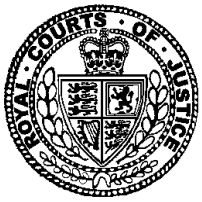

Neutral Citation Number: [2024] EWHC 32 (Admin)

Case No: AC-2023-LON-1868

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12 January 2024

Before :

MR JUSTICE JOHNSON

- -

Between :

GRAHAM WILLIAM PHILLIPS **Claimant**

- and -

THE SECRETARY OF STATE FOR FOREIGN, COMMONWEALTH AND DEVELOPMENT AFFAIRS **Defendant**

- -
- -

Joshua Hitchens (instructed by Savic & Co) for the Claimant
Maya Lester KC, Malcolm Birdling, Richard Howell and Ali Al-Karim (instructed by the Government Legal Department) for the Defendant

Hearing dates: 20 and 21 December 2023

- -

Approved Judgment

This judgment was handed down by release to The National Archives on 12 January 2024 at 10.30am.

Mr Justice Johnson:

1. This claim raises questions about the boundaries of the right to free speech, and the permissibility of interference with that right under legislation that allows the state to freeze the assets of those who support policies or actions that destabilise Ukraine. It arises in the context of Russia's invasions of Ukraine in 2014 and 2022.

2. The claimant says he is a journalist who reports on events in the Donbas region of Ukraine. He considers it his life work to provide what he calls "a counterbalance" to widespread western misunderstanding of the true situation in the region. He says that he is the first mono-British national to be subject to sanctions by the British Government, and that his designation stems entirely from his expression of his own political opinions on social media to a primarily UK domestic audience.

3. The defendant says that the claimant is a propagandist for Russia, supported and feted by the Russian authorities, and that he publishes content that feeds into a Russian propaganda narrative, thereby supporting and promoting actions and policies which destabilise Ukraine and undermine or threaten Ukraine's territorial integrity, sovereignty, and independence.

4. The defendant designated the claimant for the purpose of financial sanctions, including asset freezing restrictions. The claimant applies to set aside a decision to maintain that designation.

5. The application raises the following issues:

   (1) The nature of the claimant's activities and the factual basis on which he was designated (see paragraphs 2 and 3 above).

   (2) Does the Sanctions and Anti-Money Laundering Act 2018 permit regulations that authorise the imposition of sanctions in response to free speech?

   (3) Do the Russia (Sanctions) (EU Exit) Regulations 2019 permit the imposition of sanctions in response to free speech?

   (4) Is the continuing maintenance of the claimant's designation an unlawful interference with his rights to freedom of expression, respect for his private and family life, and peaceful enjoyment of his possessions?

6. The claimant relies on his written witness statements and exhibits to those statements. The defendant relies on statements from a Deputy Director in the Sanctions Directorate of the Foreign, Commonwealth and Development Office ("FCDO"), together with extensive documentary exhibits.

7. Joshua Hitchens, for the claimant, and Maya Lester KC, for the defendant, provided me with focussed skeleton arguments which they supplemented with helpful oral submissions. I am grateful to them, and those working with them, for the excellent way in which the case was presented on both sides.

The background

Russia's invasions of Ukraine

8. In 2014, Russia invaded Ukraine and annexed Crimea and Sevastopol. The United Nations General Assembly passed resolution 68/262, calling upon all states to refrain from actions aimed at disrupting the territorial integrity of Ukraine and underscoring that Russia's annexation of Crime and Sevastopol had no validity.

9. In February 2022, Russia again invaded Ukraine. The United Nations General Assembly passed resolution ES-11/1, deploring Russia's aggression against Ukraine, endorsing the Secretary General's statement that Russia's military offensive was contrary to the United Nations Charter, and reaffirming that no territorial acquisition resulting from Russia's threat or use of force shall be recognised as legal. Russia's offensive continues, approaching two years since the 2022 invasion.

10. On 30 September 2022, Russia purported to annex the Donetsk, Luhansk, Kherson and Zaporizhzhia regions of Ukraine following "independence referendums". The overwhelming consensus of the international community is that the referendums were illegal and, in effect, a sham: United Nations General Assembly Resolution ES-11-4.

11. Uncontested evidence served on behalf of the defendant (comprising a statement from a Deputy Director in the Sanctions Directorate of the FCDO, together with exhibits) testifies that:

> "…Russia's war in Ukraine represents not only a threat to the United Kingdom's national security, but 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. Russia's barbaric and continued targeting of Ukraine's civilians and civilian infrastructure has precipitated a dire humanitarian crisis and has caused at least 25,671 civilian casualties, including 9,287 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."

President Putin's political propaganda

12. Alongside the ongoing land war, Russia wages a misinformation, disinformation and propaganda war ("the propaganda war"), taking advantage of social media to multiply its reach and penetration. This is described in a paper published by the Organisation for Economic Co-operation and Development dated 3 November 2022, "Disinformation and Russia's war of aggression against Ukraine: Threats and governance responses." The aim of Russia's propaganda war is to cause confusion, build support for Russia's goals, and undermine the perceived legitimacy of Ukraine's response. It pays people to post manipulative messages online. It uses online accounts, purporting to belong to journalists, to spread disinformation. Where someone posts a message that is consistent with Russia's viewpoint on a social media platform, or a newspaper's online comments

forum, it will amplify the message in order to convey a misleading impression of public support for the message, and also to evade tools used by social media platforms to seek to reduce the spread of disinformation. Facebook says that the countries that are most frequently targeted by foreign disinformation operations are the United States, the United Kingdom and Ukraine.

13. The themes of Russia's propaganda war include:

(1) Messages based on historical revisionism that question Ukraine's status as a sovereign state.

(2) Claims about neo-Nazi infiltration in Ukraine's government.

(3) Claims of threats to Russian populations in Ukraine.

(4) Claims of the Ukrainian government committing genocide in parts of Donetsk and Luhansk.

14. The OECD paper suggests that there is a need, on the part of the international community, "for rapid and continued evolution in ways to counteract" Russia's propaganda war. In respect of the use of sanctions, it says:

> "…A straightforward, though potentially problematic, means of countering Russian disinformation on the war in Ukraine has been blocking or sanctioning media outlets that spread it. The European Union has applied sanctions on [Russia Today] and Sputnik. This only applies within the European Union and… the Russian government responded in kind, banning… other international media outlets… In support of the EU sanctions, some governments, such as the United Kingdom, suspended the broadcasting rights or banned Sputnik and Russia Today from operating in an attempt to limit the spread of Russian disinformation… The European Union also directly sanctioned Russian individuals in the media in response to Russia's invasion of Ukraine. This includes key personalities, such as [Russian journalists and hosts of TV shows]. The sanctions include travel bans and asset freezes, as well as limitations to making funds available to the listed individuals... The bans went ahead despite concerns raised over retaliation… which occurred when Russia directly blocked the BBC, Deutsche Welle and Voice of America... This response highlights the need to weigh the potential benefits of slowing the spread of disinformation via such bans with the clear risks they pose. Specifically, the corresponding blockages of outlets in Russia makes it increasingly difficult to share accurate information with Russian citizens about the war, already a major challenge. Banning Russian media also opens the door to accusations over freedom of expression."

The claimant's activities

15. The claimant says he is a journalist, that he was chosen by The Guardian newspaper as a "student brand manager" and that he received some training from The Guardian.

16. He has worked for the Russian state-owned broadcaster, Russia Today. He has also featured on Russia's main state television channels, Rossiya-1 and Rossiya-24.

17. Since 2014, the Claimant has worked as a video blogger, producing content from Donetsk and Luhansk (areas of Ukraine controlled by proxy Russian administrations). His content has been widely disseminated on social media. At one point, he had 330,000 subscribers to his YouTube channel, 38,000 followers on Twitter and 22,000 subscribers on Telegram. He has uploaded around 2,000 videos to YouTube. Some of these have been viewed 1.8 million times, and the total number of views of his videos is in excess of 110 million.

18. In February 2022, the claimant was in the UK. On 22 February 2022, two days before the Russian invasion, he celebrated Russia's recognition of the "Donetsk People's Republic" and the "Luhansk People's Republic", saying it was a "celebration for all of those who support the truth, what's right and justice prevailing." On 26 February 2022, two days after the invasion, he welcomed the invasion. He placed the blame for the war on the Ukrainian government and its backing of "neo-Nazi organisations and battalions" and said it was necessary to "denazify" Ukraine.

19. In March 2022, the claimant travelled to Belarus. On 5 March 2022, he published a video in which he said that Ukraine had engaged in genocide in the Donbas and said that the Russian invasion was not a "war of Russia against Ukraine, it's war against those entities flying Nazi flags, Nazi symbols, Nazi salutes, honouring Nazi collaborators." On 14 March 2022, the claimant published a video in which he said the invasion was an "intervention" and "tough love" which was necessary to "save" and "rescue" Ukraine after it "surrender[ed]… to fascism, neo-Nazism and extremism." On 19 March 2022, he said that Russia's military action was "karma" for Ukraine's tacit support for bombing civilians in the Donbas region.

20. Thereafter, the claimant went to non-government-controlled parts of Ukraine. He has remained there, largely behind Russian lines, ever since. He has been given access to the frontline by the Russian military. He displays the "Z" symbol (signifying support for Russia's invasion) on his clothing and vehicle. There is no evidence of any journalist working for a recognised western media organisation wearing Russian uniform or displaying the "Z" symbol.

