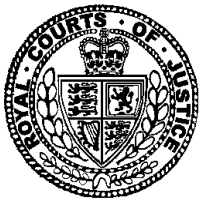

Neutral Citation Number: [2023] EWHC 2121 (Admin)

Case No: CO/741/2023

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/08/2023

Before:

MR JUSTICE GARNHAM

- -

Between :

Eugene Shvidler	**Claimant**
- and -	
Secretary of State for Foreign, Commonwealth and Development Affairs	**Defendant**

- -
- -

Lord Anderson KC and Malcolm Birdling (instructed by **Peters & Peters**) for the **Claimant**
Sir James Eadie KC, Jason Pobjoy and Rayan Fakhoury (instructed by **Government Legal Department**) for the **Defendant**

Hearing dates: 20 July 2023

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 18 August 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE GARNHAM

Garnham J :

Introduction

1. This case concerns the lawfulness of decisions by the Foreign Secretary to "designate" a British citizen under the sanctions regime established by the United Kingdom Government after the Russian invasion of Ukraine. "Designation" exposes the subject to sanctions which may have a profound effect on his financial and private life.

2. The Claimant, Eugene Shvidler, is a UK-US dual national. In 1989 he moved from the former Soviet Union to the USA. In 2004, he moved to the UK, where he settled. He has a number of very substantial business interests and is a very wealthy man. He has never been a Russian citizen, and has not visited Russia since 2007.

3. On 24 March 2022 the Claimant was designated by the Secretary of State for Foreign, Commonwealth and Development Affairs ("the Secretary of State") pursuant to reg 5 of the Russia (Sanctions) (EU Exit) Regulations 2019 ("the 2019 Regulations"), made under s1 of the Sanctions and Anti-Money Laundering Act 2018 ("SAMLA"). He was so designated on the basis that there were reasonable grounds to suspect that he was an "*involved person"*. On 11 November 2022, the grounds for the Claimant's designation were varied following a Ministerial review. The Claimant is now designated on two bases:

    i) There are reasonable grounds to suspect that the Claimant is associated with a person (Mr Roman Abramovich) who is, or has been, involved in obtaining a benefit from, or supporting, the Government of Russia.

    ii) There are reasonable grounds to suspect that the Claimant himself is, or has been, involved in obtaining a benefit from, or supporting, the Government of Russia through working as a non-executive director of Evraz plc ("Evraz"), an entity carrying on business in sectors of strategic significance to the Government of Russia (namely, the Russian extractives sector).

4. By these proceedings, the Claimant challenges that designation on two grounds. He contends that:

    i) the designation constitutes a disproportionate interference with his rights under Article 8 and Article 1, Protocol 1 ("A1P1") of the ECHR; and

    ii) the Secretary of State has exercised his discretion in a discriminatory manner in breach of Article 14 read together with Article 8 and Article 1 Protocol 1 ("A1P1") of the ECHR.

5. I heard submissions from Lord Anderson KC on behalf of the Claimant and from Sir James Eadie KC on behalf of the Secretary of State. I am grateful to them, and to those who assisted them, for their helpful and focused submissions.

The Facts

6. The Claimant was born in 1964 in Ufa, Bashkortostan in the USSR. His family moved to Moscow when he was three years old. He was educated in the USSR. After

graduating from the Moscow Institute of Oil and Gas in 1986, he worked at the Oil Research Institute in Moscow.

7. In January 1989, he left the USSR, and moved to the United States, where he was granted refugee status. His parents were unable to obtain permission to leave at that time but have since relocated to New York, USA. In the US, he graduated with a Master of Business Administration in Accounting and a Master of Science in International Taxation and began working for Deloitte & Touche in New York.

8. Mr Shvidler met his former wife, Zarui Kazaryan, in 1994, whilst she was a student in London. They were married in 1995 and their first child was born in New York in 1996. The couple, who separated in 2016, have five children, all of whom are UK citizens (the elder three naturalised, the younger two by birth).

9. In 2004, Mr Shvidler was granted a British visa under the Highly Skilled Migrant Programme. He was naturalised as a British citizen in 2010. The main family home is in Walton-on-Thames, Surrey.

10. Mr Shvidler has been a friend of Mr Roman Abramovich since 1986. Throughout Mr Shvidler's time in the USA, he remained in contact with Mr Abramovich. In March 1994, he visited Moscow, travelling on a US refugee travel document with a Russian visa. Soon thereafter he went into business with friends and contacts in Moscow, led by Mr Abramovich.

11. From 1996 onwards, Mr Shvidler was involved with Mr Abramovich's company, Sibneft (an oil production company), as Vice President for Finance. He became President of that company in 1998 and continued in the role until 2005, when it was sold to a Russian company called "Gazprom". During his tenure as President of Sibneft, Mr Shvidler was given a nominal shareholding in the company. These shares did not form part of the sale to Gazprom.

12. In 2011, Mr Shvidler was appointed to the board of Evraz plc, a UK listed company with subsidiaries in Russia, the US, Ukraine, Canada and the Czech Republic. By 2018, he occupied that role as the nominee of Greenleas International Holdings Limited, a BVI entity controlled by Mr Abramovich. When Mr Abramovich's 28.64% shareholding was transferred into his personal control on 16 February 2022, Mr Shvidler again continued in his role on the Board. Until 10 March 2022, the composition of the Board included independent non-executive directors, amongst whom was Sir Michael Peat, previously principal private secretary to HRH the Prince of Wales from 2002 until 2011.

13. Mr Shvidler has provided philanthropic funding, to the tune of some £10 million, to a number of educational initiatives in the UK.

14. In February 2014 Russia invaded Crimea, a province of Ukraine. Crimea was then annexed by Russia in March 2014.

15. On 10 February 2022 Russian troops invaded eastern Ukraine.

16. On 3 March 2022 the Claimant travelled by private plane to the United States to visit his mother, who was in hospital in New York.

17. On 10 March 2022 Mr Abramovich was designated by the Secretary of State. The same day, the Claimant resigned from his position as a non-executive director of Evraz plc. The majority of the Board of Directors of that company and the Company Secretary also resigned that day. Trading in Evraz plc's shares was suspended.

18. On 12 March 2022 a statement was made in The Guardian on Mr Shvidler's behalf. His spokesperson said:

> "Mr Shvidler would like to make it clear that, like the rest of us in Europe, he is hoping and praying for peace and an end to the senseless violence in Ukraine. We all hope that the war can be brought to an immediate end."

19. Twelve days later, on 24 March 2022, the Claimant was designated by the Secretary of State.

20. On 28 March 2022 the Claimant was informed by Harrow School that his son's place at the school would be withdrawn with immediate effect.

21. On 31 March 2022 the Claimant's solicitors, Peters & Peters Solicitors LLP ("Peters & Peters") wrote to the FDCO requesting the written reasons for his designation. The Claimant wrote personally to Elizabeth Truss MP, then the Secretary of State, setting out relevant background about himself, his family and requesting a reconsideration of the decision to designate him.

22. Over Easter 2022 the Claimant was informed by Marlborough College that his daughter would not be permitted to return to school for the remainder of the school year.

23. On 5 May 2022 Evraz plc was designated under the 2019 Regulations.

24. On 16 June 2022 Peters & Peters received what was called the "Sanctions Designation Form" ("SDF") and a "Sanctions Designation Form Evidence pack" ("SDFE") from the FDCO.

25. On 14 July 2022 Peters & Peters submitted a request for Ministerial Review under s23 of SAMLA.

26. On 5 August, 9 September, and 28 September 2022 Peters & Peters wrote to the Secretary of State, requesting a response to the request for a Ministerial Review made on 14 July 2022.

27. On 23 August 2022, Mr Abramovich's designation was varied.

28. On 14 October 2022 Peters & Peters wrote again to the Secretary of State requesting a response to the request for Ministerial Review, and notifying the Foreign Commonwealth and Development Office ("the FCDO") of the Claimant's intent to seek judicial review of the Secretary of State's failure or refusal to conduct the administrative review should no response be received.

29. On 28 October 2022 Peters & Peters sent a pre-action protocol ("PAP") letter to the FCDO seeking a response to the request for ministerial review.

