recourse to a court which can effectively review the Claimant's designation, is not a necessary or proportionate interference with his right to respect for his private and family life, guaranteed by Article 8(1), ECHR*". The scheme, it is said, lacks the procedural safeguards necessary to satisfy the requirements of Article 8.

6. The Defendant, the Secretary of State for Foreign, Commonwealth and Development Affairs ("the Secretary of State"), resists the claim contending that the 2018 Act established an effective mechanism by which the Claimant can seek a review of his designation, including by a court, but that he has chosen not to avail himself of that mechanism.

7. Permission to apply for judicial review was granted by Sir Ross Cranston, sitting as a deputy judge of the High Court, on the basis that it was arguable

> "whether the mechanism in sections 25 and 38 of the 2018 Act, with its focus on the request and its provision for judicial

> review of the Secretary of State's decision on the request, is sufficient, consistently with the UK's obligations under the UN Charter, to meet the claimant's common law and Article 6 and Article 8 ECHR rights to have the arbitrariness of the listing reviewed by a court."

8. The Claimant was represented before me by Dan Squires QC and Tim James-Matthews; the Defendant by Sir James Eadie QC, Maya Lester QC and Malcolm Birdling. I am grateful to all counsel for their helpful and well-focused submissions, both written and oral.

THE FACTUAL BACKGROUND

9. The Claimant has been resident in the UK since 6 May 1994. He is a man of good character in this jurisdiction, and (in particular) has never been convicted of any terrorism offence in the UK. He was, however, convicted *in absentia* in Egypt by a military court, with a large number of other individuals, of terrorism offences. However, in *Al-Sirri v SSHD* [2009] EWCA Civ 222, a case brought by a co-defendant of the Claimant's at that trial, the Court of Appeal held that, such was the reliance on material obtained by torture in those Egyptian proceedings, an immigration tribunal in the UK was "*required by law to accord no weight whatever*" to findings or convictions arising from it (see [44]).

10. On 29 September 2005, the Claimant was designated by the 1267 Committee. Initially, he was designated without any indication of the State responsible for requesting his designation, the reasons for his designation or the nature of the evidence which supported those reasons. As a consequence of his designation, the Claimant was subject to the asset freezing regime initially contained in the 2002 UN Order and the 2006 UN Order.

11. In September 2007, a Mr Ahmed (together with a number of others) commenced judicial review proceedings against HM Treasury, seeking to set aside directions made under the 2006 UN Order. On 24 April 2008, Collins J gave judgment for the Claimants in those proceedings (*Ahmed v HM Treasury* ([2008] EWHC 869 (Admin)). On 30 October 2008, the Court of Appeal allowed the Treasury's appeal in part, holding that those subject to 1267 Committee listing could seek a "*merits-based review*" of their designation by a UK court ([2008] EWCA Civ 1187). The Respondents obtained leave to appeal that decision to the Supreme Court.

12. Meanwhile, on 9 February 2009, the Claimant had issued a claim for judicial review challenging the *vires* of the 2006 UN Order, and seeking a review of the type identified as appropriate by the Court of Appeal in *Ahmed* by challenging the UK Government's failure to request the UN to de-list him. On 1 July 2009, Owen J allowed that claim, holding that the 2006 UN Order was *ultra vires* the 1946 Act because it subjected the Claimant to asset freezing measures without effective access to a court ([2009] EWHC 1677 (Admin)).

13. In the course of those proceedings, the Secretary of State had provided a witness statement, dated 19 June 2009, indicating that the UK considered the Claimant's listing was "*no longer appropriate*" and that it would "*submit and pursue a de-listing request*". For a period of some five years thereafter, the UK made extensive attempts

to secure the Claimant's de-listing. However, it is apparent that one or more members of the 1267 Committee declined to agree to his delisting and in consequence, the Claimant remained listed by the 1267 Committee. That remains the position today.

14. HM Treasury appealed the order of Owen J, pursuant to a certificate granted by the judge on 14 July 2009 under section 12 of the Administration of Justice Act 1969 and with leave of the Appeal Committee of the House of Lords (a "leap frog" appeal). The Supreme Court heard the appeal of the Claimants in *Ahmed* and the appeal of HM Treasury in Mr Youssef's case together. The Supreme Court allowed the appeal of the Claimants in *Ahmed*, and dismissed the appeal of HM Treasury, in the Claimant's case [2010] UKSC2 [2010] 2 A.C. 534. I consider that decision further below.

15. On 7 September 2010, the Claimant was provided with a "*narrative summary*" by the 1267 Committee, setting out the reasons for his listing. That summary demonstrated that the Claimant's designation was based upon his conviction in Egypt. As a result, in December 2010, he issued a second judicial review claim in which he sought to argue that the UK had acted unlawfully in supporting a designation it knew was based upon evidence tainted by torture. That claim was dismissed by the Divisional Court (Toulson LJ and Silber J) on 23 July 2012 (*Youssef v SSFCA* [2012] EWHC 2091). The Claimant appealed. The Court of Appeal dismissed that appeal on 29 October 2013 ([2012] EWCA Civ 1302). The Claimant appealed to the Supreme Court.

16. It became clear during the course of that judicial review that, while the narrative summary set out what was said to be the reasons for the 1267 Committee's listing, individual members of the Committee may have relied on different reasons and different material, in deciding whether to support listing or de-listing, and those reasons and that material may not have been shared with other Committee members. The evidence submitted by the Secretary of State explained how members of the 1267 Committee make decisions:

> "In terms of the 1267 Committee and the process undertaken by other member states in evaluating [requests for listing], it is important to note that the evaluation of the material provided by a Designating State is conducted away from the Committee, and the UK is not party to the internal evaluation processes conducted by other Member States. When the UK evaluates listing requests made by other Member States, the UK's decision whether or not to agree a proposed listing may be based upon or influenced by information at the disposal of UK officials, which would not necessarily be shared within the Committee itself. "

17. On the appeal from the decision of the Court of Appeal, the Supreme Court noted, in *Youssef v SSFCA* [2016] UKSC 3, at para 15:

> "…The information submitted [to the UN] in support [of the Claimant's designation] relied on his conviction in Egypt in absentia for membership of a terrorist group. This information, as the Secretary of State knew, included evidence that had been or may have been obtained by torture."