21. The claimant has received medals from (among others) a branch of Russia's Federal Security Service for his work reporting on the Donbass, and from the Luhansk People's Republic. The claimant says he is "proud" to accept these awards "with a clear conscience" because of his "warm relationship with Russia."

22. On 18 April 2022, the claimant published a video of a 44-minute "interview" that he conducted with Aiden Aslin. Mr Aslin was serving with the Ukrainian Armed Forces. He was taken prisoner by Russian forces, and tortured, following the fall of Mariupol in April 2022. The interview was conducted whilst Mr Aslin was still a prisoner and in handcuffs and in circumstances where he had been told he faced the death penalty. Mr

Aslin has since been released. He says that the claimant knew his captor and torturer. He feared punishment if he did not comply with the "interview", which he describes as a "charade" and akin to "propaganda". He says it was conducted under duress. The claimant was clearly aware of the requirements of the Geneva Conventions, which he references at the start of the interview. During the interview, the claimant puts to Mr Aslin questions about the Ukrainian Armed Forces such as that he "must have worked out that these guys are Nazis?" He said that the Ukrainian armed forces were "animals, scumbags, barbarians." The claimant gets Mr Aslin to denounce the way in which Russian prisoners of war are treated by Ukrainian captors, to say that he had "joined the wrong side" and (under heavy prompting) that the Ukrainian Azov Battalion is "fanatics, criminals, Nazis" and that President Putin's demands were reasonable. The claimant questions Mr Aslin about his conduct during the war. The claimant suggests to Mr Aslin that he "must accept responsibility for [his] decisions", that he was a mercenary, and that the appropriate penalty for his conduct was the death penalty. According to the defendant's documentation (and this is not contradicted by the claimant), this interview was used to support Mr Aslin's conviction and the imposition of a death sentence. In the event, Mr Aslin was subsequently released in a prisoner swap.

23. On 21 May 2022, the claimant posted a video about the fall of Mariupol, which he said was "a huge victory, a monumental moment in history – the returning of Mariupol to the will of the people."

24. On 29 June 2022, the claimant posted a message on Facebook in which he said "… I'll do more interviews with POWs etc, if I want to. Everything I do is determined on the basis of journalistic merit, if there's a need to do it, if it gives information on the situation here…"

25. In September 2022, the claimant posted videos of voters at a polling station in the referendum which was denounced by the United Nations General Assembly (see paragraph 10 above). He said that the ballots were cast "in accordance with proper voting practice and procedure". He asked each "voter" to show their ballot paper on camera. All ballots shown were cast in favour of Russia. He interviewed several individuals, all of whom said that they had voted in favour of joining the Russian Federation.

26. In October 2022, the claimant posted a video of himself wearing Russian military fatigues, bearing Russian insignia, and firing an automatic machine gun at an improvised firing range. He initially fires single shots. A man (who appears to be a Russian solider) then adjusts the weapon, and the claimant then fires it in automatic mode. The caption reads "As Donbass goes into a war footing, I go to an improvised firing range, almost on the frontline itself, to brush up on my shooting skills." The next caption reads "From my side, this is really just symbolic, the 'war footing' doesn't have a direct impact on myself, or my work…" He drives away in a Range Rover with "Z" insignia.

27. On 15 October 2022, the claimant shared an image on Telegram showing himself standing in front of a Russian flag, wearing combat uniform and camouflage. It appears that the camouflage was taken from a dead Ukrainian soldier by a Russian solider, who then provided it to the claimant. The caption says, "now I'm a peaceful person who prefers to film peaceful things, but when your mate gives you some awesome camo –

British camouflage from a Ukrainian soldier who no longer needed it – then it is time to camo up and get yourself to the frontline!!!"

28. On 7 March 2023, the claimant shared a video on Telegram showing the summary execution of an unarmed Ukrainian soldier. The caption read "Now imagine if everyone who repeated Nazi slogans was dealt with so effectively…"

The decision to designate the claimant

29. On 19 April 2022, there was reporting in the UK press of the claimant's interview of Mr Aslin. The claimant was described as a "modern-day Lord Haw-Haw" (see paragraph 49(3) below).

30. On the same day, the UK Government reported the video to YouTube and suggested that it contravened article 13 of the third Geneva Convention. There followed many more attempts to persuade YouTube to remove the video. They eventually did so on 22 April 2022.

31. On 20 April 2022, a senior communications officer in the FCDO sent an email to another official to say that the Foreign Secretary "sounds very keen on sanctioning Graham Phillips…" On 26 April 2022, an official in the Sanctions Taskforce said that they were "still working through some issues re the proportionality of designating him, as he's a sole British national." A large number of other people and organisations were also being considered for sanctions. On 28 April 2022, an official in the Sanctions Taskforce prepared a Ministerial submission that recommended sanctioning a number of organisations and individuals, including the claimant. It was emphasised that the claimant was a sole British national and that designation would significantly impact his rights. It was said that officials were content that designation was appropriate.

32. The final version of the submission was sent to Ministers on 3 May 2022, and approved the same day. A point was made on behalf of the claimant that this indicates undue haste and inadequate consideration of the competing arguments. I disagree. The email chain shows that the submission had been in preparation since 28 April 2022. Time had been made available in the Minister's diary on the morning of 3 May 2022 specifically to consider the submission. The submission was sent at 10.10am. A final version was sent at 11.54am. The Minister's approval was confirmed at 12.05pm. Anyway, this was not the operative decision for the reasons explained below. A further point is made about emails discussing briefing the sanctions to newspapers. I do not consider that anything turns on this. Part of the purpose of the sanctions is to dissuade others from supporting Russia's propaganda war. In that context, the pursuit of a media strategy in respect of the sanctions was not improper.

33. Following Ministerial approval of the designation, the final decision was to be made by an official, acting on behalf of the Secretary of State. The initial intention was to announce the claimant's designation on 6 May 2022, separate from other designations that were also being announced. However, those responsible for the communications strategy did not want to announce the claimant's designation individually. This was in part because he had previously worked as a UK civil servant. In the end, it was decided not to designate him at that stage, but instead to include him in a future package of designations. This then took place on 26 July 2022. The Designation Form and

Evidence Pack (running to 80 pages) which had been compiled in April 2022 provided the evidential case for the designation.

34. Although the claimant makes much of this delay, nothing turns on it. The delay may show that the claimant's designation was not considered especially urgent. That is not particularly surprising. Even though the underlying purpose was connected with the UK's national security, the claimant did not on any view, individually, pose an immediate and significant risk to UK national security.

35. On 27 July 2022, the claimant sought the revocation of his designation. Extensive further correspondence followed over the ensuing months. The claimant's application was considered at a meeting on 24 January 2023. The meeting was attended by 7 officials from the FCDO sanctions directorate and Eastern Europe and Central Asia directorate (including at least 4 who were from units concerned with Ukraine or Russia or Russia/Belarus designations), and 2 legal advisors. The Designation Form and Evidence Pack had been circulated to attendees in advance of the meeting. The minutes of the meeting record (under the heading "discussion") that the attendees considered the arguments that had been advanced by the claimant and that open-source research was undertaken. The minutes then state:

> "Following discussion by the Panel, the Panel concluded that the legal test of reasonable grounds to suspect PHILLIPS was an "involved person" as defined by the 2019 regulations continued to be met and that the designation continued to be proportionate. The recommended outcome was to maintain the designation. The panel considered the designation remained justified on policy grounds."

36. The claimant points out that this record of the discussion is very brief. However, it needs to be read in the context of the Designation Form and Evidence Pack which set out the claimant's activities in detail, and explain, in detail, the reasons why his designation was said to be justified. The following reasons are given for concluding that the designation of the claimant was rationally connected to the objective and that no less restrictive measure could have been used:

> "(ii) Whether the measure is rationally connected to the objective.
>
> 7. The designation of PHILLIPS is rationally connected to the objective because it contributes to achieving the purpose set out in regulation 4 in, at least, the following ways:
>
> a. it sends a strong message to PHILLIPS (and those members of the public who may access the media he creates) that the UK does not accept his support for or promotion of policies and action which destabilise Ukraine or undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, as well as incentivising PHILLIPS and others similarly engaged to change their behaviour, especially in the knowledge that such a measure is temporary and reversible;

> b. it sends a strong political message to 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;
>
> c. it may incentivise the Government of Russia to change its behaviour, and to cease the acts set out in (ii); and
>
> d. 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.
>
> (iii) Whether a less restrictive measure could have been used
>
> 8. It has been considered whether there is a less restrictive measure that could achieve the same objectives but none were identified. As PHILLIPS is a mono British national, only one sanction measure is available so there was no option to consider imposing fewer sanction measures as there might be for designations where a travel ban is also imposed. The Secretary of State has considered whether there are other (non-sanction) measures which could achieve the same objectives (e.g. by issuing a public condemnation, expressing concerns through diplomatic channels or by seeking to counter the particular views expressed in particular reports). While there are potentially a number of steps that the Secretary of State could take, the Secretary of State concluded that, in light of the conduct set out above, and the importance of the objectives set out above, anything short of the imposition of sanctions would not achieve the objectives sought to be achieved. In particular, it would not send a sufficiently strong message to PHILLIPS, and those who may access the media that he produces (and the Government of Russia and international community generally), that the UK does not accept his support for or promotion of policies and actions which destabilise Ukraine or undermine or threaten the territorial integrity, sovereignty and independence of Ukraine. It was also concluded that only sanctions would adequately incentivise PHILLIPS and others similarly engaged to change their behaviour, not least because such a measure is temporary and reversible.
>
> 9. Ultimately, PHILLIPS is subject to an asset freeze only. Any lesser measure would not achieve the effects above and would not send a clear enough message to deter others from assisting Russia in its actions against Ukraine."