30. On 2 November 2022 Alexander Frolov and Alexander Abramov (former non-executive directors of Evraz plc) were designated.

31. On 11 November 2022 the Secretary of State completed the Ministerial Review, and amended the designation of the Claimant. An amended SDF and amended SDFE were provided to the Claimant.

32. On 20 December 2022 Peters & Peters sent another PAP letter to the FCDO indicating an intention to instigate court proceedings under s38 SAMLA. On 16 January 2023 the Government Legal Department responded to Peters & Peters PAP Letter, disclosing further material. On 24 February 2023 this claim was issued in the Administrative Court.

The Statutory Scheme

The 2018 Act

33. SAMLA s1 provides the power to make sanctions regulations. It provides, as relevant:

> (1) An appropriate Minister may make sanctions regulations where that Minister considers that it is appropriate to make the regulations—
>
> a. for the purposes of compliance with a UN obligation,
>
> b. for the purposes of compliance with any other international obligation, or
>
> c. for a purpose within subsection (2).
>
> (2) A purpose is within this subsection if the appropriate Minister making the regulations considers that carrying out that purpose would…
>
> c. be in the interests of international peace and security,
>
> d. further a foreign policy objective of the government of the United Kingdom…
>
> (3) Regulations under this section must state the purpose (or purposes) of the regulations, and any purpose stated must be—
>
> a. compliance with a UN obligation, or other international obligation, specified in the regulations, or
>
> b. a particular purpose that is within subsection (2).

34. Section 2(4), now repealed, previously required a report to be laid before Parliament which explained why the appropriate Minister making regulations under s.1(1) considered that carrying out each of the purposes of the regulations met one or more of the conditions in paragraphs (a) to (i) of s.1(2) of SAMLA; why the Minister considered that there were good reasons to pursue that purpose; and why the Minister considered that the imposition of sanctions was a reasonable course of action for that purpose.

35. Sections 3-8 set out the types of sanctions that may be imposed by regulations under the Act. Of particular importance for present purposes is s3 which relates to financial sanctions.

36. Section 9 defines "*designated persons*" for the purposes of sections 3 and 4, Schedule 1 and sections 6 to 8. Subsection 2 provides

> (2) In each of those provisions, *"designated persons"* means—
>
> (a) persons designated under any power contained in the regulations that authorises an appropriate Minister to designate persons for the purposes of the regulations or of any provisions of the regulations…

37. Subsection (5) provides that in the Act *"person"* includes (in addition to an individual and a body of persons corporate or unincorporate) any organisation and any association or combination of persons.

38. Section 11 applies to regulations made under section 1 which authorise the Minister to designate persons by name. It provides that the regulations must contain provisions for the Minister to be able to choose whether to designate a person under "(a) the standard procedure, or (b) the urgent procedure", and must provide that under the standard procedure the Minister is prohibited from designating a person by name except where "the Minister has reasonable grounds to suspect that that person is an involved person",

39. By s11 (3) the regulations must provide that *"an involved person"* means a person who—

> (a) is or has been involved in an activity specified in the regulations,
>
> (b) is owned or controlled directly or indirectly by a person who is or has been so involved,
>
> (c) is acting on behalf of or at the direction of a person who is or has been so involved, or
>
> (d) is a member of, or associated with, a person who is or has been so involved.

40. Section 21 provides that prohibitions and requirements under the Act generally apply only within the UK and territorial waters. However in the case of UK nationals, such as the Claimant, and companies, they apply worldwide.

41. Section 22(2) provides that "*a relevant designation may at any time be varied or revoked by the Minister*." Section 23 provides a right to request variation or revocation of a designation: that being the right exercised by the Claimant in the present case on 14 July 2022, a request which resulted in the decision to vary communicated on 11 November 2022.

42. SAMLA ss38-40 provide for Court review, including (as in this case) of a designation as varied under s23(3). In determining whether a decision should be set aside, the Court is required by s38(4) to apply the principles applicable on an application for judicial review, and may, subject to s39, give corresponding relief. The rules of court provided for by s40 are those in CPR 79.

The 2019 Regulations as amended

43. In exercise of his powers under the 2018 Act the Secretary of State made the 2019 Regulations. They came into force on 31 December 2020. Their purpose was identified in the Explanatory Notes that accompanied the Regulations. Those provided that

> When these Regulations come into force they will replace, with substantially the same effect, the EU sanctions regimes relating to Russia's actions in relation to Ukraine that are currently in force under EU legislation and related UK regulations. This sanctions regime is aimed at encouraging Russia to cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

44. That explanation was echoed in Reg 4 which provides that one of the purposes for designations under the 2019 Regulations is "*encouraging Russia to cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine"*.

45. Reg 5(1) empowers the Secretary of State to designate persons by name for specific measures, including the asset freeze and associated restrictions provided for in Regulations 11-15 to which the Claimant has been subject since March 2022.

46. Reg 6 sets out the designation criteria. By Reg 6(1)(a) the Secretary of State may not designate a person under regulation 5 unless the Secretary of State has reasonable grounds to suspect that that person is an "involved person". "*Involved person*" is defined in Regulation 6(2) as a person who:

a. is or has been involved in—

(i) destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine, or

(ii) obtaining a benefit from or supporting the Government of Russia,

b. is owned or controlled directly or indirectly (within the meaning of regulation 7) by a person who is or has been so involved,

c. is acting on behalf of or at the direction of a person who is or has been so involved, or

d. is a member of, or associated with, a person who is or has been so involved.

47. Reg 6(3) provides that for the purposes of this regulation, a person is "involved in destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine" if—

a. the person is responsible for, engages in, provides support for, or promotes any policy or action which destabilises Ukraine or undermines or threatens the territorial integrity, sovereignty or independence of Ukraine;

b. the person provides financial services, or makes available funds, economic resources, goods or technology, that could contribute to destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine;

c. the person provides financial services, or makes available funds, economic resources, goods or technology, to—

(i) a person who is responsible for a policy or action which falls within sub-paragraph (a), or

(ii) a person who provides financial services, or makes available funds, economic resources, goods or technology, as mentioned in sub-paragraph (b);

d. the person obstructs the work of international organisations in Ukraine;

e. the person conducts business with a separatist group in the Donbas region;

f. the person is a relevant person trading or operating in [non-government controlled Ukrainian territory];

g. the person assists the contravention or circumvention of a relevant provision.

48. By reg 6(4), being *"involved in obtaining a benefit from or supporting the Government of Russia"* includes (c) carrying on business in a sector of strategic significance to the Government of Russia. By reg 6(6) being *"associated with"* in paragraph (2)(d), includes (a) obtaining a financial benefit or other material benefit from that person; and (b) being an immediate family member of that person.

49. By reg 6(7) a *"sector of strategic significance to the Government of Russia"* includes "(f) the Russian extractives sector."

50. Reg 7 defines the expression "owned or controlled directly or indirectly". It provides that

(1) A person who is not an individual ("C") is "owned or controlled directly or indirectly" by another person ("P") if either of the following two conditions is met (or both are met).

(2) The first condition is that P—

a. holds directly or indirectly more than 50% of the shares in C,

b. holds directly or indirectly more than 50% of the voting rights in C, or

c. holds the right directly or indirectly to appoint or remove a majority of the board of directors of C.

(3) Schedule 1 contains provisions applying for the purpose of interpreting paragraph (2).

(4) The second condition is that it is reasonable, having regard to all the circumstances, to expect that P would (if P chose to) be able, in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of C are conducted in accordance with P's wishes.

51. Schedule 1 provides rules for the interpretation of regulations 7(2). By paragraph 3

(1) If shares or rights held by a person and shares or rights held by another person are the subject of a joint arrangement between those persons, each of them is treated as holding the combined shares or rights of both of them.

(2) A *"joint arrangement"* is an arrangement between the holders of shares or rights that they will exercise all or substantially all the rights conferred by their respective shares or rights jointly in a way that is pre-determined by the arrangement.