18. The Secretary of State decided to support the Claimant's designation, "*not based on this information but on a separate Security Service assessment*". That information had nothing to do with the conviction *in absentia* and was not tainted by torture. It followed that, while it was not disputed that Egypt, the Designating State, sought the Claimant's listing based on evidence that had, or may have been, obtained by torture, and that was reflected in the 1267 Committee's narrative summary, the UK based its decision to support listing on entirely different evidence.

19. In the period during which *Youssef v SS FCA* was proceeding, the Claimant made a request to the UN that he be "delisted". That petition was forwarded to the UN Ombudsperson, Kimberley Prost, who on 4 February 2014, after a lengthy period of information gathering and dialogue, provided the Sanctions Committee with a "Comprehensive Report. She concluded that statements made by the Claimant and written material posted and disseminated by him amounted to support for Al-Qaida and wrote to the Claimant stating that as a result there was "sufficient information to provide a reasonable and credible basis for the listing.

20. The Supreme Court dismissed the Claimant's appeal on 26 January 2016, holding that the Secretary of State had been entitled to place the Claimant's name on the United Nations' list of members of Al-Qaida and its associates, on the basis that there were reasonable grounds to suspect that he met the criteria for such designation.

21. As set out in his skeleton argument, the Claimant has been subject to essentially the same financial sanctions (under the different regimes described above) for approaching 16 years. They have had far-reaching consequences for him and his family. The measures were described in *Ahmed* as *"oppressive in nature*" and "*draconian*". Lord Hope explained (at [38]) that:

> "The effect of the regime… is that every transaction, however small, which involves the making of any payments or the passing of funds or economic resources whether directly or indirectly for the benefit of a designated person is criminalised. This affects all aspects of his life, including his ability to move around at will by any means of private or public transport."

22. In the statements filed, on behalf of the Claimant, in this case, it is explained that nothing substantial has changed in the 11 years since the Supreme Court's decision in *Ahmed* and nothing has significantly ameliorated the regime described by the Supreme Court.

23. The Claimant is currently pursuing a request for a review to procure his de-listing by the EU. That review could only be effective within the EU, and will not, following the UK's withdrawal from the EU, affect the freezing of the Claimant's assets within this jurisdiction. The Claimant says he brings these proceedings because he wants access to a Court that can consider whether he is appropriately subject to the asset-freezing regime, and, if it is not justified, can finally bring the measures to an end.

THE LEGAL FRAMEWORK

24. There is no significant dispute between the parties as to the legal framework against which this challenge falls to be considered and both have helpfully set out the relevant provisions in their skeleton arguments.

25. The United Nations Charter ("UN Charter") provides, in Article 1, that the purposes of the UN include the maintenance of "*international peace and security*", and the promotion and encouragement of "*respect for human rights and for fundamental freedoms for all*…".

26. Article 25 provides that "*The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter*."

27. Article 41 provides that "*The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures*."

28. In a series of Resolutions, the UN Security Council has required Member States to freeze the assets of anyone included on a list of individuals maintained by the 1267 Committee said to be "*associated with Al-Qaida*". On 29 September 2005, the Claimant was listed pursuant to paragraphs 1 and 2 of Resolution 1617, on the ground that he was associated with Al-Qaida. This resulted in the Claimant being added to a UN "Consolidated List", with the result that UN Member States were obliged, pursuant to that Resolution, to:

> "(a) Freeze without delay the funds and other financial assets or economic resources of these individuals, groups, undertakings and entities, including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly, for such persons' benefit, by their nationals or by any persons within their territory;…"

29. As noted above, the UK has given effect to that regime in three different ways since 2002. Initially, domestic effect in the UK was given to the relevant UN Security Council Resolutions through Orders (the 2002 and 2006 UN Orders) purportedly made in the exercise of the power conferred by s.1of the UN Act. S.1 of the United Nations Act 1946 provides that:

> "If, under Article forty-one of the Charter of the United Nations … the Security Council of the United Nations call upon His Majesty's Government in the United Kingdom to apply any measures to give effect to any decision of that Council, His Majesty may by Order in Council make such provision as appears to Him necessary or expedient for enabling those measures to be effectively applied, including (without prejudice

> to the generality of the preceding words) provision for the apprehension, trial and punishment of persons offending against the Order."

30. By the 2002 and 2006 UN Orders, any person who was a *"person designated by the [1267 Committee]"* was also a "*designated person*" for the purposes of the Orders. The Orders established a system of prohibitions and licences applicable to "*designated persons*".

31. Again, as noted above, on 27 January 2010, the Supreme Court in *Ahmed* determined that the 2002 and 2006 UN Orders were *ultra vires* the UN Act and, on 4 February 2010, it quashed the relevant parts of those Orders. In response to the quashing of the 2002 and 2006 UN Orders, the UK relied upon EC 881/2002.

32. Pursuant to EC 881/2002, the Council of the EU is empowered to designate (within the EU) those listed by the 1267 Committee. They are added to Annex I to EC 881/2002, and are thereby subject to an asset-freezing regime within the EU. Initially, the Council of the EU automatically added, to Annex I, all those designated by the 1267 Committee, without any court process capable of determining whether their designation was justified.

33. That was challenged before the CJEU in *Kadi v European Commission* (C-402/05P*)* [2009] 1 AC 1225 (CJEU) ("*Kadi I")*. It was noted by the Grand Chamber that among the fundamental rights recognised by the EU are the "*principle of effective judicial protection*"; the "*right of defence*" (including the right to be notified of the evidence relied on and the right to be heard); and the "*right to respect for property*" ([333]-[336], [348], [368]-[369]). Those rights were breached, the Grand Chamber held, if individuals were automatically subject to asset-freezing measures by reason of their 1267 Committee listing. The Grand Chamber considered "*the review by the Court of the validity of any Community measure in the light of fundamental rights"* to be "*the expression, in a community based on the rule of law, of a constitutional guarantee stemming from the EC treaty"* ([316]). That principle required the EU to:

> "ensure the review, in principle the full review, of the lawfulness of all Community acts in the light of fundamental rights forming an integral part of the general principles of Community law, including review of Community measures which, like the contested regulation, are designed to give effect to the resolutions adopted by the Security Council under Chapter VII of the Charter of the United Nations." ([326]).