37. On 26 January 2023, a Ministerial submission was sent with a recommendation that the Minister maintain the designation. On 30 January 2023, the Minister's agreement with

the recommendation was noted. On 31 January 2023, the formal decision was made, by an official (acting on behalf of the Secretary of State) who had been present at the meeting on 24 January 2023.

38. The claimant was informed of the decision under cover of a letter dated 1 February 2023. There was a variation of one aspect of the rationale given for the initial designation of the claimant. Part of that initial rationale was that the claimant had obfuscated crimes committed by the Russian military in Bucha. That part of the rationale had been based on media reporting on the claimant's videos rather than, directly, on the content of the videos themselves. The claimant made extensive representations to the effect that the media reporting was inaccurate. Following those representations, the reliance on the claimant's reporting about the events in Bucha was withdrawn.

39. On 19 June 2023, the claimant started these proceedings, under section 38 of the 2018 Act. He seeks an order quashing the designation decision, and declarations that it was unlawful on grounds of illegality, breach of the claimant's rights under article 10 and article 1 of the first protocol to the European Convention on Human Rights ("ECHR"), an order requiring the defendant to strike his name from the Sanctions List, and an order quashing regulation 6(3)(a) of the 2019 Regulations (which he says is *ultra vires* the 2018 Act if they permit interference with free speech).

The impact of designation on the claimant

40. As soon as the claimant was designated, his bank account was frozen. Paypal and Patreon (which the claimant used for crowdfunding) terminated his accounts. His YouTube account "went into indefinite demonetisation." His entire income stream was eliminated. His UK bank account has less than £500 in it. He now has debts of thousands of points. A summons has been issued for unpaid council tax on his property in London. He is being pursued for other unpaid debts. He has been denied "priceless time back in the UK with my elderly parents, and my daughter." He has received many death threats.

41. The claimant is entitled to apply for licences to enable him to meet his basic and other needs. In other cases, those subject to sanctions have been able to spend substantial sums of money as a result of the grant of licences: *R (Fridman) v HM Treasury* [2023] EWHC 2657 (Admin) *per* Saini J at [32]. The claimant has declined to apply for licences. He takes a highly principled position. He considers that the sanctions are entirely illegal and illegitimate. He does not wish to "buy into" the system, or lend it any credibility, by applying for licences.

The legal framework

Free speech and prohibition of propaganda

42. Free speech is a fundamental common law right: *R v Shayler* [2002] UKHL 11; [2003] 1 AC 247 *per* Lord Bingham at [21]. It has been described as "the primary right" without which "an effective rule of law is not possible", "the lifeblood of democracy" and "a brake on the abuse of power by public officials": *R v Secretary of State for the Home Department ex parte Simms* [1999] 2 AC 115 *per* Lord Steyn at 125G and 126F-H. It "constitutes one of the essential foundations of a democratic society and one of

the basic conditions for its progress and for each individual's self-fulfilment": *R (Lord Carlile) v Home Secretary* [2014] UKSC 60; [2015] AC 943 *per* Lord Sumption at [13], *Sunday Times v United Kingdom* (1979-80) 2 EHRR 245 at [65], *Handyside v United Kingdom* (1979-80) 1 EHRR 737 at [49]. George Orwell ("If liberty means anything at all, it means the right to tell people what they do not want to hear"), Theodore Roosevelt ("To announce that… we are to stand by the President, right or wrong… is morally treasonable…") and Voltaire (or, at any rate, his biographer, Evelyn Beatrice Hall, "I disapprove of what you say, but I will defend to the death your right to say it") all recognised that if free speech is to have value, it has to encompass dissent. Political dissent must be allowed to take its place in John Stuart Mill's free competitive marketplace of ideas – "the best test of truth is the power of the thought to get itself accepted in the competition of the market": *Abrams v United States* (1919) 250 US 616 *per* Holmes J (dissenting) at 630, quoted by Lord Steyn in *Simms* at 126F. In *Shayler*, Lord Bingham said, at [21]:

> "…Modern democratic government means government of the people by the people for the people. But there can be no government by the people if they are ignorant of the issues to be resolved, the arguments for and against different solutions and the facts underlying those arguments. The business of government is not an activity about which only those professionally engaged are entitled to receive information and express opinions. It is, or should be, a participatory process. But there can be no assurance that government is carried out for the people unless the facts are made known, the issues publicly ventilated."

43. Genuine political dissent is therefore afforded strong legal protection:

(1) Speeches made during Parliamentary proceedings, and papers distributed in the course of Parliamentary proceedings, are subject to absolute legal immunity: *Lake v King* (1667) 83 ER 387, article 9 of the Bill of Rights 1689, Parliamentary Papers Act 1840, *A v United Kingdom* (2002) 36 EHRR 917.

(2) Interferences with the freedom of expression of opposition politicians call for "the closest scrutiny on the part of the Court": *Castells v Spain* (1992) 14 EHRR 445 at [43]. There is "little scope under Article 10(2) of the Convention for restrictions on political speech or on debate of questions of public interest": *Wingrove v United Kingdom* (1997) 24 EHRR 1 at [58], *R (Miller) v College of Policing* [2021] EWCA Civ 1926; [2022] 1 WLR 4987 *per* Dame Victoria Sharp P at [73].

(3) In this context, the law protects not just against direct interference with free speech, but also the indirect "chilling effect" of deterring others from exercising their rights to free speech: "[t]he concept of a chilling effect… is… extremely important", particularly where it concerns speech "on controversial matters of public interest": *Miller* at [68].

(4) The role of the press to act as a "public watchdog" in imparting information and ideas on all matters of public interest and serious public concern is an essential function in a democratic society. That requires legal protection, where the journalist

is acting responsibly, even where there is a degree of exaggeration or provocation: *Blated Tromsø and Stensaas v Norway* (2000) 29 EHRR 125 at [59].

(5) In *Simms* the Secretary of State sought to restrict the ability of a journalist to interview prisoners who maintained that they had been wrongly convicted. At 127C, Lord Steyn said "The prisoners are in prison because they are presumed to have been properly convicted. They wish to challenge the safety of their convictions. In principle it is not easy to conceive of a more important function which free speech might fulfil."

(6) Even where speech is defamatory of another person, and contains a false statement of fact, qualified privilege may attach. In *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127 the House of Lords recognised that qualified privilege attaches to the responsible publication of political information. At 200D, Lord Nicholls said "…freedom to disseminate and receive information on political matters is essential to the proper functioning of the system of parliamentary democracy cherished in this country."

(7) For the same reasons, a similarly high level of protection can, in principle, also extend to responsible "citizen journalists" and "bloggers" and "popular users of social media", although it is necessary to recognise that "the risk of harm posed by content and communication on the internet is higher than that posed by the press": *Delfi AS v Estonia* (2016) 62 EHRR 6 at [133], *Editorial Board of Pravoye Delo* (2014) 58 EHRR 28 at [63], *Magyar Bizottsag v Hungary* (appln no 18030/11, 8 November 2016) at [168].

(8) In *Redmond-Bate v Director of Public Prosecutions* (1999) 163 JP 789 the appellant was convicted of obstructing a constable in the execution of his duty when she refused his request to stop preaching in order to avoid disorder. Her appeal was allowed. Sedley LJ said:

> "[Counsel] was prepared to accept that blame could not attach for a breach of the peace to a speaker so long as what she said was inoffensive. This will not do. Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having. What Speaker's Corner (where the law applies as fully as anywhere else) demonstrates is the tolerance which is both extended by the law to opinion of every kind and expected by the law in the conduct of those who disagree, even strongly, with what they hear. From the condemnation of Socrates to the persecution of modem writers and journalists, our world has seen too many examples of State control of unofficial ideas."

(9) In *R (Director of Public Prosecutions) v Manchester City Magistrates' Court* [2023] EWHC 2938 (Admin) the DPP appealed against acquittals of two protestors of public order offences. They had shouted "Tory scum" and intended, and did, cause alarm. The Divisional Court (Popplewell LJ and Saini J) upheld the judge's finding that the defendants had a defence of reasonable conduct.

(10) In such cases, the court has an important role as "the constitutional guardian of the freedom of political debate" and thus as a trustee "of our democracy's framework": *R (Prolife Alliance) v BBC* [2002] EWCA Civ 297; [2004] 1 AC 185 *per* Laws LJ at [36].

44. There are limits to the important general rule that dissent enjoys a high degree of protection – see *Aldi v General Medical Council* [2023] EWCA Civ 1261 *per* Popplewell LJ at [50]:

> "…Bean LJ posited a hypothetical example of a doctor who published views that there was no link between cancer and smoking, that smoking was good for health, and that people were encouraged to smoke at least 40 cigarettes a day. In such a case the views would be so far removed from any concept of legitimate medical debate that an appeal to the importance and breadth of the freedom of expression protected by article 10 would be misplaced. All depends upon the facts of each individual case, and Mr Hoar's appeal to some general principle in relation to medical or political debate obscures the need to focus on the particular views expressed by the appellant in this case."