52. Pursuant to what was s.2(4) SAMLA, a report was laid before Parliament in relation to the 2019 Regulations on 11 April 2019. That report explained why the Minister considered that the purposes of the 2019 Regulations fell within the scope of ss. 1 (2)(c) and (d) SAMLA, why the Minister considered that there were good reasons to pursue that purpose, and why the Minister considered that the imposition of sanctions was a reasonable course of action for that purpose. At §§14-15, the report noted:

> "These sanctions are not an end in themselves. They are one element of a broader strategy to achieve the UK's foreign policy goals to change the Russian Government's policy towards Ukraine. Direct lobbying alone has not proved sufficient. The UK is therefore combining sanctions with diplomatic measures, individual visa denials or blocking Russian membership of the G8, cancelling the annual EU-Russia Summit, and reducing access to European Bank for Reconstruction and Development project funding, as well as bilateral lobbying, lobbying through international frameworks, and supporting UN resolutions.
>
> The policy intention is that sanctions on Russia will remain in place until the UK Government is assured that Russia has ended its illegal annexation of Crimea and Sevastopol; withdrawn from eastern Ukraine and is no longer carrying out actions that undermine Ukraine's sovereignty and territorial integrity. Fulfilling the Minsk Agreements would deliver the purpose of the sanctions regime. We will continue to monitor the position on the ground, including via the OSCE Special Monitoring Mission to Ukraine. The UK will continue to coordinate with international partners, including on the future of the sanctions regime."

The bases for the Designation of the Claimant and of Roman Abramovich

53. As explained in the first witness statement of Mr David Reed, the Director of the Sanctions Directorate in the FCDO, the Claimant was originally designated on 24 March 2022 for the purpose of an asset freeze. That designation was varied on the 30th

March 2022 to include transport sanctions and since 21 March 2023 he is now also subject to trust services sanctions.

54. The original March 2022 designation was on two grounds, namely:

> Eugene Shvidler is a business partner of Roman Arkadyevich Abramovich with whom Shvidler has maintained a close relationship for decades. Shvidler is therefore associated with a person (Roman Arkadyevich Abramovich) who is or has been involved in destabilising Ukraine and undermining and threatening the territorial integrity, sovereignty and independence of Ukraine, and obtaining a benefit from or supporting the government of Russia
>
> Shvidler is a former longstanding non-executive director of Evraz PLC in which he continues to hold shares alongside other companies operating in sectors of strategic significance to the Russian Government, primarily the Russian extractives sector. As such Shvidler is or has been involved in obtaining a benefit from or supporting the Government of Russia through carrying on business in a sector of strategic significance to the Government of Russia.

55. Roman Abramovich had been designated by the Secretary of State on 10 March 2022. The grounds of that designation were subsequently varied so as to delete the reference to him "*being involved in destabilising Ukraine and undermining and threatening the territorial integrity, sovereignty and independence of Ukraine*". However, the grounds of his designation continued to refer to his association with President Vladimir Putin.

56. Following the Administrative Review of the Claimant's designation, first requested on 14 July 2022, the grounds of the Claimant's designation were also varied. On 11 November 2022 the Claimant's solicitors were informed that their request for the revocation of his designation had been refused and that the designation had been varied. The amended designation read as follows:

> Eugene Shvidler is a business partner of Roman Arkadyevich Abramovich with whom Shvidler has maintained a close relationship for decades and from whom he has obtained financial benefit. Shvidler is therefore associated with a person (Roman Arkadyevich Abramovich) who is involved in obtaining a benefit from or supporting the Government of Russia (1) by owning or controlling directly or indirectly (i) Evraz PLC and (ii) [identified]subsidiaries of Evraz PLC… and (2) by carrying on business in a sector of strategic significance to the Government of Russia, namely extractives, construction and transport. Shvidler is a former non-executive director of Evraz PLC. As such Shvidler has been involved in obtaining a benefit from or supporting the Government of Russia through working as a non-executive director of Evraz PLC, an entity carrying on business in a sector of strategic significance to the Government of Russia, namely the Russian extractives sector.

57. That amendment made clear that Mr Abramovich was no longer designated on the ground of involvement in destabilising, undermining or threatening Ukraine and that the second ground of the Claimant's designation was based on his former role as a non-executive director of Evraz.

The effect of sanctions on the Claimant

58. The Clamant says that he is now living in the US, where his material needs are being met by friends. He sets out in his two statements, however, the significant effect the sanctions imposed on him are having on him and his family. I have read and considered those statements carefully. By way of example, the Claimant explains that his ability to conduct his businesses has been destroyed; he can no longer access financial institutions he has used for many years; his registered agents in the British Virgin Islands have given notice of their intention to resign; his two private aircraft have been grounded, and he has been unable to pay the expenses necessary to ensure his private yacht is safe and seaworthy.

59. HM Treasury manages an office, the "Office of Financial Sanctions Implementation" (or OFSI), which operates a license scheme by which those subject to sanctions can seek permission to carry out activities which would otherwise be prohibited by the sanctions regulations. But, Mr Shvidler says, he has had great difficulty pursuing licence applications to the OFSI and as a result has had difficulty maintaining and insuring his properties in the UK. He says he has had to make redundant a number of members of his household staff

60. The Claimant says that the imposition on him of sanctions has had a serious impact on his ex-wife, Zara, and his two children. His daughter was excluded from Marlborough College while she was studying for her A levels. His son, then aged 15, was excluded from Harrow. He says their lives "*have been turned upside down*".

61. His children have now moved to the United States where they are completing their education. He explains that whilst he and his children are all U.S. citizens, his ex-wife, Zara, is not. The result is that his children are living far from their mother for most of the year. His ex-wife has also found it difficult to obtain banking services or to instruct a solicitor.

62. There is no doubt that the imposition of sanctions under the 2019 Regulations has entailed a significant restriction on the Claimant's rights under Article 8 and A1P1 ECHR as protected by the Human Rights Act 1998, and the equivalent rights protected by the common law.

The competing arguments

63. The Claimant says he has no relationship with President Putin (whom he says he last saw at Boris Yeltsin's funeral in April 2007) and has never been involved in politics. He says he has no ability to influence or affect Russian government policy or to compel the Russian government to withdraw from Ukraine.

64. However, on his behalf, Lord Anderson accepts that by virtue of his former non-executive directorship of Evraz plc, a company involved in the extractive sector in Russia, he satisfied what Lord Anderson calls "*the highly indirect criterion*" for

designation pursuant to Regulation 6(2)(a)(ii), 6(4)(c) and 6(7) of the 2019 Regulations, and that therefore the second basis for his designation is made out.

65. As to the first basis, Lord Anderson says that the Claimant has always been open about his long-standing personal and business relationship with Mr Abramovich but he does not accept that he received financial or material benefit from Mr Abramovich, or that he was otherwise associated with him within the meaning of Regulations 6(2)(d) and 6(6). He says that any remuneration received from Sibneft or from Evraz plc was received from those companies, not from Mr Abramovich, and that the Claimant's "*longstanding and close personal and business relationship*" with Mr Abramovich does not constitute an association within the meaning of the Regulations.

66. He argues that even if an association of some kind between the Claimant and Mr Abramovich could be made out, the fact that Mr Abramovich is no longer said to have been involved in destabilising, undermining and threatening Ukraine, and indeed is designated principally on the basis of his own connection with Evraz, means that the Abramovich connection cannot materially strengthen the supposed utility of the Claimant's designation for achieving the Regulation 4 objectives.

67. Nonetheless, Lord Anderson accepts that the threshold criteria for designation under the 2019 Regulations are very broad. He accepts that even the amended and reduced grounds now relied upon, which make no reference at all to the Russian leadership or to Ukraine, cross the threshold set out in the 2019 Regulations. But he says that that *necessary* condition for designation, is not *sufficient* to make designation lawful. Precisely because the permissible grounds for designation are so broad, and so marginally satisfied here, and because the fundamental liberties of a citizen have been so markedly curtailed and will remain so for an indefinite period of time, it is, he argues, imperative for the Court to scrutinise with particular care any reasoned plea that a designation is *disproportionate* or *discriminatory*. Those are the twin grounds upon which his designation is contested.