34. Following the decision in *Kadi I*, the EU adopted EC 1286/2009, which amended EC 881/2002. It provided for the *"full review"* mandated by the Court in *Kadi I*. The scheme allows for the merits of a designation, and of its continued application, to be reviewed before the European General Court, which has the power to quash the Council's order subjecting the individual to the asset-freezing regime. As the Claimant submits, it follows that the position following *Ahmed*, from 2010 to 2020, was that the UK decided to comply with its obligations pursuant to the UN Charter Articles 25 and 41 through EC 881/2002, a provision which allowed a full judicial review of their designation and which could bring the asset freeze to which they were subject to an end irrespective of whether they remained listed by the 1267 Committee.

35. Following the UK's departure from the EU, the UN Sanctions regime is now given effect in domestic law by the 2018 Act and the 2019 Regulations. The 2019 Regulations are made in exercise of the power conferred upon the Secretary of State by ss.1(1)(a) and 13 of the 2018 Act. Section 1 of the 2018 Act provides that:

> "An appropriate Minister may make sanctions regulations where that Minister considers that it is appropriate to make the regulations … for the purposes of compliance with a UN obligation….".

36. Section 13 of the 2018 Act provides that:

> "(1) This section applies where—
>
> (a) the purpose, or a purpose, of a provision of regulations under section 1 is compliance with an obligation to take particular measures in relation to UN-named persons that the United Kingdom has by virtue of a UN Security Council Resolution ("the Resolution"), and
>
> (b) for that provision of the regulations to achieve its purpose as regards that obligation, the relevant UN-named persons need to be designated persons for the purposes of that provision.
>
> (2) The regulations must provide for those persons to be designated persons for the purposes of that provision."

37. The designation of "UN-named persons" is effected by Regulation 5, which provides that: "*Each person for the time being named on the [1267 Committee list] is a designated person for the purposes of regulations 8 to 12 (asset-freeze etc) and 15 to 22 (trade etc)*". A person who is a "*designated person*", pursuant to regulation 5, is thereby subject to a variety of restrictions (by regulations 6 to 24). Thus, a person must not deal with funds or economic resources owned, held or controlled by a designated person (regulation 8); and no person may make funds available directly or indirectly to a designated person (regulation 9), or for the benefit of a designated person (regulation 10). Pursuant to regulation 29, HM Treasury may grant licences to authorise particular economic activity in connection with designated persons.

38. The 2019 Regulations regime is similar to that imposed pursuant to the 2002 and 2006 UN Orders. The restrictions on those designated and their families are similar to those described by the Supreme Court in *Ahmed* and the regime operates, as did the 2002 and 2006 UN Orders, so that all those designated by the 1267 Committee are automatically subject to the asset freezing measures.

39. The 2018 Act sets out the means by which individuals can ask the Secretary of State to support their de-listing by the 1267 Committee. Section 25 of the 2018 Act provides:

> "This section applies where—

> (a) the purpose, or a purpose, of a provision of regulations under section 1 is compliance with an obligation to take particular measures that the United Kingdom has by virtue of a UN Security Council Resolution ("the Resolution"),
>
> (b) a person is a designated person for the purposes of that provision, and
>
> (c) the person is such a designated person under provision included in the regulations by virtue of section 13 (persons named by or under UN Security Council Resolutions).
>
> (2) The person may request the Secretary of State to use the Secretary of State's best endeavours to secure that the person's name is removed from the relevant UN list.
>
> …
>
> (4) On a request under this section the Secretary of State must decide whether or not to comply with the request."

40. If the Secretary of State refuses to seek de-listing, an affected person may apply to the High Court under s.38(1)(c) of the 2018 Act, for a "review" of that refusal. In determining the review "*the court must apply the principles applicable on an application for judicial review*" (s.38(4)).

COMMON GROUND AND THE COMPETING CASES

41. There is considerable common ground between the parties. In particular, it is agreed that the application of financial sanctions to the Claimant engages his rights pursuant to ECHR Articles 6 and 8. It is agreed that those rights include a right of access to the court which can conduct an effective review of the measures imposed on the Claimant. It is agreed that the relevant UN Security Council Resolutions which require UN Member States to impose asset-freezing measures, afford the UK a measure of "*legislative choice*" in connection with the implementation of the sanctions regime, and to the extent that such a "*legislative choice*" exists, the UK must exercise that choice in a manner consistent with ECHR Articles 6 and 8.

42. The Claimant's case is that the scheme of the 2019 Regulations and 2018 Act breaches his rights pursuant to the ECHR. He says that, unlike the EC 881/2002 regime, but like the 2002 and 2006 UN Orders, the 2018 Act / 2019 Regulations automatically subject individuals to asset freezing measures if they are listed by the 1267 Committee, without the possibility of effective judicial review. He says he may remain subject to crippling asset-freezing measures indefinitely, with no right of access to a domestic or international court, that can decide whether the measures are justified, and which can bring the asset-freeze to an end if they are not.

43. The Claimant invites the court to conclude that the irreducible minimum standard of the right of access to the court is, essentially, the same whether it is considered pursuant to the common law or EU law or ECHR Articles 6 and 8. It is the right to

access an effective judicial process, by which an individual can challenge the imposition and continued application of measures that have a substantive impact on their rights, and where the court has the power to grant a remedy which vindicates those rights by bringing the measures to an end if they are found to have been arbitrarily imposed or unjustifiably retained.

44. He contends that in *Ahmed*, the Supreme Court decided that the ability to ask the UK to seek de-listing by the UN, and then judicially review any refusal to do so, did not satisfy the right of access to the court protected by the common law. He says that is unsurprising in light of the limitations of such a process, including the limited value of the available remedy. He says that the scheme on which the Secretary of State now relies (that set out in ss.25 and 38) is materially identical to that considered, and rejected, by the Supreme Court in *Ahmed* as according insufficient access to the court. The fact that the inadequate mechanism of judicial oversight, which existed at common law has now been codified in the 2018 Act, makes no difference of substance and does not assist the Secretary of State. Nor, he says, does it assist the Secretary of State that the challenge is now pursued by reference to the right of access to the court accorded by the ECHR rather than that protected by the common law as considered in *Ahmed*. He says the Secretary of State (rightly) does not suggest that the former accords less extensive protection than the latter. *Ahmed* is therefore dispositive of the first key dispute in the present case, namely whether the review mechanism in the 2018 Act secures an "*effective remedy*" to challenge asset freezing measures. It does not.