45. There are thus circumstances in which lesser protection is afforded. These include cases where there is a "tense political… background", particularly involving violent conflict, or where the speech involves a call for violence, or a justification of violence or hatred or intolerance, or where the speech involves sweeping statements attacking or casting in a negative light entire groups: *Perinçek v Switzerland* (2016) 63 EHRR 6 at [204] – [225]. The protection afforded by article 10 ECHR does not normally extend to "expression that promotes or justifies violence, hatred, xenophobia or another form of intolerance": *RT France v Council* Case T-125/22 at [139] (citing *Sűrek v Turkey (No 1)* (8 July 1999) at [61] – [62] and *Perinçek* at [197] and [230]). Recognised contexts in which free speech may be curtailed therefore include public order offences and incitement to violence. They also include certain terrorism offences, including encouraging terrorism and disseminating terrorist publications: sections 1, 2 Terrorism Act 2006.

46. Further, the important policy considerations that underpin free speech show that it would be wrong to afford equal protection to all speech. That is because the essential contribution that free speech makes to a democratic society depends on a functioning democratic marketplace in free thought and ideas. That marketplace can be distorted by speech itself. In the online world of social media, bots, trolls, cyber troops, false and hacked accounts can be used to drown out genuine free speech and replace it with a dishonest narrative to suit the whim of an autocrat, government or some other powerful body or person. Propaganda, disinformation and misinformation, particularly in time of war, can be corrosive of democracy and national security. Such tools are "capable of undermining the foundations of democratic societies and are an integral part of the arsenal of modern warfare": *RT France* at [56].

47. The International Covenant on Civil and Political Rights requires that everyone has the right to freedom of expression (article 19), but article 20 requires the legal prohibition of "propaganda for war":

> "1. Any propaganda for war shall be prohibited by law.
>
> 2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

48. At common law, "all intercourse or communication across the line of war" is prohibited: *Sovfracht v Van Udens Scheepvaart en Agentuur Maatschappij* [1943] AC 203 *per* Lord Wright at 217. Lord Wright explained that the rule had its foundation in "the ancient common law". He cited *Gist v Mason and others* (1786) 1 Term Rep 88. In *Gist*, Lord Mansfield CJ referred to two cases which established that trading with the enemy was prohibited: "one of which is a short note (2 Roll Abr 173), where trading with Scotland, then in a general state of enmity with this kingdom, was held to be illegal, and the other was a note (which is now burned) which was given to me by Lord Hardwicke, of a reference in King William's time to all the Judges, whether it were a crime at the common law to carry corn to the enemy in time of war, who were of opinion that it was a misdemeanour."

49. There are a number of examples of prohibitions on the dissemination of propaganda during war or conflict:

(1) A directive issued under section 29(3) of the Broadcasting Act 1981 prevented the broadcast of words spoken by representatives of proscribed terrorist organisations. A challenge to the directive failed: *R v Secretary of State for the Home Department ex parte Brind* [1991] 1 AC 696. At 749C Lord Bridge said:

> "In any civilised and law-abiding society the defeat of the terrorist is a public interest of the first importance. That some restriction on the freedom of the terrorist and his supporters to propagate his cause may well be justified in support of that public interest is a proposition which I apprehend the applicants hardly dispute."

(2) Article 13(1)(b)(i) of the Southern Rhodesia (United Nations Sanctions) (No 2) Order 1968 enabled the Secretary of State to impose sanctions on persons who "furthered or encouraged… any unconstitutional action in Southern Rhodesia". Sanctions under this power were imposed on senior executives of the Rhodesia Broadcasting Corporation and Rhodesia Television Ltd.

(3) William Joyce ("Lord Haw-Haw") was a British passport holder who, between September 1939 and July 1940, worked for a German radio company and delivered from Germany broadcast talks in English that were hostile to the UK, amounting to "propaganda on behalf of the … enemies of our Lord the King." The House of Lords upheld his conviction for treason: *Joyce v Director of Public Prosecutions* [1946] AC 347. He was the last person to be sentenced to death for treason in the UK. The United States also recognises that this type of conduct can amount to the crime of treason, notwithstanding the protection afforded by the First Amendment to the US Constitution. Mildred Gillars participated "in the psychological warfare of the German Government against the United States" between 1941 and 1945 by making radio broadcasts and phonographic recordings for the German Radio Broadcasting Company which comprised propaganda laid down by the German

Propaganda Ministry. Her conviction for treason was upheld by the US Court of Appeals for the District of Columbia Circuit: *Gillars v United States* 182 F 2d 969 (DC Cir 1950) *per* Judge Fahy:

> "While the crime is not committed by mere expressions of opinion or criticism, words spoken as part of a program of propaganda warfare, in the course of employment by the enemy in its conduct of war against the United States, to which the accused owes allegiance, may be an integral part of the crime. There is evidence in this case of a course of conduct on behalf of the enemy in the prosecution of its war against the United States. The use of speech to this end… made acts of words. The First Amendment does not protect one from accountability for words as such. It depends upon their use. It protects the free expression of thought and belief as a part of the liberty of the individual as a human personality. But words which reasonably viewed constitute acts in furtherance of a program of an enemy to which the speaker adheres and to which he gives aid with intent to betray his own country, are not rid of criminal character merely because they are words."

(4) The Defence (General) Regulations 1939 created an offence of acts that are "likely to assist the enemy." Such an offence could be committed by preparing propaganda for enemy broadcasts: *Wicks v DPP* [1947] AC 362 *per* Viscount Simon at 365.

(5) Section 1(2)(a) of the Trading with the Enemy Act 1939 prohibits "any commercial, financial or other intercourse or dealings with… an enemy" which includes "perform[ing] any obligation to… an enemy".

50. It is not always easy to distinguish between legitimate political dissent, worthy of the highest protection, and illegitimate propaganda which might justifiably be the subject of censorship - "dissent [can be] difficult to distinguish from actual aid to the enemy": Emerson, Freedom of expression in wartime, University of Pennsylvania Law Review 116 (1968) 975.

51. A series of cases concerning Turkey's terrorism legislation (which sought to outlaw "propaganda… aimed at undermining the territorial integrity of the Republic of Turkey") and decided by the European Court of Human Rights in the late 1990s explore this issue: *R v Choudary* [2016] EWCA Crim 61; [2018] 1 WLR 695 *per* Sharp LJ (giving the judgment of the Court of Appeal (Criminal Division)) at [73] – [89]. A literary historical analysis of the events in Turkey involving Kurds was protected, as was poetry; letters which portrayed the PKK activity as acts of national liberation was not. However, no bright line principle emerges, and it is necessary to carry out an intensive factual analysis of the circumstances: Sharp LJ at [89].

Convention rights

52. The defendant is a public authority: section 6(3)(b) Human Rights Act 1998. It is unlawful for the defendant to act in a way which is incompatible with a Convention right: section 6(1) of the 1998 Act. Convention rights include articles 8 and 10 ECHR, and article 1 of the first protocol to the ECHR: section 2 of the 1998 Act.

53. Article 8(1) gives everyone the right to respect for his private and family life, his home and his correspondence. Article 8(2) prohibits any interference by a public authority with the exercise of the right under article 8(1) "except such as is in accordance with the law and is necessary in a democratic society in the interests of national security…"

54. Article 10(1) gives everyone the right to freedom of expression. Article 10(2) states that the exercise of the right to freedom of expression "may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity…" Article 10 is based on the common law right to freedom of speech and is no different in principle from the common law: *Attorney General v Guardian Newspapers Ltd (No 2)* [1990] 1 AC 109 *per* Lord Goff at 283F – 284A, *Kennedy v Information Commissioner* [2014] UKSC 20; [2015] AC 455 *per* Lord Mance at [46].

55. Article 1 of the first protocol gives everyone the right to the peaceful enjoyment of his possessions. It states: "No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law." It also provides that this does not "in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest…"

56. Each of these Convention rights is qualified. A public authority may interfere with the exercise of each of these Convention rights so long as that interference is justified. One of the conditions for justification is that the interference is "in accordance with the law" or "prescribed by law" or "subject to the conditions provided for by law". These different formulations mean the same thing. They impose a "legality requirement". The legality requirement does not just mean that there must be a law that authorises the interference. The law itself must be adequately accessible and must operate in a manner that enables citizens to foresee, to a reasonable degree, the consequences which a given action may entail. That does not mean that the consequences must be capable of being foreseen with certainty: *Sunday Times* at [49]. It is permissible for the law to confer a discretionary power to interfere with qualified Convention rights, so long as there is sufficient clarity as to the scope of that discretion and the manner of its exercise: *Malone v United Kingdom* (1985) 7 EHRR 14 at [68]. The law must also contain sufficient safeguards against arbitrary interference with Convention rights: *R (Gillan) v Commissioner of Police of the Metropolis* [2006] UKHL 12; [2006] 2 AC 307 *per* Lord Bingham at [34]. The legal framework does not have to "codify the answers to every possible issue which may arise." It is sufficient if it lays down the principles that are to be applied: *Catt v Association of Chief Police Officers* [2015] UKSC 9; [2015] AC 1065 *per* Lord Sumption at [11].

57. Legislation must be interpreted in a way which is compatible with Convention rights, so far as it is possible to do so: section 3 of the 1998 Act. That means that a Convention compliant interpretation should be applied, so long as that is possible, even if it results in an interpretation "which linguistically may appear strained": *R v A (No 2)* [2001] UKHL 25; [2002] 1 AC 45 *per* Lord Steyn at [44], *Ghaidan v Godin-Mendoza* [2004] UKHL 30; [2004] 2 AC 557 *per* Lord Nicholls at [30] – [32].