68. As to the basis for designation, Sir James says that Claimant has been involved in obtaining a benefit from, or supporting, the Government of Russia through working as a non-executive director of an entity carrying on business in a sector of strategic significance to the Government of Russia, namely the Russian extractives sector. Even on the Claimant's case, says Sir James, his role as a non-executive director of Evraz is sufficient to bring him within the scope of an "*involved person"* under reg 6 of the 2019 Regulations. That is the second basis.

69. As to the first, the Secretary of State has assessed that, in addition to the Claimant's admitted friendship and business relationship with Mr Abramovich, there are reasonable grounds to suspect that the Claimant has obtained a financial or other material benefit from Mr Abramovich. The Secretary of State relies on the cumulative effect of three matters: (i) the Claimant's remuneration as President of Sibneft; (ii) the Claimant's remuneration as one of Mr Abramovich's two nominee directors on the board of Evraz; and (iii) the Claimant's remuneration as an Evraz director in circumstances where Evraz is jointly owned and controlled by Mr Abramovich (together with Messrs Alexander Abramov and Alexander Frolov).

70. In short form, **the Claimant's case on Ground 1** is that the imposition of sanctions on an individual does, and is intended to, result in the imposition of significant hardships

on that individual, their family, and others associated with them. Those hardships result from the facts that the Claimant is the subject of severe restrictions on the access to, and use of, his assets, and that third parties are forbidden from making a range of goods and services available to either him or his family, on pain of criminal penalty. This entails a restriction on the Claimant's rights under Article 8 and A1P1 of the Convention and the equivalent rights protected by the common law. Additionally, Lord Anderson says, this imposes, for the same reasons, a restriction on the rights of his immediate family.

71. It is said that to satisfy the requirements of proportionality, the designation must be sufficiently important to justify the limitation of a fundamental right; it must be rationally connected to the purposes of the 2019 Regulations; there should be no less intrusive measures available in the alternative; and the public benefits of designation (in the sense of the practical outcomes expected to be achieved by this particular designation) should outweigh the private harms caused by designation.

72. It is said that the Claimant's designation does not satisfy these requirements. The impact of sanctions on him and his family is manifestly disproportionate – indeed not even rationally connected – to the indirect, unevidenced and implausible respects in which it is suggested that they may further the objectives of the 2019 Regulations. The consequence is that his designation is an unlawful interference with the Claimant's rights (and those of his family) under the Convention and so is unlawful pursuant to s6 of the HRA.

73. The **Secretary of State's response on Ground 1** is that the Claimant has not challenged the lawfulness or proportionality of the 2019 Regulations. Nor has he challenged the lawfulness of the Secretary of State's finding that there are reasonable grounds to suspect that he is an "*involved person"*. To the contrary, the Claimant accepts that the factual matters relied upon by the Secretary of State are sufficient to bring him within the scope of the definition of an "*involved person"*. The sole question is therefore whether the Secretary of State's decision is disproportionate notwithstanding that the Claimant satisfies the (lawful and proportionate) designation criteria. It is said by Sir James Eadie on the Secretary of State's behalf, that it is not. The Secretary of State has carefully considered the impact which the designation is likely to have on the Claimant and his family. Having done so, the Secretary of State was entitled to conclude that the designation is proportionate for the reasons set out in the amended SDF and further explained in evidence of Mr Reed.

74. The Secretary of State's assessment of proportionality is based in substantial part on matters of foreign policy in relation to which, Sir James contends, he is entitled to a significant margin of discretion. That assessment considers (among other things): (i) the importance of the overarching objective of the designation, namely encouraging the Government of Russia to cease its illegal and extremely serious actions in and in relation to Ukraine; (ii) the Secretary of State's judgment that less intrusive measures would unacceptably compromise the achievement of the specific objectives pursued by the Claimant's designation; (iii) the temporary and reversible nature of the sanctions measures; (iv) the possibility of the Claimant obtaining licences to meet his own basic needs and those of his family; and (v) the safeguards built into the statutory regime, including the opportunity to seek both a Ministerial review and a court review of the designation.

75. **The Claimant's case on Ground 2** is that the Defendant has exercised his discretion to impose sanctions against the former directors of Evraz plc on a discriminatory basis, and in a manner which is contrary to Article 14, read with Article 8 and A1P1, and therefore unlawful under s6 HRA. Where (as here) a difference in treatment is based on race or ethnicity, the notion of objective and reasonable justification must be interpreted as strictly as possible.

76. **In response, the Secretary of State says** that he has not exercised his discretion in a discriminatory manner. The four former board members of Evraz who have been designated under the 2019 Regulations are of Russian or Ukrainian ethnicity, but there is no evidence to support a suggestion that the ethnicity of these individuals was a factor in the Secretary of State's decision-making. None of these individuals are designated on the sole basis that they were former directors of Evraz. There has therefore been no discrimination "*on the grounds of"* ethnicity, and no question of justifying such discrimination arises. The difference in treatment between the designated individuals and other former directors of Evraz reflects the fact they are differently situated.

Discussion

The common ground and the issues for decision

77. I begin by identifying the common ground and the issues for decision.

78. It is common ground that the second of the two bases for designation relied upon by the Secretary of State (founded on the Claimant's executive directorship of Evraz) is established. The first (founded upon benefit received from Mr Abramovich) remains a matter of dispute.

79. It is also common ground that the Secretary of State's decision to designate an individual under the 2019 Regulations must be proportionate. There are circumstances where a statutory scheme will of itself ensure that its application to particular individuals will meet the requirements of proportionality without any consideration of the circumstances of an individual case (see Lord Reed in *Re Abortion Services (Safe Access Zones)(Northern Ireland) Bill* [2023] AC 505 at [34]. However, I agree with the submission of Lord Anderson that this is not such a case. The Secretary of State has a discretion under the 2019 Regulations whether or not to impose sanctions on an individual and, where Convention rights are engaged as they are here, it is necessary in the exercise of that discretion for the Secretary of State properly to consider the proportionality of the measure proposed.

80. Further, it is agreed that the test for proportionality is that set out by the Supreme Court in *Bank Mellat v HM Treasury (No 2)* [2013] UKSC 39. In his judgment in that case, Lord Sumption held that the answer to the question whether a measure is proportionate depends on

> an exacting analysis of the factual case advanced in defence of the measure, in order to determine (i) whether its objective is sufficiently important to justify the limitation of a fundamental right; (ii) whether it is rationally connected to the objective; (iii) whether a less intrusive measure could have been used; and (iv) whether, having regard to these matters and to the severity of the

> consequences, a fair balance has been struck between the rights of the individual and the interests of the community. These four requirements are logically separate, but in practice they inevitably overlap because the same facts are likely to be relevant to more than one of them.

81. It is also agreed, correctly in my judgment, that the first of those elements of the test is met here: the objective of the statutory scheme of "*encouraging Russia to cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine"* is of the greatest importance and in principle justifies the limitation on the fundamental rights of those effected. As David Reed put it, the sanctions were a response

> to the illegal annexation by Russia of Crimea and Sevastopol from Ukraine in 2014, and the subsequent campaign of destabilising Ukraine and undermining Ukrainian sovereignty, including supporting separatist destabilisation in the Donbas and, in 2022, commencing an illegal invasion of Ukraine. Sanctions are intended to increase pressure on Russia to desist its actions, consistently with the purpose of the regime, by inflicting cost at scale, undermining Russia's war machine, and providing strategic support to Ukraine.*"*

82. Mr Reed's statement continues as follows:

> The response of the UK is considered to be proportionate to the severity of Russia's actions. Aggression of this nature represents the most egregious violation of international law and the UN charter. Russia's invasion of Ukraine represents the most serious threat to European security and the international order since the end of the Second World War. It has brought large scale, high intensity land warfare to Europe, and generated a refugee and energy crisis in the region. It is caused enormous loss of life and human suffering. Russia's barbaric and continued targeting of Ukraine's civilians and civilian infrastructure has precipitated a dire humanitarian crisis and has caused at least 22,607 civilian casualties to date including 8,541 civilian deaths. At least one child has been killed in Ukraine in each day of the conflict. Women have been subjected to trafficking and conflict-related sexual violence. The human cost on the battlefield has been devastating, with at least 100,000 soldiers killed or wounded on each side.