45. The Claimant further contends that the UK is not precluded by the UN Charter from imposing an asset freezing regime which is subject to a judicial mechanism, with power to conduct an effective review of an individual's designation, and in particular one that is capable of considering whether the imposition of an asset freezing regime is justified, and if it is not, to bring it to an end. If that possibility would place the UK in breach of its obligations under the UN Charter, it would have been in breach between 2010 and 2020 (as would be any other EU Member State that seeks to fulfil its UN Charter obligations through EC 881/2002).

46. The Secretary of State invites the Court to conclude that the 2018 Act and the 2019 Regulations establish a scheme that discharges the UK's obligations under the UN Charter. It is not suggested by the Defendant that access to the court to challenge designation is accorded at the UN level. Instead, she relies upon the domestic mechanisms contained in the 2018 Act and 2019 Regulations, which, it is said provide the "*access to the court"* and *"effective remedy*" required by ECHR Articles 6 and 8. She points to ss.25 and 38 of the 2018 Act, by which a listed individual may "*request the Secretary of State to use the Secretary of State's best endeavours"* to secure their de-listing by the 1267 Committee, and, pursuant to which, if the Secretary of State refuses to request de-listing, the individual can challenge that refusal. The Secretary of State argues that that accords sufficient access to the court to satisfy the Convention's requirement and meets the requirements of articles 6 and 8 in circumstances where the UN mandates the designation.

47. She says that the ECHR does not give rise to any requirement that the domestic courts should have the power to grant an order quashing the effects of a UN listing. She says that is unsurprising because, if exercised, such a power would place the UK in breach of its obligations under the United Nations Charter.

DISCUSSION - THE RIGHT OF ACCESS TO THE COURT

48. Mr Squires argues that the "*irreducible minimum standard of the right of access to the court is, essentially, the same whether considered pursuant to Articles 6/8, ECHR, the common law or EU law*". It has, he says, two aspects. First, it requires an individual to be able to challenge, in court, a measure which significantly interferes with their civil and other rights. Second, the court must be capable of according an effective remedy, which means, it is submitted, a remedy which can bring the measure to an end if it is unjustified. He says that irreducible minimum has been applied to UN asset freezing regimes in *Ahmed* (common law), *Kadi I* (EU law), and *Al-Dulimi v Switzerland* (App 5809/08, 21 June 2016) and *Nada v Switzerland* (2013) 56 EHRR 18) (ECHR).

49. He says that *Ahmed* is determinative of this application and it is convenient to address that argument first.

Common law and Ahmed

50. It has long been a principle of the common law that the right of access to the Courts is to be regarded as a "fundamental" right (*Pyx Granite Co Ltd v Ministry of Housing and Local Government* [1960] AC 260, per Viscount Simonds at [286]). In *R v Lord Chancellor, Ex p Witham* [1998] QB 575, the Court held that the abrogation of that fundamental right was not to be taken as authorised by the general words of a statutory provision. In *R v Secretary of State for the Home Department, Ex p Pierson* [1998] AC 539, at 575C-D, Lord Browne-Wilkinson said that:

> "A power conferred by Parliament in general terms is not to be taken to authorise the doing of acts by the donee of the power which adversely affect the legal rights of the citizen or the basic principles on which the law of the United Kingdom is based unless the statute conferring the power makes it clear that such was the intention of Parliament."

51. In *R v Secretary of State for the Home Department, Ex p Simms* [2000] 2 AC 115, 131E-G, Lord Hoffmann held that:

> "Parliamentary sovereignty means that Parliament can, if it chooses, legislate contrary to fundamental principles of human rights. The Human Rights Act 1998 will not detract from this power. The constraints upon its exercise by Parliament are ultimately political, not legal. But the principle of legality means that Parliament must squarely confront what it is doing and accept the political cost. Fundamental rights cannot be overridden by general or ambiguous words. This is because there is too great a risk that the full implications of their unqualified meaning may have passed unnoticed in the democratic process. In the absence of express language or necessary implication to the contrary, the courts therefore presume that even the most general words were intended to be subject to the basic rights of the individual. In this way the

> courts of the United Kingdom, though acknowledging the sovereignty of Parliament, apply principles of constitutionality little different from those which exist in countries where the power of the legislature is expressly limited by a constitutional document."

52. The decision of the Supreme Court in *Ahmed* concerned a challenge to the 2002 and 2006 UN Orders by the present Claimant and other individuals, including a Mr Al-Ghabra. Mr Al-Ghabra was designated by the 1267 Committee at the UK's request. As a result, he became subject to the 2006 UN Order asset-freezing regime. He argued that the Order breached his common law right of access to the court, and that, as the interference was not authorised by Parliament, it was *ultra vires* the 1946 Act. Collins J agreed and quashed the Order.

53. The Court of Appeal (Sir Anthony Clarke MR, Sedley, Wilson LJJ), held that the 2006 UN Order was not *ultra vires* because Mr Al-Ghabra had sufficient access to the court to challenge his designation. Sir Anthony considered that a "*[domestic] court has power to consider a claim for judicial review by a person to whom the [2006 Order] applies"*, and to conduct a "*full merits review"* in order to "*consider what the basis of the listing was"* ([119]). Sir Anthony considered that the consequence of any finding that a person "*should not have been listed"*, was not that the domestic court could bring the asset-freeze to an end, but that the Government would "*be bound to support delisting … and [to] take appropriate steps to that end"* ([119]).

54. As noted above, the challenge of Mr Youssef, the present Claimant, was decided at first instance by Owen J ([2009] EWHC 1677). Owen J considered the solution proposed by the Court of Appeal in Mr Al-Ghabra's case (at [22]-[34]). Although Owen J did not doubt that the "*full merits review"* envisaged by the Court of Appeal was, in principle, available, he concluded that it would not be effective in Mr Youssef's case. Mr Youssef had not been nominated to the 1267 Committee by the UK and accordingly the UK government "*does not know all, and may not know most of the facts leading to designation"* ([30]). And, because Mr Youssef had been nominated by another state, even if HM Government concluded that he should be de-listed, "*the possibility that the 1267 Committee may decide otherwise cannot be excluded"* ([31]). Owen J therefore held that the 2006 UN Order was *ultra vires,* at least as it applied to Mr Youssef.