Sanctions under United Nations Act 1946 and European Union legislation

58. The modern history of the use of sanctions by the UK is set out by Sir Julian Flaux C in *Mints v PJSC National Bank Trust* [2023] EWCA Civ 1132 at [4] – [20].

59. United Nations Security Council Resolution 1267, and subsequent resolutions, required member states to freeze assets of entities designated by the Sanctions Committee. The UK gave effect to those resolutions by passing orders under the 1946 Act. The Supreme Court held that the orders were *ultra vires* the 1946 Act: *Ahmed v HM Treasury* [2010] UKSC 2; [2010] 2 AC 534. Thereafter, the UK gave effect to the UN's resolutions by using powers granted by EU legislation which took effect in UK law under the European Communities Act 1972.

60. One aspect of the EU's legislative response to Russia's 2014 invasion was decision 2014/145/CFSP. That decision concerns "restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine." Article 2(1) of decision 2014/145/CFSP provides for the freezing of all funds and economic resources belonging to, or owned, held or controlled by:

> "natural persons responsible for, actively supporting or implementing, actions or policies which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, or stability or security in Ukraine, or which obstruct the work of international organisations in Ukraine, and natural or legal persons, entities or bodies associated with them;"

61. This power was used to sanction (among many others) Dimitrii Kiselev because he was a "[c]entral figure of the government propaganda supporting the deployment of Russian forces in Ukraine." Mr Kiselev brought an action before the EU General Court seeking an annulment of the measures that had been imposed on him. His claim was dismissed. One of the court's findings was that it was foreseeable that article 2(1)(a) would cover "large-scale media support for the actions and policies of the Russian Government destabilising Ukraine, provided, in particular during very popular television programmes, by a person appointed by a decree of President Putin as Head of RS, a news agency that the appellant himself describes as a 'unitary enterprise of the Russian State…": *Kiselev v Council* Case T-262/15 at [76].

62. Decision 2014/145/CFSP was implemented in EU law by Council Regulation 2014/269/EU, which had effect in domestic law by reason of section 2 of the 1972 Act until 31 December 2020 (that is, the end of the implementation period following the UK's departure from the EU).

The 2018 Act

63. The 2018 Act was passed after the UK invoked article 50 of the Treaty on European Union, to begin the process of withdrawal from the EU. It makes provision to enable sanctions to be imposed where appropriate for purposes that include international peace and security and furthering foreign policy objectives (see the long title to the Act). The explanatory notes explain that these were matters that were (at the time that the Act was passed) dealt with through EU law, but that as a result of withdrawal from the EU it was necessary to create a new legislative framework:

> "…a new legislative framework was needed to provide powers to impose sanctions, to enable the UK to… continue to use sanctions as a foreign policy and national security tool once the European Communities Act 1972 has been repealed. The Act ensures maximum continuity and certainty; it sets up the powers that the UK will need to carry on implementing sanctions as it currently does."

64. The Act has been amended since it was first passed, but it has not been amended since the date on which the decision under challenge was made.

65. Section 1(1)(c) (read with section 1(9)(a)) gives the Secretary of State a power to make sanctions regulations where he considers that is appropriate for one or more specified purpose. The specified purposes include the interests of international peace and security and the furtherance of a foreign policy objective of the UK government: section 1(2)(c) and (d). Such regulations may impose financial sanctions. Financial sanctions may impose prohibitions or requirements for the purpose of freezing funds or economic resources owned, held or controlled by designated persons: sections 1(5)(a) and 3(1)(a). That means preventing the funds from being dealt with in any way (used, altered, moved, transferred or providing access to them): section 60(3). Financial sanctions may also prevent financial services from being provided to, or for the benefit of, designated persons: section 3(1)(b)(i).

66. The result is that (subject to the licencing regime) the designated person may be deprived "of any resources whatsoever" so that he is, effectively, a "[prisoner] of the state": *Ahmed v HM Treasury* [2008] EWCA Civ 1187; [2010] UKSC 2; [2010] 2 AC 534 *per* Sedley LJ (in the Court of Appeal) at [125] and *per* Lord Hope (in the Supreme Court) at [4] and [60].

67. A designated person is a person who is designated under the regulations: section 10(1). The regulations must provide that (except in urgent cases) the Secretary of State is prohibited from designating a person by name unless he has reasonable grounds to suspect that the person is an "involved person": section 11(2), (2A). An involved person includes someone who "is or has been involved in an activity specified in the regulations": section 11(3)(a). An activity may not be specified in the regulations by virtue of section 11(3) unless the Secretary of State considers that specifying the activity is appropriate, having regard to the purpose of the regulations: section 11(4). The regulations may make provision as to the meaning of a person being involved in an activity specified in the regulations: section 11(5).

68. Aside from financial sanctions, the Act also authorises regulations that impose immigration sanctions, trade sanctions, aircraft sanctions, shipping sanctions and other sanctions for the purposes of UN obligations: sections 1(5)(b) - (f) and 4 - 8. These are not directly relevant to this case, save as an aid to the interpretation of the Act. Trade sanctions may not include a prohibition on making information generally available to the public unless that is necessary (and no more than necessary). That follows from section 5(2) and schedule 1, paragraph 29:

> "Regulations may not contain prohibitions for a purpose mentioned in Part 1 which have the effect of prohibiting any of the following activities—

> (a) the communication of information in the ordinary course of scientific research,
>
> (b) the making of information generally available to the public, or
>
> (c) the communication of information that is generally available to the public,
>
> unless the interference by the regulations in the freedom to carry on the activity in question is necessary (and no more than is necessary)."

69. Regulations may create exceptions to any prohibition or requirement imposed by the regulations: section 15(2)(a). They may also provide for a prohibition not to apply to anything done under the authority of a licence issued by the Treasury: section 15(2)(b), read with section 1(9)(b).

70. Prohibitions may be imposed under the regulations in respect of conduct in the UK and also conduct by a UK person outside the UK: section 21(1). It follows that sanctions imposed against a UK national (like the claimant) have worldwide effect, whereas sanctions against those who are not a UK national are limited to conduct by that person in the UK.

71. The Secretary of State has a general power to vary or revoke a designation: section 22(2). The power to revoke must be exercised if the Secretary of State considers that the required conditions are not met in respect of the designation: section 22(3). There is a right to ask the Secretary of State to vary or revoke a designation: section 23(1). If that right is exercised, then the Secretary of State must decide whether to vary or revoke the designation: section 23(3).

72. If the Secretary of State decides, under section 23(3), not to revoke a designation, the designated person may apply to the High Court to set aside the Secretary of State's decision: section 38(2), read with section 38(1)(a). In determining such an application, the court must apply the principles that apply to an application for judicial review: section 38(4). Provision is made for rules of court to apply to an application under section 38: section 40. Those rules are contained in part 79 of the Civil Procedure Rules.

73. So far as is relevant to this case, regulations made under section 1(2) must be subject to the made affirmative procedure, that is they cease to have effect within 28 days of being laid before Parliament, unless they are approved by a resolution of each House of Parliament: section 55(3).

74. At the time the 2019 Regulations were made, the Secretary of State was required to lay a report before Parliament which explained why there were good reasons to pursue the purpose of the Regulations, why the purpose of the Regulations would meet the conditions in section 1(2) and why the imposition of sanctions was a reasonable course of action for that purpose: section 2(4). He was also required to undertake an annual review each of these matters and lay a report before Parliament containing the reasoned conclusions of the review: section 30. Sections 2 and 30 were repealed on 15 March

2022: sections 57(3), 62(1)(c) and 69(3) of the Economic Crime (Transparency and Enforcement) Act 2022.

The 2019 Regulations

75. The 2019 Regulations were made on 10 April 2019 under the powers conferred by (among other provisions) sections 1(1)(c) and (3)(b), 3(1)(a) and 5 of the 2018 Act. They were laid before Parliament on 11 April 2019. Both Houses of Parliament approved the Regulations.

76. The Regulations came into force on 31 December 2020. Up until that date the EU sanctions regime ceased to have direct effect in UK law: regulation 1(2), and section 1A of the European Union (Withdrawal) Act 2018.

77. The Regulations were introduced to replace the regimes that operated under EU legislation. Initially, they were a response to the annexation by Russia of Crimea and Sevastopol, and Russia's subsequent campaign to destabilise Ukraine and undermine Ukrainian sovereignty, including by supporting separatist destabilisation in the Donbas. Following Russia's 2022 invasion, the Regulations were amended and expanded.

78. The purpose of the 2019 Regulations includes to "encourage Russia to cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine": regulation 4(a).

79. Subject to regulation 6, the Secretary of State may designate persons for the purpose of imposing an asset freeze: regulation 5(1)(a). The criteria for designation are prescribed by regulation 6. Allowing for the effect of section 61(3)(a) of the 2022 Act, regulation 6 states:

> "**6 Designation criteria**
>
> (1) The Secretary of State may not designate a person under regulation 5 (power to designate persons) unless the Secretary of State—
>
> (a) has reasonable grounds to suspect that that person is an involved person
>
> (2) In this regulation, an "involved person" means 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
> …
>
> (3) 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;
>
> …"

80. It may be observed that regulation 6(3)(a) takes much of its structure and language from article 2(1)(a) of decision 2014/145/CFSP (see paragraph 60 above).

81. The Secretary of State must inform the designated person of, and must publicise, their designation (and any variation or revocation of their designation) and the reasons for the designation: regulations 8(2), (3) and (6).