83. None of that is disputed by the Claimant and, in my judgment, the scheme as a whole is plainly proportionate to the objective in view. But that does not address the separate question whether the making of an individual designation is necessarily proportionate. I do not understand that to be disputed by Sir James. To the contrary, he emphasises the care the FCDO took in deciding that the designation of the Claimant was proportionate.

84. Finally, it is common ground that if a decision is based on race or ethnicity, its justification must be strictly examined. However, the Secretary of State disputes that the decision here was based on race or ethnicity.

85. It follows that five issues arise for decision:

i) Is the first basis for designation made out? In other words, has the Claimant received financial or material benefit from Mr Abramovich, or was he otherwise associated with him within the meaning of Regulations 6(2)(d) and 6(6)?

ii) Was the measure in question rationally connected to the objective?

iii) Could a less intrusive measure have been used?

iv) Has a fair balance been struck between the rights of the Claimant and the interests of the community?

v) Was the discretion to impose sanctions on the Claimant exercised in a discriminatory manner?

86. I deal with each in turn below. But first I deal with two important issues governing the approach to be adopted.

Preliminaries

87. Before turning to the issues on proportionality, it is necessary to consider two important preliminary points: (i) the degree of deference due to the Secretary of State when making decisions under the 2019 regulations; and (ii) the extent to which it is appropriate to have regard to evidence as to the Secretary of State's reasoning as expressed after the decision was taken.

88. As to the first point, Lord Anderson accepted that the issue as to the importance to be attached to the objective of seeking to dissuade Russian military activity in Ukraine, involved "*matters of executive judgment relating to foreign policy"* to which "*special weight*" should be accorded. However, he contends that that is not the case on the other limbs of the *Bank Mellat* test. He refers me to the judgment of Lord Sumption in *R (Lord Carlile of Berriew and others) v Secretary of State for the Home Department* [2015] AC 945 (SC) at §§30 and 34:

> "30. So far … as the traditional treatment of foreign policy or national security decisions depends on the non-justiciability of the Crown's prerogative to conduct the United Kingdom's foreign relations or of measures taken in the interests of national security, it cannot apply in cases where a scrutiny of such decisions is necessary in order to adjudicate on a complaint that Convention rights have been infringed. In these fields of law, nothing which is relevant can be a "forbidden area" (Lord Phillips MR's phrase in *Abbasi*), although complaints about the substance as opposed to the application of British foreign policy may well be met by the response that it is not relevant: *R (Gentle) v Prime Minister* [2008] AC 1356, paras 24-25 (Lord Hope of

> Craighead)… I would accept that when it comes to reviewing the compatibility of executive decisions with the Convention, there can be no absolute constitutional bar to any inquiry which is both relevant and necessary to enable the court to adjudicate.
>
> …
>
> 34. Various expressions have been used in the case law to describe the *quality* of the judicial scrutiny called for when considering the proportionality of an interference with a Convention right: "heightened", "anxious", "exacting", and so on... But the legal principle is clear enough. The court must test the adequacy of the factual basis claimed for the decision: is it sufficiently robust having regard to the interference with Convention rights which is involved? It must consider whether the professed objective can be said to be necessary, in the sense that it reflects a pressing social need. It must review the rationality of the supposed connection between the objective and the means employed: is it capable of contributing systematically to the desired objective, or its impact on the objective arbitrary? The court must consider whether some less onerous alternative would have been available without unreasonably impairing the objective. The court is the ultimate arbiter of the appropriate balance between two incommensurate values: the Convention rights engaged and the interests of the community relied on to justify interfering with it. But the court is not usually concerned with remaking the decision-maker's assessment of the evidence if it was an assessment reasonably open to her. Nor, on a matter dependent on a judgment capable of yielding more than one answer, is the court concerned with remaking the judgment of the decision-maker about the relative advantages and disadvantages of the course selected, or of pure policy choices (eg do we wish to engage with Iran at all?). The court does not make the substantive decision in place of the executive. On all of these matters, in determining what weight to give to the evidence, the court is entitled to attach special weight to the judgments and assessments of a primary decision-maker with special institutional competence."

89. Sir James does not suggest that the matters before me are "*an altogether forbidden area*" for the Court, but he contends that these are matters in respect of which the Secretary of State should be afforded "*an especially broad margin of discretion*": *R (Al Rawi) v SSFCA* [2008] QB 29 at [149].

90. It is apparent from that summary that neither party adopts an absolutist position. Both acknowledge that simple reference to foreign relations does not operate to exclude the jurisdiction of the Court. Both accept, however, that there are matters of executive judgment relating to foreign policy to which "*special weight*" should be accorded.

91. Undoubtedly, this is a case where close scrutiny is necessary in order to adjudicate on a complaint that Convention rights have been infringed. And it is the structured analysis

articulated in *Bank Mellat* that must be applied. But the court does not assume the role of primary decision maker on issues that turn on the exercise of judgment or the determination of policy, limiting itself instead to asking whether the decision was one properly open to the executive. It will recognize the constitutional competence of the Secretary of State and his officials on matters of foreign affairs, attaching particular weight to the judgments of a primary decision-maker with special institutional competence who has considered all the relevant material.

92. Applying that approach, the Court must consider closely the particular question that falls for decision so as to gauge the extent to which it should defer to the expertise of the Secretary of State and the extent to which it can itself form a judgment. In my view, the question as to how far the evidence relied upon by the Secretary of State supports the contention that the Claimant's designation could contribute to achieving that objective (Limb 2 of *Bank Melatt*) is not entirely a question of United Kingdom foreign policy on which the Court is unqualified to form a view, nor is it a subject on which the Court should necessarily be slow to interfere on grounds of institutional competence. The Secretary of State is the primary decision-maker under the statute but the Court is well placed to judge the reasonableness of his analysis. The other limbs of *Bank Melatt* require a similar approach.

93. As to the second preliminary issue, the Claimant is critical of the Secretary of States' changing explanations for the designation. He refers to the explanation given in November 2022 in the decision under review:

> "… The designation of Shvidler is likely to contribute to achieving the purposes of the sanctions regime in at least the following ways: (i) it sends a strong political message to the designated person, the Government of Russia and the international community that the UK does not accept acts which destabilise Ukraine or undermine or threaten the territorial integrity, sovereignty and independence of Ukraine; (ii) it may incentivise the Government of Russia to change its behaviour, and to cease the acts set out in (i); and (iii) it signals the UK's support for the full implementation of Russia's international obligations and commitments, including the UN Charter, 1975 Helsinki Final Act, 2014 and 2015 Minsk Protocols and the 1994 Budapest Memorandum, and the withdrawal of all Russian forces from Ukraine."

94. He contrasts that with the Response to the s38 application where it is said that the Claimant's designation would contribute to the objective of encouraging the Government of Russia to cease or limit its actions in Ukraine, because it would:

i) incentivise the Claimant to put pressure on Mr Abramovich to encourage President Putin to cease or limit the Government of Russia's actions in Ukraine, to distance himself from (and thereby isolate) President Putin and/or to speak out against the Russian invasion of Ukraine;

ii) send a signal to the Claimant and others in his position that there are negative consequences to having implicitly legitimised the Government of Russia's actions by associating with individuals who are close to President Putin and who

have carried on business in sectors of strategic significance to the Government of Russia since the illegal annexation of Crimea in 2014;

iii) disincentivise others from associating themselves in future with individuals who are close to President Putin and individuals who have carried on business in sectors of strategic significance to the Government of Russia;

iv) incentivise the Claimant and others in his position to speak out and oppose more robustly Russia's invasion in Ukraine;

v) send a signal to the Claimant and others in his position that there are negative consequences to having implicitly legitimised the Government of Russia's actions by carrying on business in sectors of strategic significance to the Government of Russia since the illegal annexation of Crimea in 2014;

vi) incentivise the Claimant and others in his position to divest from businesses in sectors of strategic significance to the Government of Russia, thereby disrupting their operations;

vii) disincentivise others from carrying on business in these sectors in the future; and

viii) encourage senior figures in sectors of strategic significance to the Government of Russia to resign from their positions, thereby disrupting the operation of those entities.