55. The cases of Mr Al-Ghabra and the present applicant were heard together by the Supreme Court (*Ahmed)*. The decisive question for the court was whether the terms of s.1 of the 1946 Act authorised the restriction of a fundamental right such as access to the court. The Court held by a majority (Lord Brown dissenting) that the 2006 UN Order deprived those designated under it of the fundamental right of access to an effective judicial remedy by which their listing could be reviewed, and that, accordingly, article 3(1)(b) of that Order was ultra vires the powers conferred by s.1 of the 1946 Act and would be quashed.

56. At [76] Lord Hope, with whom Lord Walker and Baroness Hale agreed, said this:

> "I would accept (counsel's) proposition that, as fundamental rights may not be overridden by general words, section 1 of the 1946 Act does not give authority for overriding the

> fundamental rights of the individual. It does not do so either expressly or by necessary implication."

57. In consequence, Lord Hope concluded (at paragraph 81):

> "I would hold that G is entitled to succeed on the point that the regime to which he has been subjected has deprived him of access to an effective remedy. As (counsel) indicates, seeking a judicial review of the Treasury's decision to treat him as a designated person will get him nowhere. G answers to that description because he has been designated by the 1267 Committee. What he needs if he is to be afforded an effective remedy is a means of subjecting that listing to judicial review. This is something that, under the system that the 1267 Committee currently operates, is denied to him. I would hold that article 3(1)(b) of the AQO , which has this effect, is ultra vires section 1 of the 1946 Act. "

58. Lord Phillips held at [124]:

> "I do not accept that the 1946 Act authorises such wide-ranging legislation. The natural meaning of the wording of section 1, when read with the wording of article 41 of the Charter, imposes limits on the power granted by section 1. That power is to make such provision as appears necessary or expedient for enabling the effective application of "measures not involving the use of armed force" which the Security Council has decided "are to be employed to give effect to its decisions". Measures to which the 1946 Act refers must necessarily have a degree of specificity. They have to be capable of being "employed" or "effectively applied". They will often be the means to an objective rather than the objective itself. Preventing terrorists from using the territory of the United Kingdom for terrorist acts is an objective, it is not a "measure". It is not something that can be "employed" or "applied."

59. Lord Rodger (with whom Baroness Hale agreed) said at [185]:

> "…having regard to the principle stated by Lord Browne-Wilkinson in R v Secretary of State for the Home Department, Ex p Pierson [1998] AC 539, 575, I have come to the conclusion that, by enacting the general words of section 1(1) of the 1946 Act, Parliament could not have intended to authorise the making of AQO 2006 which so gravely and directly affected the legal right of individuals to use their property and which did so in a way which deprived them of any real possibility of challenging their listing in the courts."

60. Lord Mance held at [249] that:

> "So here, in my view, section 1(1) was and is an inappropriate basis for the Al-Qaida Order, freezing indefinitely the ordinary rights of individuals to deal with or dispose of property on the basis that they were associated with Al-Qaida or the Taliban, without providing any means by which they could challenge the justification for treating them as so associated before any judicial tribunal or court, at a domestic or international level. On this basis, I would hold that section 1(1) did not extend to authorise the making of article 3(1)(b) of that Order".

61. As is apparent, it was critical to the decision of the majority that the 1946 Act did not, either expressly or by necessary implication, circumscribe the common law right of access to the Court. The 2018 Act, by contrast, does just that. S.1 expressly empowers a Minister to make sanctions regulations for the purposes of compliance with a UN obligation. The 2018 Act addresses the question of whether and when a person designated under the 2019 Regulations can seek a remedy in the courts. Ss.25 and 38 provide a mechanism by which a person can seek review by a court of a decision by the Secretary of State not to comply with a request that she uses her best endeavours to secure his removal from the relevant list. It is implicit in that statutory scheme that the person has no other resort to the courts.

62. In consequence, in my judgment, it cannot be said, as the Claimant seeks to say, that the decision of the Supreme Court in *Ahmed* is dispositive of his present claim. The Supreme Court in *Ahmed* was addressing the common law position in the absence of an adequate statutory mandate; there is now a statutory scheme which covers the ground. Mr Squires says that the 2018 Act scheme is materially identical to that which was not regarded as sufficient by the Supreme Court. But that is entirely to miss the point; in *Ahmed*, the Court was concerned with a statutory provision, the 1946 Act, which could not be said to authorise restrictions on the common law right of access to the courts; the 2018 Act does precisely that by introducing the ss.25 and 38 arrangements.

63. In fact, the Claimant does not ground his present claim on the common law but on Article 6 and 8 ECHR. I turn to those arguments below, having first said a word about the EU submissions.

EU Law

64. Mr Squires refers the Court to the decision of the CJEU in *Kadi 1* and to *European Commission v Kadi* (C-584/10 P) [2014] 1 CMLR 24 (CJEU) ("*Kadi 2*"). However, the position as a matter of EU law is now irrelevant.

65. First, as Sir James submits, this is not an area of "*retained EU law*"; nor are any of the judgments referred to by the Claimant in his Statement of Facts and Grounds "*retained EU case law*" within the meaning of s.6 of the European Union (Withdrawal) Act 2018. The 2018 Act and the 2019 Regulations create a new domestic framework.

66. Second, as Lord Hope explained in *Ahmed* at paragraph 71, the EU as an international organisation is not party to the UN Charter and EU institutions are not bound by Article 103 of the UN Charter. As a member state of the UN, the UK is in a materially different position from the EU in relation to its obligations under the UN Charter.

67. Finally, on this topic, there is nothing to support the suggestion by Mr Squires that the United Kingdom conceded that it would be consistent with its international obligations to disapply the implementation of a sanction imposed by the UN Security Council. That certainly does not appear to be the position adopted by the United Kingdom as recorded in paragraphs 29, 33 or 35-37 in *Kadi 1* and in paragraphs 51 and 59 in *Kadi 2*.