82. Subject to certain conditions and exceptions, it is an offence to:

(1) deal with funds or economic resources that are owned, held or controlled by a designated person: regulation 11.

(2) make funds or economic resources or a loan available to (or for the benefit of) a designated person: regulations 12 - 18.

(3) intentionally participate in activities to circumvent regulations 11 - 18: regulation 19.

83. Where the sanctioned person is a UK national, these offences have extra-territorial effect – they apply worldwide.

84. If a person is convicted on indictment of any of these offences then he is liable to imprisonment for a term not exceeding 7 years, or a fine, or both: regulation 80(1).

85. Regulation 54A requires internet service providers to take reasonable steps to prevent content generated, uploaded or shared by a designated person being encountered by users in the UK.

86. Regulations 58 – 60ZZB provide for exceptions from the scope of financial sanctions. Regulation 64 provides that financial sanctions will not apply to anything done under the authority of a licence issued by the Treasury.

Submissions

Claimant's submissions

87. Joshua Hitchens, for the claimant, submits that an interpretation of the 2019 Regulations that permits interferences with political expression would offend the legality principle and/or section 3 of the 1998 Act. The wording of regulation 6 ("providing support for, or promoting any policy or action which destabilises Ukraine…") requires more than just "expressing support for" a particular policy or side in the Ukraine crisis. If the Regulations would otherwise have the effect of curtailing the right to freedom of expression, then they would be incompatible with article 10 ECHR. That is because they would not satisfy the legality requirement of article 10, and because they would have an arbitrary effect (they could, for example, apply to

anyone who advocates an end to UK aid to Ukraine, or a peace deal which results in the loss of Ukrainian territory), and because article 10(2) provides little scope for restrictions on political speech. There is no rational connection between the designation of British citizens for expressing views that are contrary to British foreign policy and the purported aim of encouraging Russia to cease its actions in Ukraine. The Regulations should therefore be interpreted in a way that ensures compatibility with article 10 ECHR: section 3 of the 1998 Act.

88. Alternatively, if that is the correct interpretation of the 2019 Regulations, then they are *ultra views* the 2018 Act and must therefore be quashed. There is no wording in the 2018 Act which empowers the Secretary of State to regulate political speech. Nor is there anything to suggest that was the intended effect of the Act in the record of the Parliamentary debates in Hansard, or in the predecessor EU legislation, or in the Government's impact assessment for the 2018 Act, or in the Joint Committee on Human Rights Legislative Scrutiny report, or in written evidence from the Government to Parliament on the Bill that became the 2018 Act. If the Act had been intended to have this effect, then that would have been identified in these documents and would have been made crystal clear in the language of the Act. It follows that the 2018 Act cannot be interpreted as having that effect: *Simms per* Lord Hoffmann at 131F. To the extent that the 2018 Act does authorise the regulation of political speech it must be interpreted as authorising only that which is reasonably necessary to fulfil the objective of the Act: *R (Unison) v Lord Chancellor* [2017] UKSC 51; [2020] AC 869 *per* Lord Reed at [80]. That would mean interpreting the Act as authorising curtailment of free speech only by those who are controlled by, employed by, or subject to the direction of the Russian State: cf regulation 6(2)(a)(ii) of the 2019 Regulations. That is sufficient to fulfil the objective of the Act because it would combat misinformation operations of the Russian Government, but it would not unnecessarily curtail individual rights of free speech, given that Russia does not have a right to freedom of speech which engages the UK's obligations under the common law or the Convention.

89. In any event, the designation of the claimant was a disproportionate interference with his Convention rights and was therefore unlawful by reason of section 6 of the 1998 Act. In assessing proportionality, the court should not apply the deference that is ordinarily shown by courts in matters of foreign policy. That is because this case does not concern a "delicate question of foreign policy" but rather the right of UK nationals to express political views, and the right of a UK audience to receive those views. Here, there was no rational connection between the designation of the claimant and the aim that the defendant sought to pursue, the defendant could instead have imposed less intrusive measures (such as requiring social media platforms to remove the claimant's content) and no fair balance was struck between the claimant's rights and the legitimate aim that was being pursued. There would be no practical or tangible benefit for UK national security as a result of the claimant's designation, yet it is having a crushing impact on his life. Without any licence to spend funds, he is utterly destitute, unable to pay rent and unable to return to the UK. He did not wish to apply for a licence because that would give credibility and legitimacy to a situation which was unjust and unfair.

Defendant's submissions

90. Maya Lester KC, for the defendant, submits that the claimant was not designated for engaging in political debate or for his political views, or for criticising the Government's foreign policy. He was designated for supporting Russia's invasion of

Ukraine by producing and publishing propaganda advanced by Russia as justification for that illegal invasion. These are matters which it has long been recognised are properly and legitimately the subject of regulation by Government, including by sanctions.

91. The 2018 Act authorises regulations that impact on freedom of expression. That is clear from the breadth of the word "activity" in section 11 (which includes communication), and from the provisions in relation to trade sanctions (which make it clear that "activities" include "communications"), and from the statutory purpose and context (including the fact that sanctions imposed under the equivalent EU provisions had been applied in a way that restricted freedom of expression).

92. The 2019 Regulations permit the designation of those who spread Russian propaganda in support of the war against Ukraine. That follows from regulation 6(3)(a). On the natural and ordinary meaning of that provision, it applies to those who support or promote (including by spreading Russian propaganda) Russian policies or actions which destabilise Ukraine or undermine or threaten Ukraine's territorial integrity, sovereignty or independence.

93. Ms Lester was content for the court to assume that the continued designation of the claimant is an interference with his rights under article 10 within the jurisdiction of the UK. She also accepted that there was an interference with his rights under article 1 of the first protocol. She disputed any interference with his article 8 rights. He had chosen to live outside the UK, but he was free to return to the UK where he retained his right of abode. Although the asset freeze might make it more difficult to return to the UK, he could apply for a licence to permit him to meet his travel expenses.

94. In any event, any interference with the claimant's Convention rights was justified because it was prescribed by law and was proportionate to the legitimate aim of protecting UK national security. The relevant "law" for the "prescribed by law" test is the designation itself rather than the 2018 Act and the 2019 Regulations. In any event, the 2018 Act and the 2019 Regulations satisfy the requirement of legality because they are sufficiently accessible and foreseeable in their application.

95. The Secretary of State is entitled to determine that the destabilisation of Ukraine, and the consequential impact on international peace and security, undermines UK national security. The protection of Ukrainian sovereignty and independence is therefore a legitimate national security aim for the purpose of article 10(2). It is sufficiently important to justify an interference with Convention rights. The designation of the claimant is rationally connected to that aim, and no less intrusive measure could have been deployed, for the reasons given in the Designation Form (see paragraph 36 above).

96. A fair balance had been struck. The claimant's actions were such that the protection to be afforded to his article 10 rights was diminished, and he did not benefit from the heightened protection afforded to journalistic content. Although the designation has (and is intended to have) significant consequences for the claimant, he retains his British citizenship and his right of abode in the UK. He is able to seek licences to meet his needs. There is no real risk (and certainly no evidence) that the designation of the claimant has deterred others from criticising UK foreign policy or from engaging in any other legitimate political dissent. So, there is no evidence of a chilling effect. As against the impact on the exercise of Convention rights, the designation of the claimant pursued

weighty public interest considerations, including counteracting the Russian propaganda war.

Issue 1: The factual basis for the designation of the claimant

97. Before addressing the legal issues that arise (including the highly fact sensitive question of proportionality), it is necessary first to address the factual basis on which the claimant was designated. Mr Hichens says he was designated for "lawful political speech". Ms Lester submits that the claimant was not designated "for engaging in political debate, for his political views, or for criticising the foreign policy of the Government." She says he was designated (and his designation was maintained) "for supporting the Russian war by producing, principally in occupied eastern Ukraine, and publishing propagandist video content which glorifies the Russian invasion of Ukraine and its atrocities, and promotes disinformation advanced by Russia as a justification for the invasion."

98. The distinction is important because of the different degrees of protection that are afforded to different types of speech (see paragraphs 42 - 49 above). If Mr Hichens is correct on this issue, then the claimant is entitled to the very greatest protection for what amounts to political dissent. If, conversely, Ms Lester is correct, then the protection afforded to the claimant's speech is more attenuated.

99. Although he describes himself as a journalist, the claimant does not produce content for any traditional western media organisation (but he has, in the past, done so on a freelance basis). He has regularly produced content for (and appeared on) different Russian state broadcasters (Russia Today, Rossiya-1 and Rossiya-24). Each of these is at the heart of President Putin's propaganda machine. The claimant has been referred to by a Rossiya-1 presenter as "one of ours". He went to the Donbass region in 2014 at the request of Russia Today and was paid a daily rate by Russia Today. There is no nuance or balance in the material the claimant produces. It is entirely one-sided, supporting Russia and denigrating Ukraine. He is, in effect, embedded with and adopted by the Russian military. He eschews traditional media apparel and instead wears Russian military uniforms, displays their insignia and (on at least one occasion) has fired Russian weaponry. Mr Hitchens says that the claimant's instructions are that to film at the front line he is required to wear Russian combat uniform and to display the Z symbol. That does not seem to me to be consistent with the claimant's own witness statement, in which he appears to recognise that "Press markings" could be worn to identify journalists operating at the front line, but that he makes a "personal choice" not to wear "Press markings" because he considers that to be "somewhat pretentious" and that it would be a "barrier" to his relationship with Russian soldiers.