95. In response, Sir James argues that in considering proportionality, the Court is not limited to assessing the decision-maker's process, thinking or assessment at the time the relevant decision was made. He refers me to *Belfast City Council v Miss Behavin' Limited* [2007] 1 WLR 1420 where at [13-14] Lord Hoffman rejected the approach adopted by the Court of Appeal when it held that the Claimant's Convention rights had been violated by the way the council had arrived at its decision.

> "In the reasons it gave, the council had not shown that it was conscious of the Convention rights which were engaged. The decision was therefore unlawful unless it was inevitable that a reasonable council which instructed itself properly about Convention rights would have reached the same decision."
>
> This approach seems to me not only contrary to the reasoning in the recent decision of this House in R (SB) v Governors of Denbigh High School [2007] 1 AC 100 but quite impractical… Either the refusal infringed the applicants Convention rights or it did not. If it did, no display of human rights learning by the Belfast City Council would have made the decision lawful. If it did not, it would not matter if the councillors had never heard of article 10 or the First Protocol."

96. In my judgment, on this issue, Sir James is right, the Secretary of State is entitled to rely on the Response to the s38 application. Further, as Sir James submits, the officials who formulated this Response acted for this purpose as the Secretary of State under the

Carltona principle, and the reasoning contained in the witness statement of Mr Reed was intended to expand upon and amplify the reasoning already set out in the Claimant's SDF.

97. Accordingly, I will have regard to all the evidence which explains the Secretary of State's reasoning.

Association with Mr Abramovich

98. There is no doubt that the Claimant is a long term friend and business associate of Mr Abramovich. That is accepted by the Claimant and has been known to, and taken into account by, the Secretary of State from at least the time of the Claimant's SDF of 16 June 2022. In my judgment, the Secretary of State also had reasonable grounds to suspect that the Claimant has received significant financial benefits from Mr Abramovich. I say that for the following reasons.

99. First, it is accepted in the letter from the Claimant's solicitors dated 14 July 2022 seeking a review of his designation that Sibneft was "*Mr Abramovich's company*". It is accepted that that the Claimant was "*Vice-President for Finance*" and then President of Sibneft between 1996 and 2005, a period when the company was owned by Mr Abramovich. It is accepted (both in that letter and in his witness statement) that he was paid for that role. It is accepted that he "*received a generous severance package in the amount of approximately $10 million when he stepped down as president of Sibneft*".

100. I reject the Claimant's suggestion that these benefits should be treated simply as incidents of his employment with Sibneft; they may well be that but he owes his employment in those roles to the actions of Mr Abramovich.

101. Second, the Claimant was also one of Mr Abramovich's two nominee directors on the board of Evraz, a role for which he says, in his second statement, that he was paid $204,000pa in the period 2013-2021. He was appointed to that role by Mr Abramovich (as is made clear in a letter from Evraz to the OFSI dated 11 March 2022). It follows that the Claimant obtained a financial benefit from Mr Abromovich as a result of that act of patronage.

102. Third, there was before me an interesting, but ultimately redundant, argument about the degree to which Evraz continues to be controlled by Mr Abramovich. The Claimant acknowledges, in his second statement, that Mr Abramovich and two other men, Messrs Abramov and Frolov (acting through companies owned by them) are regarded as "*concert parties*" and therefore "*controlling shareholders*" under the Financial Conduct Authority's Handbook. He points out that Mr Abramovich holds 28.64% of the shares, Mr Abramov holds 19.223% and Mr Frolov holds 9.65%. However, Lord Anderson seeks to draw a fine distinction between the generally understood definition of "*concert party*" in company law and the definition of joint arrangement under paragraph 3(2) of Schedule 1 to the 2019 Regulations. He says that in company law the phrase "*concert party*" is understood to mean a group of shareholders who coordinate their actions to obtain a given outcome, whereas a joint arrangement under the 2019 Regulations is defined as *"an arrangement between the holders of shares or rights that they will exercise all or substantially all the rights conferred by their respective shares or rights jointly in a way that is pre- determined by the arrangement."* Accordingly he submits

that to suggest that the Claimant received financial benefit from Mr Abramovich is based on an error of law.

103. I reject the Claimant's argument in this regard. In my judgment, Sir James was right in his submission that, given that Messrs Abramovich, Abramov and Frolov are treated by Evraz as "*acting in concert"*, there are reasonable grounds to suspect that there exists a "*joint arrangement"* between them within the meaning of paragraph 3. Accordingly, each of them is to be treated as holding the combined shares of all three, and Mr Abramovich can be treated as owning, directly or indirectly, more than 50% of the shares or voting rights in Evraz.

104. In consequence, even if the argument based on Mr Abramovich's nomination of the Claimant were to be rejected, the Claimant's remuneration as a director can properly be regarded as a financial benefit obtained from Mr Abramovich.

105. For all those reasons, in my judgment both bases of the designation are well founded.

Rational connection

106. The argument before me, both in writing and orally, focused on the eight reasons identified in the Response to the s38 application (see [94] above) as to why the Secretary of State considered that the Claimant's designation would contribute to the objective of encouraging the Russian Government to cease or limit its actions in Ukraine. Helpfully, the Claimant's written submissions were grouped together by reference to reasons of a similar type. I follow that approach.

107. The first, third, seventh and eighth factors relate to incentives to third parties.

108. By the first, the Secretary of State suggests that the Claimant's designation will incentivise him to put pressure on Mr Abramovich (i) to encourage President Putin to cease or limit the Government of Russia's actions in Ukraine; and/or (ii) to distance himself from (and thereby isolate) President Putin; and/or (iii) to speak out against the Russian invasion of Ukraine.

109. Lord Anderson says the Secretary of State has not put before the Court evidence capable of supporting the proposition that Mr Abramovich is either close to Mr Putin or in a position to influence his conduct. Sir James responds that the evidence relied upon by the Secretary of State in Mr Abramovich's SDF indicates that Mr Abramovich does have a relationship with, or access, to President Putin.

110. In my judgment, the Secretary of State did have evidence that Mr Abramovich had had a close relationship with President Putin. Both parties refer to the judgment of Gloster J in *Berezovsky v Abramovich* [2012] EWHC 2463 (Comm). Gloster J's conclusion were that Abramovich was not part of President Putin's inner circle and was not in a position to "*pull the presidential strings*". However, the passages in that judgment to which I have been referred do strongly suggest that Mr Abramovich had very good relations with President Putin in the period up to 2001, that he had privileged access to him and that Putin may have taken his views into account in that period.

111. Furthermore, the evidence on which the Secretary of State relied in designating Mr Abramovich strongly supports the proposition that the close relationship between him

and President Putin continued. I note in particular the evidence that President Putin nominated Mr Abramovich for a second term as governor of Chukota 2005; that in 2006 Mr Abramovich was awarded the Order of Honour by President Putin; that in December 2010 President Putin was quoted as suggesting that Mr Abramovich should contribute towards the building of facilities for the football World Cup; that in 2012 President Putin relied on Mr Abramovich as a peacekeeper in a shareholder dispute; that in 2014, following Russia's invasion of Crimea, Putin was reported to call Mr Abramovich "*our oligarch*"; that between 2016 and 2017 Mr Abramovich was pictured on several occasions with Putin and other top Russian businessmen; and perhaps most importantly in 2022 Mr Abramovich was requested by Ukraine to help negotiate an end to the Russian invasion of their country and it was credibly reported that President Putin personally approved of his involvement in peace talks with Ukraine.

112. In my judgment, the Secretary of State was plainly entitled on all the material to which he refers to conclude that there was a continuing relationship of trust and confidence between President Putin and Mr Abramovich.

113. Lord Anderson says that in any event Mr Abramovich has already used whatever influence he may in the past have had to make "*a strong case to end the war*" to Mr Putin. That may be so but that does not mean that Mr Abramovich's influence is at an end. On the contrary, it is entirely reasonable to suppose it continues.