Ground 1 - Art 6 ECHR

68. It is right to point out, as Sir James observed, that the Supreme Court in *Ahmed* rejected the argument that the ECHR provided a remedy for those made subject to such UN sanctions. The Court followed the House of Lords' judgment in *R (Al-Jedda) v Secretary of State for Defence* [2008] AC 332 and held that the effect of Article 103 of the UN Charter was that obligations arising under the Charter prevailed over those arising under other international instruments, including the ECHR (see Lord Hope at [71]-[74]; Lord Phillips at [106]; Lord Rodger at [175]; and Lord Brown at [203].

69. But the parties agree that Strasbourg jurisprudence has moved on since *Al Jedda* and that the leading authority now on the application of Article 6 to domestic provisions implementing UN sanctions is the Grand Chamber decision in *Al-Dulimi and Montana Management Inc v Switzerland (App 5809/08)* (2016) 42 BHRC 163. It is necessary to address that decision in a little detail.

70. According to the UN Security Council, Mr Khalaf Al-Dulimi was the head of finance for the Iraqi Intelligence Service under the regime of Saddam Hussein and the Managing Director of Montana Management Inc. After Iraq's invasion of Kuwait in 1990, the UN Security Council adopted Resolutions for UN Member States and non-Member States to apply a general embargo against Iraq. As a result, the Swiss Federal Council adopted an ordinance providing for economic measures against the Republic of Iraq. The applicants alleged that since then their assets in Switzerland had remained frozen. In 2004, the UN Sanctions Committee added both applicants to their list and as a result, the applicants' names were added to Switzerland's list of sanctioned entities. The Swiss Federal Council also adopted an ordinance on the confiscation of frozen Iraqi assets and economic resources and their transfer to the Development Fund for Iraq.

71. The applicants attempted to remove their names from the sanctions list, calling upon the Federal Department for Economic Affairs ("EAER") in Switzerland, to suspend the confiscation procedure in respect of their assets. The EAER sent the applicants draft decisions on the confiscation and transfer of the funds that were deposited in their names in Geneva. Despite the applicants challenging these draft decisions, in May 2006, the EAER ordered the confiscation of the applicants' assets. In supporting its decision, it observed that the applicants' names were on the Sanctions Committee's list and that Switzerland was bound by the Resolutions of the Security Council. It indicated that it could only delete a name if the relevant decision had been made by the Sanctions Committee.

72. The Grand Chamber reiterated that the right to a fair hearing, as guaranteed by Article 6(1) must be construed in the light of the rule of law, which requires that all litigants should have an effective judicial remedy enabling them to assert their civil rights

[126] and that the convention is intended to guarantee rights that are not theoretical or illusory but practical and effective [127]. At [128] the court held that:

> "Article 6 § 1 of the Convention in principle requires that a court or tribunal should have "full jurisdiction" to hear a complaint, that is to say jurisdiction to examine all questions of fact and law that are relevant to the dispute before it ... This means, in particular, that the court must have the power to examine point by point each of the litigant's grounds on the merits, without refusing to examine any of them, and give clear reasons for their rejection. As to the facts, the court must be able to examine those that are central to the litigant's case."

73. That "in principle" observation suggests that the requirement that there was "*full jurisdiction*" is not absolute. As the Court held at [129], that jurisdiction may be subject to limitations because "*the right of access by its very nature calls for regulation by the State*". In that regard the court held "*Contracting States enjoy a certain margin of appreciation*". The limitations, however, must not:

> "restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation of the right of access to a court, including jurisdictional immunity under international law, will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved."

74. Considering the facts of the case before it, the Court noted it was agreed that the Swiss provision in question restricted access to the court and that it was therefore necessary to consider "*whether that restriction was justified, that is, whether it pursued a legitimate aim and was proportionate to such aim*" [131]. The Court held [133] that the refusal of the domestic courts to examine the merits of the applicant's complaint could be considered to be in pursuit of a legitimate aim, namely the maintenance of international peace and security.

75. Between [134] and [155] the Court considered the proportionality of the Swiss provision. It noted (at [134]) that despite its character as a human rights instrument, "*the Convention is an international treaty to be interpreted in accordance with the relevant norms and principles of public international law, and, in particular, in the light of the Vienna Convention on the Law of Treaties of 23 May 1969*". At [135] it described Article 103, "*which asserts the primacy, in the event of conflict, of the obligations deriving from the Charter over any other obligation arising from an international agreement*", as "*one of the basic elements of the current system of international law*". One obligation under the Charter was that provided for by Article 25 "*to accept and carry out the decisions of the Security Council in accordance with ... the Charter*".

76. At [136], the Grand Chamber rejected the argument that the right of access to the court enshrined in Article 6 was "*among the norms of jus cogens in the current state of international law*" so as undermine the binding effect of the UN Resolution.

Accordingly, it was necessary, at [137] and following, for the Court to consider whether there was a conflict between Article 6 ECHR and Art 103 of the UN Charter or whether it was possible to read the two compatibly. The Court concluded, at [149], that Switzerland was not faced with a real conflict of obligations between Article 6 and Article 103.

77. The Court took into account: the assumption that when creating new international obligations, States are assumed "*not to derogate from their previous obligations*" [138]; that it was "*not its role to pass judgment on the legality of the acts of the UN Security Council*", that where a State "*relies on the need to apply a Security Council resolution in order to justify a limitation on the rights guaranteed by the Convention, it is necessary for the Court to examine the wording and scope of the text of the resolution in order to ensure, effectively and coherently, that it is consonant with the Convention*"; and that the UN's purposes include "*promoting and encouraging respect for human rights and for fundamental freedoms*" [139].

78. All that being so, the Court held (i) "*there must be a presumption that the Security Council does not intend to impose any obligation on member States to breach fundamental principles of human rights*"; (ii) "*in the event of any ambiguity in the terms of a UN Security Council resolution, the Court must choose the interpretation which is most in harmony with the requirements of the Convention*"; and (iii) "*where a Security Council resolution does not contain any clear or explicit wording excluding or limiting respect for human rights in the context of the implementation of sanctions against individuals or entities at national level, the Court must always presume that those measures are compatible with the Convention"* [140].