100. The claimant's conduct is not at all consistent with responsible journalism. An example (aside from the lack of balance in any of the reporting that has been put in evidence) is his "interview" of the prisoner of war, Mr Aslin (see paragraph 22 above). Article 13 of the Third Geneva Convention states that "prisoners of war must at all times be protected… against insults and public curiosity." Guidance published by the UK Government and the British Red Cross says that this means that it is not normally permissible to interview or transmit images of prisoners of war. The claimant does not directly address this in his evidence, other than to say that he has only interviewed prisoners of war "very rarely" and that he does not consider that he has "crossed a line". Mr Hitchens, on his behalf, realistically accepted that the video was shocking, and that there is no mitigation that can be advanced. Quite aside from the standards required by

article 13 of the third Geneva Convention, the interview is wholly incompatible with responsible journalism. The same goes for his depiction of the execution of a Ukrainian solider, and the caption that he attached to that video. These are, perhaps, the most striking examples, but they are not isolated aberrations that the claimant now regrets. He has said that he has interviewed prisoners of war, held by Russian soldiers, on other occasions, and that he would do so again.

101. The material that the claimant produces closely aligns with the central themes of Russia's propaganda war (see paragraph 13 above). It is not credible that this is a coincidental product of independent journalistic endeavour. The claimant's assertion that he is independent shows, at best, considerable naivety. I was told that there was no evidence of any recognised western journalist or media organisation being given the access to Russian troops that the claimant has secured. It is reasonable to infer that he is given such access because he produces material that is in line with Russia's propaganda. The same goes for the awards that he has received. The claimant says none of the awards were made by the Kremlin. That may be so in form, but on his own evidence the medals he has received include a "war correspondent" medal from Moscow and a medal from the Minister for the Ministry of Internal Affairs of the so-called Luhansk Peoples Republic which was awarded "for assisting the internal affairs" after he published a documentary "in response to a BBC article which had made numerous false allegations."

102. Additionally, the claimant has a Russian bank account. Notwithstanding the asset freeze, he solicits the donation of funds into that account. He has not disclosed details of the donations that have been paid into his account or the source of those donations. The claimant's social media metrics suggest that his output is being "amplified", which is a recognised technique of the Russian government (see paragraph 12 above): he had 330,000 subscribers to his YouTube channel, yet some of his videos have been viewed 1.8 million times.

103. This is not a case where the state is censoring hostile political speech that deserves the greatest legal protection. Rather, it is imposing an extensive matrix of sanctions (alongside the European Union, the United States of America, Australia, Canada and New Zealand) to address Russia's propaganda war. The claimant has been sanctioned as part of that response because the claimant is, for all practical purposes, a Russian asset who has signed up to that propaganda war.

Issue 2: Does the 2018 Act permit the Secretary of State to make regulations that authorise the imposition of sanctions in response to the exercise of free speech?

104. Parliament does not legislate in a vacuum. The UK is a liberal democracy. The common law is a cornerstone of the constitution. Free speech is a fundamental right, jealously protected by the common law (see paragraph 42 above). Parliament legislates against that backdrop. Parliamentary supremacy means that Parliament can pass legislation that overrides common law rights, including even the right to free speech. It can do so by legislating in clear and unambiguous language that shows that its intention is to override common law rights. The court's obligation, in interpreting primary legislation, is to give effect to Parliament's intention. Where Parliament clearly intends to override common law rights, the courts give effect to that intention. The remedy, for someone who objects to such legislation, is at the ballot box, not the court. That is part and parcel of Parliamentary supremacy. But where it is not clear that this is what Parliament intends,

the courts will not assume that general or ambiguous statutory language is intended to override fundamental rights: *Simms* at 131F *per* Lord Hoffmann. That, too, is part of the backdrop against which Parliament legislates. It is the principle of legality.

105. Thus, the principle of legality means that the courts will not interpret an Act in a way that overrides free speech unless that is the clear Parliamentary intent, arising from "express language or necessary implication": *Simms* at 131F. The language must be "crystal clear" and "clear and unambiguous": *R (Evans) v Attorney General* [2015] UKSC 21; [2015] AC 1787 *per* Lord Neuberger at [58], *Mints* at [179] *per* Sir Julian Flaux C. For the same reason, the courts will not interpret an Act as authorising another person to override free speech unless it is clear that is the intention of Parliament: *R v Secretary of State for the Home Department, ex parte Pierson* [1998] AC 539 *per* Lord Browne-Wilkinson at 575, *AXA General Insurance Ltd v Lord Advocate (Scotland)* [2011] UKSC 46; [2012] 1 AC 868 *per* Lord Reed at [152].

106. The defendant has Governmental responsibility for foreign policy. If he is entitled to pass regulations under the 2018 Act that can interfere with free speech, then that can produce the side-effect (albeit not by way of the primary intention) of enabling the defendant to designate people who express views that conflict with his foreign policy objectives. I agree with Mr Hichens' submission that this raises the principle of legality in an acute rule of law context. I would not accept that this is the effect of the statute in the absence of the "clearest" (or a "crystal clear" and "unambiguous") indication that this was Parliament's intention: *Evans* at [58], *Mints* at [179], *Pierson* at 591 *per* Lord Steyn, and even (or perhaps especially) *Liversidge v Anderson* [1942] AC 206 *per* Lord Atkin (dissenting) at 244 - 245.

107. There is no doubt that the 2018 Act was intended to override fundamental rights. Most obviously, it was intended to permit regulations that interfere with property rights – that directly follows from the provisions on financial sanctions. That does not mean that Parliament intended it to interfere with other fundamental common law rights. That would be to conflate distinct fundamental rights: *Mints* at [183].

108. There are some individual provisions within the Act that clearly do directly impact on free speech. An example is paragraph 29 of schedule 1 to the Act (see paragraph 68 above). Trade sanctions imposed by regulations passed under section 1(5)(c), and 5(1) and paragraph 11(a)(i) of Schedule 1 may "[prevent] all services… from being provided… to, or for the benefit of… designated persons." That would have the effect of preventing all internet, social media or other publishing services from being provided to designated persons. That likewise inevitably interferes with freedom of speech.

109. The fact that other parts of the Act are intended to interfere with free speech does not mean that the provisions that are relevant in the present case are intended to have that effect. It is therefore necessary to turn to those specific provisions.

110. Section 1(1)(c) (read with section 1(5) and (9)) permits the Secretary of State to make regulations that impose financial sanctions where he considers it appropriate to do so for a purpose within section 1(2). Financial sanctions are prohibitions or requirements for purposes that include freezing funds or economic resources owned, held or controlled by a designated person: section 3(1)(a). Regulations may authorise the Secretary of State to designate an individual by name: section 10(2)(a). He may do so if he reasonably suspects that the individual is an "involved person": section 11(2)(a).

An involved person includes a person who "is or has been involved in an activity specified in the regulations": section 11(3)(a). An activity may be specified in regulations if the Secretary of State considers that "specifying the activity is appropriate having regard to the purpose of the regulations as stated under section 1(3)": section 11(4).

111. The key word is "activity" in section 11. Subject to certain conditions, the Act permits regulations that authorise the imposition of sanctions on those who have engaged in a specified "activity". The word "activity" is not further defined. It is a general, broad and non-specific word. In isolation, it is capable of being interpreted in a way that does not encompass the exercise of free speech (or other fundamental common law rights). It does not explicitly encompass the exercise of free speech. The principle of legality means that the word "activity" is not sufficiently clear and unambiguous, in isolation, to indicate an intention to override common law rights.

112. Nonetheless, the broader legislative context does show that this was Parliament's intention. For the reasons that follow, the entire scheme of the Act makes it clear that the provisions that apply here were intended to impact on fundamental rights, including free speech. There is therefore no scope for the principle of legality to operate: *R (Belhaj) v Director of Public Prosecutions* [2017] UKSC 33; [2019] AC 593 *per* Lord Lloyd-Jones at [42]. Put another way, the intention of the legislature to curtail fundamental rights emerges by way of "necessary implication" so that there is no breach of the principle of legality.

113. The purpose of the Act is to provide a power to impose and implement sanctions. The sanctions that may be imposed include financial sanctions which freeze a designated person's funds and economic resources, potentially rendering them destitute and wholly dependent on the state to permit them a licence for any financial activity. That inevitably impacts on basic legal rights, including most directly property rights in funds and economic resources. It means that the sanctioned person is unable (without state approval or risk of criminal sanction) to pay for a video camera, or recording equipment, or credit for a mobile telephone, or a subscription to an internet service provider, or a megaphone, or a newspaper, or a stamp for a letter. Financial sanctions inevitably have, and are intended to have, a significant impact on almost every aspect of a person's life, including their ability to exercise their rights of free speech and freedom of expression (including the right to receive the views of others). This all directly follows from the purpose and content of the 2018 Act. It distinguishes this case from *Mints*. In that case it was argued that the principle of legality did not apply to the question of whether the 2018 Act restricted the right of access to the courts, because it was clear from the statutory scheme that it was intended to restrict the peaceful enjoyment of property. The argument was rejected because it conflated two separate rights: the right of access to the courts, and the right to peaceful enjoyment of property: *per* Sir Julian Flaux C at [183]. Here, by contrast, it is clear from the context that the Act was intended to restrict freedom of expression, which is the right on which the claimant relies for his legality argument.