114. Lord Anderson argues that the Defendant has a far more direct means of placing pressure on Mr Abramovich – that is, to designate him personally – and that he has done. If designating Mr Abramovich himself has not provided a significant enough incentive for him to do as the Defendant wishes, says Lord Anderson, it is hopeless to suggest that designating the Claimant would in some way cause him to do so.

115. I do not accept that that is so. As a matter of common experience, an individual may more readily act when it is at the request, or in the interests, of his friends and colleagues than when it is only in his own interests. In any event, the availability of a more direct means of putting pressure on Mr Abramovich does not undermine the value of additional pressure provided by the Claimant.

116. Furthermore, in my judgment, the likelihood of one oligarch influencing the behaviour of another is one of those areas of decision making where the Secretary of State is better able to assess the evidence than is the court. In this regard the discussion of the role of oligarchs in the Russian political economy in Mr Abramovich's SDF is instructive. I accept Sir James' submission that consideration of the extent to which the designation of a close friend and business associate such as the Claimant is likely to influence Mr Abramovich to distance himself from (and thereby isolate) President Putin, or to speak out against the Russian invasion of Ukraine, are essentially matters of executive judgment based on the Secretary of State's institutional expertise in the conduct of foreign policy and his understanding of the internal dynamics of the Russian political economy. I accept that the identification of levers of pressure by which to influence the Government of Russia's decision-making, and the weight to be attached to different potential courses of action, is a matter of foreign policy in respect of which the Secretary of State has institutional expertise and is entitled to considerable respect.

117. By the third factor, it is suggested that the Claimant's designation will "*disincentivise others from associating themselves in future with individuals who are close to President*

Putin and individuals who have carried on business in sectors of strategic significance to the Government of Russia". By the seventh, it is suggested that the Claimant's designation *would disincentivise others from carrying on business in these sectors in the future.*

118. The Claimant suggests that these factors are indirect and theoretical and that no evidence is adduced in support of either. It is argued that any useful disincentive there might be is provided by the designation rules themselves, independently of the Claimant's designation. Again I do not accept that analysis. The practical example of the effect of sanctions on the Claimant may well discourage others from involving themselves in businesses supportive of the Russian state.

119. By the eighth, it is said that the Claimant's designation may encourage senior figures in sectors of strategic significance to the Government of Russia to resign from their positions, thereby disrupting the operation of those entities. The Claimant argues that such individuals are at risk of designation in any event and the maintenance of the Claimant's designation is in this respect counter-productive, because it signals that individuals are likely to face designation whether or not they, like the Claimant, have resigned from their positions.

120. I accept that this is a pressure less likely to have significant effect. If it stood alone I might have concluded that it was not capable of "*contributing systematically to the desired objective*". But it does not stand alone.

121. Next, the Claimant addresses the second and fifth factors, namely the sending of a signal to the Claimant and others that there are negative consequences to legitimizing the actions of Russia and to carrying on business in sectors of strategic significance to Russia. The Claimant argues that sanctions cannot permissibly be imposed as punishment for past acts, now regarded as objectionable, and there is no rational connection between this step and the aim of the 2019 Regulations. It is said that the Claimant had already done all he could to withdraw from "*whatever indirect association the Secretary believed he had with the Russian government*", and to denounce publicly its actions in Ukraine. The "signal" cannot make any meaningful contribution to achieving the objective of ending Russian aggression in Ukraine.

122. I do not accept that argument. Any sanctions regime is likely to be backward looking, focusing on past actions not then unlawful. And the 2019 Regulations refer expressly to past conduct as providing the ground for designation. To be effective sanctions need to send messages to the designated person, and others in a similar position, that the conduct in question is unacceptable. The value of such messages persists even if the person in question ceases the conduct complained of and makes statements distancing himself from the Russian regime.

123. The fourth factor is that the Claimant's designation will "*incentivise Mr Shvidler and others in his position to speak out and oppose more robustly Russia's invasion in Ukraine*". 12 days prior to his designation the Claimant had in his own words "*spoken out against the war*" (see [12] above). The Secretary of State has acknowledged (in the second statement of Mr Reed) "*the legitimate concerns identified by Mr Shvidler as to the potential risks associated with speaking out against the Russian invasion of Ukraine*", but suggests that the Claimant should be encouraged to take "*private action …to pressurize the Government of Russia to cease or limit its actions in Ukraine*."

124. The Claimant argues that, given that he has no connection or influence over Mr Putin, has never been involved in politics and has no ability to influence Russian government policy "*it is fanciful to suppose that such a thing would be possible*". I do not agree. Given the Claimant's long relationship with Mr Abramovich and his other contacts in Russia he may well be able to speak out privately against the Russian invasion of Ukraine and so add to pressure on the Russian government to desist from its activities in Ukraine.

125. The sixth factor relied on by the Secretary of State is that the Claimant's designation will incentivise him and others in his position to divest from businesses of strategic significance to Russia. The Claimant's response is that he needs no incentive to divest but any further steps towards divestment are now impossible because of the Secretary of State's actions. Evraz' shares were suspended from trading on the day Mr Abramovich was designated, his shareholding is now frozen and he is unable to divest himself of his stake without committing a criminal offence. Further, third parties are already incentivised to divest by the fact that individuals involved in such sectors *themselves* face the risk of designation. Indeed the designation of the Claimant *after* he had resigned from the board of Evraz plc runs contrary to the idea that his designation could incentivise others in the manner suggested.

126. Sir James responds by pointing out that the Claimant's own case demonstrates the value of sanctions in this regard; it is a reasonable assumption that it was the designation of Mr Abramovich on 10 March 2022 that prompted the Claimant, that same day, to resign from his position as a non-executive director of Evraz plc in an attempt, as it turned out an unsuccessful attempt, to avoid being designated himself.

127. I agree with the Claimant that he probably needs no further incentive to disinvest, but I accept the Secretary of State's argument that that proves the value of sanctions on one individual as a means of encouraging others to disinvest before they are identified and subjected to similar measures.

128. As I noted above, the Secretary of State does not have to establish all these suggested factors to make good his case that there is a rational connection between the measure and the objective. In my judgment, the sanctions imposed on the Claimant are capable of contributing systematically to the desired objective.

Absence of less intrusive measures

129. Lord Anderson contends that the aim of sending a political message to the Government of Russia, the international community, and those who are currently (or who are contemplating) involvement in strategic sectors of the Russian economy could be achieved *more* effectively via less intrusive measures. He refers to the many ways the UK Government has already sent such a message, including by providing humanitarian aid to Ukraine, by supplying weapons and military training to Ukraine's armed forces, by changing its immigration system to enable Ukrainians to move to the UK, by imposing properly targeted sanctions, and by the removal of Russian banks from the SWIFT system.

130. Mr Reed's first statement sets out the Defendant's response. He says that the UK has already expressed concern about the war in Ukraine "*in multilateral fora*". He points by way of example to the Foreign Secretary's speech at the UN Security Council, on

the anniversary of the invasion. He says, however, that no measure other than these types of sanctions would achieve the desired effect. Not doing so would amount to sending a weak signal of condemnation to Russia. That could reduce the incentive on other prominent business-people to oppose Russia's invasion of Ukraine. He says that given the urgency of the situation on the ground in Ukraine the deterrent effect must be powerful and must send a strong signal to relevant markets and persons "*in order to affect the Government of Russia's cost benefit analysis as much as possible in the short and medium term.*"

131. In my judgment, this is an area where the Courts have to defer to the judgment of the Secretary of State. The relative benefits, disadvantages and effectiveness of different measures taken in pursuit of foreign policy objectives is not one on which the Court can second-guess the Foreign Office. All that can properly be said is that the Government's analysis is not self-evidently irrational or outside the range of reasonable responses.

Fair Balance

132. The relevant question for me here is "*whether the impact of the rights infringement is disproportionate to the likely benefit of the impugned measure*" (Lord Reid at [74] in *Bank Mellat*).