79. The Court noted that the obligation under the UN Resolution was to "*freeze without delay*" the financial assets or economic resources of the affected individual but concluded that there was nothing in the wording of the relevant Resolutions that "*explicitly prevented the Swiss courts from reviewing, in terms of human rights protection, the measures taken at national level pursuant to the … Resolutions*". Accordingly, the Court held that State Parties "*are required, in that context, to ensure a level of scrutiny of Convention compliance which, at the very least, preserves the foundations of that public order. One of the fundamental components of European public order is the principle of the rule of law, and arbitrariness constitutes the negation of that principle."*

80. The Court concluded at [146]-[147]:

> "As a result, in view of the seriousness of the consequences for the Convention rights of those persons, where a resolution such as that in the present case, namely Resolution 1483, does not contain any clear or explicit wording excluding the possibility of judicial supervision of the measures taken for its implementation, it must always be understood as authorising the courts of the respondent State to exercise sufficient scrutiny so that any arbitrariness can be avoided. By limiting that scrutiny to arbitrariness, the Court takes account of the nature and purpose of the measures provided for by the Resolution in question, in order to strike a fair balance between the necessity

> of ensuring respect for human rights and the imperatives of the protection of international peace and security.
>
> In such cases, in the event of a dispute over a decision to add a person to the list or to refuse delisting, the domestic courts must be able to obtain – if need be by a procedure ensuring an appropriate level of confidentiality, depending on the circumstances – sufficiently precise information in order to exercise the requisite scrutiny in respect of any substantiated and tenable allegation made by listed persons to the effect that their listing is arbitrary. Any inability to access such information is therefore capable of constituting a strong indication that the impugned measure is arbitrary, especially if the lack of access is prolonged, thus continuing to hinder any judicial scrutiny. Accordingly, any State Party whose authorities give legal effect to the addition of a person – whether an individual or a legal entity – to a sanctions list, without first ensuring – or being able to ensure – that the listing is not arbitrary will engage its responsibility under Article 6 of the Convention."

81. Those passages, in my judgment, lead to the following conclusion on facts such as the present:

(i) the court should resolve any ambiguity in the terms of a UN Security Council Resolution in a manner which respects Article 6;
(ii) if a Security Council sanctions Resolution does not contain explicit wording limiting respect for human rights, the Court should presume that those measures are compatible with the Convention;
(iii) if such a Resolution does not exclude the possibility of judicial supervision of the measures taken for its implementation, it must be understood as authorising the courts of the respondent State to exercise scrutiny of such measures;
(iv) the level of scrutiny required is such that will avoid arbitrariness; and
(v) the required level of scrutiny is limited in that way in order to strike a fair balance between the necessity of ensuring respect for human rights and the imperatives of the protection of international peace and security.

82. It is of note that, as Sir James correctly submits, there is nothing at all in *Al-Dulimi* that supports the submission that Article 6 requires that a court have the power to order that a UN sanction be disapplied by a contracting party. On the contrary, the limit of the obligation on a contracting state faced with a UN sanctions Resolution is to establish a mechanism by which its courts can scrutinise the domestic measures implementing the Resolution to ensure that they are not arbitrary.

83. The question in the present case resolves, therefore, to whether the arrangements established by ss. 25 and 38 of the 2018 Act provide such a level of scrutiny.

84. In ordinary speech, the descriptor "arbitrary" suggests a decision based on random choice or personal whim, rather than reason or system. I was not taken by either party to any authority as to the meaning of "arbitrary" in the present context. However, Sir

James referred me to three authorities which provided some illustration of use of the expression in the Strasbourg case law.

85. First, in *Khamidov v Russia* [2007] ECHR 928, the Court said at [170] – [174]:

> "The Court reiterates that it is not its task to take the place of the domestic courts, which are in the best position to assess the evidence before them, establish facts and interpret domestic law. The Court will not, in principle, intervene, unless the decisions reached by the domestic courts appear arbitrary or manifestly unreasonable and provided that the proceedings as a whole were fair as required by Article 6 § 1..."
>
> …The Court is perplexed by (the domestic court's) conclusion and cannot see how it could be reconciled with the abundant evidence to the contrary, and, first of all, with the findings made in the judgment of 14 February 2001, or the replies from public officials. In the Court's view, the unreasonableness of this conclusion is so striking and palpable on the face of it that the decisions of the domestic courts in the 2002 proceedings can be regarded as grossly arbitrary, and by reaching that conclusion in the circumstances of the case the domestic courts in fact set an extreme and unattainable standard of proof for the applicant so that his claim could not, in any event, have had even the slightest prospect of success."

86. Second, in *Bochan v Ukraine No 2* (application No. 22251/08), the Grand Chamber said this:

> "The Court observes that the Supreme Court's reasoning does not amount merely to a different reading of a legal text. For the Court, it can only be construed as being "grossly arbitrary" or as entailing a "denial of justice", in the sense that the distorted presentation of the 2007 judgment in the first *Bochan* case (cited above) had the effect of defeating the applicant's attempt to have her property claim examined in the light of the Court's judgment in her previous case in the framework of the cassation-type procedure provided for under domestic law (see paragraphs 51-53 above). In this regard, it is to be noted that in its 2007 judgment the Court found that, given the circumstances in which the applicant's case had been reassigned by the Supreme Court to lower courts, the applicant's doubts regarding the impartiality of the judges dealing with the case, including the judges of the Supreme Court, had been objectively justified..."

87. Third, in *Andelkovic v Serbia* [2013] ECHR 1401/08, the ECtHR said, at [24]:

> "it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation...

> That being so, the Court will not question the interpretation of domestic law by the national courts, save in the event of evident arbitrariness…in other words, when it observes that the domestic courts have applied the law in a particular case manifestly erroneously or so as to reach arbitrary conclusions and/or a denial of justice." (emphasis added).

88. In my view, those authorities support the view that arbitrary implies a decision without reason or evidence.

89. Given that that is the modest level of scrutiny required by Article 6, in my judgment the arrangements under ss.25 and 38 of the 2018 Act and the 2019 Regulations comfortably reach the necessary standard.