133. Lord Anderson argues that Mr Shvidler is bearing a "*disproportionate and excessive burden and the likely benefit is non-existent: the Claimant's designation has no real prospect of delivering any real benefit (be it practical or symbolic*)". He says that even if the Secretary of State expectation of public benefits is entitled to be accorded any weight in the balancing exercise, these would have to be scrutinised by comparison with the "*concrete, intended, and now crystallised*" hardships which flow from designation. He says, adopting the language of Lord Hope in *HM Treasury v Ahmed* [2010] 2 AC 534 at [60] that these "*Draconian measures…strike at the very heart of the individual's basic right to live his own life as he chooses*".

134. He argues that the Defendant has never engaged in any meaningful sense with the consequences of the Claimant's designation for him and his family. He says that when he presented the Defendant with evidence of the adverse effects on him and his family, the Secretary of State made no enquiries and responded to the matters "*in cursory, conclusory and question-begging terms*". He says the fact that the sanctions are temporary and that there is statutory provision for the grant of licenses is of only minimal relevance on the facts of this case.

135. In response, Sir James argues that the Secretary of State has had regard to the impact of sanctions on the Claimant and his family and has specifically acknowledged that their impact will be particularly acute because of the Claimant's British citizenship. He says the Secretary of State has carried out a detailed and comprehensive review of the evidence and has adduced the detailed witness statements of Mr Reed responding to the claimant's case. He says that Parliament has entrusted the Secretary of State with the authority to make decisions in relation to sanctions designations and that, having conducted a careful assessment, taking account of the relevant human rights considerations, the Secretary of State was entitled to conclude that the claimant's designation was proportionate.

136. After the conclusion of the hearing, the parties alerted me to the decision of Sir Ross Cranston (sitting as a High Court Judge) in *Dalston Projects Ltd v The Secretary of State for Transport* [2023] EWHC 1885 (Admin), a case concerning the lawfulness of the detention of a luxury motor yacht under the 2019 Regulations. The circumstances of that case were different from the present but I note what Sir Ross said at [86] in addressing the rational connection argument advanced in that case. He said:

> "I accept (counsel for the Secretary of State's analysis) that the Secretary of State need not demonstrate the efficacy of each individual detention (or designation) decision in order to maintain a sanctions measure. Certainly, it would be difficult to demonstrate that any one decision would have a desired foreign policy outcome."

137. I agree. And it seems to me that that point is relevant too to the fair balance analysis. The effectiveness of any sanctions regime depends, not on the effect of a particular measure directed at a single individual, but on the cumulative effect of all the measures imposed under that regime, together with other types of diplomatic pressure. Sir Ross went onto hold in *Dalston* that

> "the Secretary of State is granted a broad margin of discretion in a case such as this to decide that the exercise of the sanctions power is needed, when coupled with other measures, as part of pursuing the UK's foreign policy objectives."

138. Again I agree. The foreign policy objectives here are of the highest order and weigh heavily in the scales when determining fair balance.

139. There is no doubt that the effects of designation on the Claimant and his family are severe. As discussed in his witness statements and summarized above, the imposition of sanctions on the Claimant has caused him and his family significant hardship. He is the subject of severe restrictions on his access to, and use of, his assets, and third parties are forbidden from making a range of goods and services available to him or his family. His family suffer the consequences of his designation and, as Lord Anderson reminds me, these consequences fall to be considered as part of the proportionality exercise (*Beoku-Betts v Secretary of State for the Home Department* [2009] 1 AC 115 (HL), at §§1-4, 20-21, 41-44).

140. Furthermore, as his counsel points out, the effect of s21(1)(b) of the 2018 Act is that Claimant is in a materially different position to the vast majority of those designated under the 2019 Regulations because his British citizenship means he is subject to a worldwide asset freeze. The consequence is that any attempt to deal with any of the Claimant's assets, no matter where they are located, would amount to a criminal offence.

141. However, in my view, Mr Reed's statements demonstrate that the Secretary of State has had conscientious regard to the impact of designation on both the Claimant and his family. They have properly been taken into account but have been found insufficient to outweigh the community interest in the maintenance of sanctions in the Claimant's case. In my view, whilst the effects of designation are serious, and the Claimant and his family have been subjected to enormous inconvenience and no little financial loss, they

do not threaten his life or liberty. The effects of designation are temporary and reversible, not fixed and permanent. The Claimant is not permanently deprived of his property; he is simple deprived of the use of that property for the period it is thought necessary to maintain the sanctions.

142. Moreover, the effect of the measures are ameliorated, at least to some degree, by the licensing arrangements in place. Mr Reed explains that the Secretary of State is aware of the Claimant's complaints about the working of the licensing arrangements but makes the fair point that if there has been legal or administrative error in the processing of those complaints the Claimant is able to challenge those decisions or delays by judicial review. He has highly experienced and competent legal advice available to him to advance such a challenge.

143. Furthermore, under s23 of the 2018 Act the Claimant was entitled to seek a variation or revocation of his designation, and by s38(1) he was entitled to do what he is doing now and challenging the failure of the defendant to make such variation or revocation.

144. In my view, it cannot properly be said that the Secretary of State has failed to strike a fair balance between the rights of Mr Shvidler and his family and the interests of the community.

145. It follows, having applied the *Bank Melatt* test to assess the proportionality of the decision, the first ground of challenge must be rejected.

Discrimination

146. I turn finally to the second ground of challenge. The issue of unlawful discrimination occupied a tiny fraction of the argument before me.

147. Lord Anderson contends that the Secretary of State has applied his discretion to impose sanctions against the former directors of Evraz plc on a discriminatory basis, and in a manner which is contrary to Article 14 of the Convention, read with Article 8 and A1P1. Accordingly, he says his decision is unlawful under s6 HRA. Relying on *Sejdić and Finci v. Bosnia and Herzegovina* (Applications nos. 27996/06 and 34836/06, Grand Chamber, 2009), [43-44], he says that where (as here) the difference in treatment is based on race or ethnicity, the notion of objective and reasonable justification must be interpreted as strictly as possible.

148. He points out that the sole basis on which the Secretary of State has concluded that the Claimant is himself an "involved person" (rather than merely associated with such a person) is that he is a former non-executive director of Evraz. He says that the Claimant resigned his position as a non-executive director of that company on 10 March 2022, the day Mr Abramovich was designated and two weeks before his own designation. Eight other members of the board resigned on the same day. Until 2 November 2022 (when Alexander Abramov and Alexander Frolov were designated), Mr Shvidler was the *only* board member to have been designated on the basis of his role with Evraz. Five former board members of Evraz resigned on the same day, but have not been designated.

149. He says that the only directors of Evraz sanctioned by reason of their role on its board are of Russian ethnicity. None of the non-Russian directors have been designated by

reason of their role on the Board. This, he says, is a difference in treatment of persons in analogous or relevantly similar situations on the grounds of ethnicity, without objective or reasonable justification, contrary to Article 14 read with Article 8 and A1P1.

150. In response, Sir James says that absolutely no evidence has been adduced to support the suggestion that the Secretary of State designated the Claimant because of his race or ethnicity and that the inference the Claimant seeks to draw is unwarranted. He says that it is the cumulative effect of the two grounds relied on by the Secretary of State, his role with Evraz and his association with Mr Abramovich that led to his designation.

151. In my judgment, Lord Anderson's case on discrimination is hopeless. The Claimant's case in this regard proceeds on inference without foundation. It is plain from all the evidence that the reason that the Claimant was designated was not just his role at Evraz but the combination of that role with his relationship with Mr Abramovich. That is why the other directors of Evraz to whom the Claimant refers, Sir Michael Peat, Karl Gruber, Deborah Gudgeon and Stephen Odell, were not designated. There is no evidence to suggest it was the race, nationality or ethnicity of those individuals played a part in the Defendant's decision making.

152. Similarly, it was the combination of relevant factors in the case of Messrs Abramov, Frolov and Tenebaum that led to their designation. Mr Abramov and Mr Frolov were not only non-executive directors of Evraz but was also part of the concert party or arrangement that controlled the company. Mr Tenebaum was designated on the basis of his association with Mr Abramovich.

153. In those circumstances, Ground 2 is dismissed.

Conclusion

154. For those reasons, this review is dismissed.