90. As set out above, by s.25, UN-designated persons are entitled to request the Secretary of State to use her best endeavours to secure that his name is removed from the relevant UN list. On such, a request the Secretary of State must make a decision, as soon as reasonably practicable, whether or not to comply with the request. She must inform the requester in writing of the decision on the request and the reasons for it, again as soon as reasonably practicable after the decision is made. The decision must be made in accordance with public law principles.

91. Should the Secretary of State decide not to comply with the request, the person can apply to the High Court for that decision to be set aside in accordance with s.38. The court must then apply the principles applicable on an application for judicial review. If the Court decides that a decision should be set aside, it may make any order, other than an award of damages, that could made in judicial review proceedings. Subject to any application for public interest immunity or, if necessary, by adopting a closed material procedure, the Court will be able to consider all the material that was before the Secretary of State, including any material submitted by the Claimant, and to decide whether the decision was "lawful" in a public law sense. That would include whether the Minister could reasonably conclude that the UN listing criteria were fulfilled. As Sir James submits, it would be open for the Court to conclude that the decision was unlawful if it considered that the UNSC's listing of an individual was "*arbitrary*".

92. It is right to say that, on a s.38 application, the court would not be able to order the UN Security Council to reconsider its decision to make the listing nor the Secretary of State to reconsider her decision to comply with the UN's direction. But, as discussed above that is not what Article 6, as interpreted by the Grand Chamber in *Al-Dulimi* requires. The remedy available under the 2018 Act and the 2019 Regulations is "*effective*", in the sense that the court can order the Secretary of State to use her best endeavours to procure the removal of that listing by the only body able to do so – the UN Security Council. That is the one remedy that complies with international law and meets the requirements under the ECHR of a remedy against arbitrariness.

93. That is sufficient to dispose of this ground of challenge.

94. However, even if I had taken the contrary view as to the adequacy of the ss.25 and 38 arrangements, I would have declined to grant judicial review on this ground. In the

penultimate paragraph of his judgment in the Supreme Court in the 2016 case, Lord Carnwath said this:

> "More generally, the court should in my view be very slow to grant a substantive remedy in the circumstances now facing the court. Judicial review is a discretionary remedy. The court is not required to ignore the appellant's own conduct, or the extent to which he is the author of his own misfortunes. I appreciate that the material disclosed by the Ombudsperson's report became available after the Court of Appeal's judgment, and indeed after the grant of permission to appeal to this court. It is not formally in issue before us. Further the appeal raised important issues of law which needed a decision. I can understand therefore why it was decided to defer for the moment detailed consideration of any challenge to the latest decision. However, the fact remains that there is before the court unchallenged evidence showing that the appellant is at least a strong vocal supporter of Al'Qaida and its objectives. That stands uneasily with his simple denial in 2010 of any involvement in terrorism. If those allegations were misplaced, I would have expected him to want to say so publicly at the first opportunity. I raised my concern with Mr Otty at the opening of the appeal, but I heard no convincing answer. Even if the appellant were otherwise entitled to some relief, I would be very hesitant about granting it so long as these allegations stand unrefuted."

95. As part of these proceedings, the Claimant has submitted two witness statements dated 29 March 2021 and 10 September 2021. In them he addresses the allegations made against him, but he does so in general terms, simply repeating his denial of involvement in terrorism or extremism. Although he says that he has now taken down the relevant website and no longer publishes "*any political or theological commentary on the internet*…", he appears to accept that he published the material upon which the UN Ombudsperson relied in concluding, in her Comprehensive Report, that there was sufficient information to provide a reasonable and credible basis for the listing.

96. In those circumstances, I would have declined to grant substantive relief.

Ground 2 - Article 8 ECHR

97. In my judgment, the position is no different in respect of the challenge under Article 8.

98. Mr Squires argues that Article 8 provides a separate and discrete ground of challenge. He says it is well established that Article 8 imports a "*procedural"* requirement, that any administrative or judicial procedures by which Article 8 rights are considered must afford due respect to the interests protected by Article 8. He relies on *Nada v Switzerland* (2013) 56 EHRR 18.

99. In *Nada,* the Grand Chamber considered a claim by an Italian national who had been designated by the 1267 Committee. As a consequence, UN Member States were

required to subject him to a transit ban. Switzerland did so. Because the applicant lived in the small Italian enclave of Campione d'Italia, surrounded on all sides by Swiss territory, the transit ban rendered him unable to travel to other parts of his country of nationality. Mr Nada argued that this restriction breached his Article 8 right to respect for his private and family life by (inter alia) preventing him from attending events such as weddings and funerals, and that this breach was aggravated by his inability effectively to challenge the merits of the allegations against him. Switzerland opposed both arguments.

100. The Grand Chamber agreed that the applicant's Article 8 right had been unjustifiably infringed on the basis that the transit ban breached the applicant's substantive Article 8 rights. But the Grand Chamber made no finding that the applicant's inability to challenge the ban breached the procedural requirements of Article 8. As Sir James submits, it was Mr Nada's confinement in one small part of Italy, not any alleged inability to challenge this state of affairs, that put Switzerland in breach of Article 8. The Grand Chamber held (at [182], [185] and [195]) that, on a correct understanding of its obligations under the UN Charter and the relevant Resolution, Switzerland had a degree of flexibility as to how to implement the relevant sanction, and ought to have taken into account the applicant's unique geographical situation when doing so.

101. Mr Nada also argued that Switzerland was in breach of his rights under Article 13. In considering that argument, the Grand Chamber addressed his complaints that there were no effective domestic means by which he could seek to have his name removed from the relevant domestic instrument under which he was sanctioned. But in my judgment, this element of the analysis does not assist Mr Squires; Article 13 is not a Convention right incorporated by the Human Rights Act 1998.

102. Article 8 does contain a procedural component, in the sense that certain procedural obligations attach to some exercises of power affecting substantive Article 8 rights. However, in my judgment, nothing in *Nada* suggests that the procedural requirements of Article 8 are any broader in this context than Article 6.

CONCLUSIONS

103. In my view, *Ahmed* is not determinative of this application.

104. In my judgment, given the UK's obligations under the UN Charter, the mechanism in ss.25 and 38 of the Sanctions and Anti-Money Laundering Act 2018, is sufficient to meet the Claimant's rights, under Article 6 and Article 8 ECHR, to have the arbitrariness of the listing reviewed by a court.

105. For those reasons, this application must be dismissed.