114. The context in which the Act was passed shows that it was intended to allow regulations to be made that would mirror existing EU legislation. That existing legislation includes article 2(1) of decision 2014/145/CFSP. That provision permits sanctions to be imposed on those who (for example) actively support actions or policies which undermine or

threaten the territorial integrity, sovereignty and independence of Ukraine. This is, in principle, capable of applying to certain types of speech or communication.

115. The application of article 2(1) in practice, before the 2018 Act was passed, shows that it was, in fact, used in response to certain types of speech. It was, for example, used to apply sanctions against Dimitrii Kiselev, who had been appointed by presidential decree as the Head of the Russian Federal State news agency and was a central figure of Russian government propaganda supporting the deployment of Russian forces in Ukraine. In *Kiselev*, the EU General Court held that article 2(1)(a) was capable of applying to media support for the actions and policies of the Russian government destabilising Ukraine "provided that the resulting limitations on the freedom of expression comply with the other conditions that must be satisfied in order for that freedom to be legitimately restricted": [76].

116. This point again distinguishes the present case from *Mints* where the equivalent EU regulation "was clearly never intended to preclude a designated person from obtaining a judgment in respect of a civil claim": *per* Sir Julian Flaux C at [185].

117. It follows that the 2018 Act was intended to preserve the UK's power to impose sanctions in the way that it had done under EU legislation, and that EU legislation had been recognised as authorising (in certain restricted circumstances) the imposition of sanctions in response to media support for the actions and policies of the Russian government destabilising Ukraine. Parliament can be taken to have been aware of how the EU legislation was being applied when it passed equivalent domestic legislation: cf *Barras v Aberdeen Steam Trawling and Fishing Co Limited* [1933] AC 402 *per* Viscount Buckmaster at 411.

118. Mr Hitchens accepts that the word "activities", as it is used in paragraph 29 of schedule 1 to the Act, includes the communication of information, and hence the exercise of free speech. He is clearly right to do so; that follows from the clear and express wording of paragraph 29. He also accepts that there is a presumption that Parliament intends the same word, where it is used in different places in a statute, to mean the same thing: *Oovee v S3D Interactive* [2022] EWCA Civ 1665; [2023] 4 WLR 1 *per* Popplewell LJ at [41]. That principle has been applied to the interpretation of (other) words in the 2019 Regulations: *Fridman per* Saini J at [76].

119. Here, the words "activity" and "activities" are important in the scheme of the Act. It might therefore be expected that they were intended to bear the same, consistent, meaning. Mr Hitchens points out that the presumption is not irrebuttable, and that it must sometimes yield to other canons of construction. Again, Mr Hitchens is clearly correct. There are two conceptually different contexts in which the word "activity" / "activities" is used in the Act. One is connected with the activities that may lead to designation. This is the context in which it is used in section 11. The other is the activities that may be prohibited by designation. This is the context in which it is used in paragraph 29 of schedule 1. These slightly different contexts for the use of the same word mean that it is possible that Parliament intended the word to convey slightly different meanings. Mr Hitchens relies on the principle of legality in this context, as rebutting the presumption that the same word in different places in a statute conveys the same meaning. But the principle of legality cannot come to his aid in this way. There is nothing to indicate that the same word should convey different meanings in the different contexts in which it is used. There is no reason why it should bear a more

restricted meaning when used in the context of activities that might lead to the imposition of sanctions, than when it is used in the context of activities that might be prevented by sanctions. In both cases it has the effect of overriding fundamental rights.

120. Further, paragraph 29 of schedule 1 shows that Parliament made a legislative choice to make explicit provision to exempt certain types of communication activity from the ambit of trade sanctions. It chose not to make equivalent provision to exclude the exercise of freedom of expression from the type of activity that might lead to the imposition of financial sanctions. It follows that free speech was not intended to be excluded from the types of activity that could lead to the imposition of sanctions.

121. I was taken to the following additional documents that were relied on as aids to interpretation:

(1) The Joint Committee on Human Rights, "Legislative Scrutiny: The Sanctions and Anti-Money Laundering Bill", HL Paper 87, HC 568 (1 March 2018).

(2) HM Government "Public consultation on the United Kingdom's future legal framework for imposing and implementing sanctions" Cm 9408 (April 2017).

(3) HM Government "Public consultation on the United Kingdom's future legal framework for imposing and implementing sanctions: Government response" Cm 9490 (August 2017).

(4) Foreign and Commonwealth Office, "Sanctions and Anti-Money Laundering Bill: Impact Assessment", FCO1701 (18 October 2017).

122. Reliance on the report of the Joint Committee on Human Rights is not permissible. It is a record of proceedings in Parliament: *R v Chaytor and others* [2010] UKSC 52; [2011] 1 AC 684 *per* Lord Phillips at [47]. Reliance on it is contrary to article 9 of the Bill of Rights 1689 or is otherwise impermissible on grounds of relevance, taking account of the independence of the judiciary and the mutual respect owed by the legislative and the judiciary to one another: *R (Bradley) v Secretary of State for Work and Pensions* [2008] EWCA Civ 36; [2009] QB 114 *per* Sir John Chadwick at [50] (read with the first instance decision of Bean J, [2007] EWHC 242 (Admin) at [267]), *Office of Government Commerce v Information Commissioner* [2008] EWHC 774 (Admin); [2010] QB 98 *per* Stanley Burnton J at [46] – [48].

123. The remaining documents are, in principle, legitimate aids to the interpretation of the 2018 Act: *Fothergill v Monarch Airlines Ltd* [1981] AC 251 *per* Lord Diplock at 281C. Those documents show that Parliament's intention was that the Act would, in part, replicate the framework for imposing sanctions that was available under EU legislation. They also show that the Act was intended to impact on fundamental rights. The impact assessment states: "We recognise that sanctions have the potential to impact upon human rights…" The documents do not expressly address free speech, but that omission cannot be taken as a positive indication that the Act was intended to have no possible impact on free speech. For the reasons given above, such a conclusion is not tenable.

124. It is not necessary to address Mr Hitchens' contention that the Act must be interpreted as authorising only such intrusion on free speech as is reasonably necessary to fulfil the objective of the Act. The Secretary of State may only make regulations in order to fulfil

the objective of the Act: *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997 *per* Lord Reid at 1030C. Further, any interference with the right of freedom of expression by a public authority must be justified. Otherwise, it is unlawful: section 6(1) of the 1998 Act (leaving aside the circumstances in which section 6(1) is disapplied by section 6(2)). Such an interference can only be justified if it is necessary in a democratic society for a prescribed purpose. That involves a test of proportionality. An interference will not be proportionate unless it is reasonably necessary to fulfil the objective of the Act. This follows not from the interpretation of the 2018 Act, but by the application of common law principles and the 1998 Act to decisions made under the 2018 Act. That does not, however, make any substantive difference. It means that there is no reason to interpret the legislation in an artificially narrow way, because the controls that Mr Hitchens seeks are (in this respect) already there.

125. For all these reasons, the Act was intended to permit the Secretary of State (in certain circumstances) to make regulations that authorise the imposition of sanctions in response to the exercise of free speech.

Issue 3: Do the Regulations permit the imposition of sanctions in response to free speech?

126. For the reasons given above, the 2018 Act empowers the Secretary of State to make regulations that impact on free speech.

127. There are some provisions within the 2019 Regulations that directly impact on free speech. An example is regulation 54A (see paragraph 85 above).

128. For the purposes of this case, the critical provision in the 2019 Regulations is regulation 6(3)(a). This applies to anyone who "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." The structure of this provision can be divided into two elements. One element is "[a] policy or action which destabilises Ukraine or undermines or threatens the territorial integrity, sovereignty or independence of Ukraine." That includes Russia's decision to invade Ukraine, its failure to respond to the demands of the international community that it withdraws its forces from Ukraine, and its use of propaganda to seek to justify its actions and thereby threaten Ukraine's sovereignty and independence.

129. The second, and critical, element is that the "involved person" must be someone who "engages in, provides support for, or promotes" that policy or action. As a matter of the natural and ordinary use of language, "promoting" a policy or action is something that can be done, and most obviously is done, by way of expression. Providing support for a policy or action is also something that can be done by way of expression. So too, engaging in a policy or action, particularly where that policy or action itself involves expression (such as the dissemination of propaganda).

130. In another analogous context (the statutory prohibition on providing support for a terrorist organisation), the court has held that the word "support" is an "ordinary English [word] with a clear meaning" that requires "no elaboration", that "support" may be "practical or tangible, but it need not be" and that "support" may include "encouragement, emotional help, mental comfort, and the action of writing or speaking in favour of something or advocacy": *Choudary* at [41] *per* Sharp LJ and (approving the analysis of Holroyde J at first instance) at [46].

131. It follows that the language of the 2019 Regulations, in its natural and ordinary meaning, permits the imposition of sanctions in response to the exercise of free speech.

132. The remaining provisions of regulation 6(3) largely deal with commercial or financial support. The contrasting language of regulation 6(3)(a) shows that it is not limited to commercial or financial support, but extends to engagement, support and promotion more broadly. This provides some limited further support for the interpretation that emerges from the natural and ordinary language of regulation 6(3)(a).

133. Further, as explained above, the 2019 Regulations mirror EU legislation. They were intended to have a similar ambit. The equivalent EU legislation had been used to impose sanctions on those who propagate propaganda: *Kiselev* at [73] – [78]. That is an additional indicator that the 2019 Regulations were likewise intended to permit the imposition of sanctions in response to the exercise of free speech.

134. Further, the purpose of the Regulations is to encourage "Russia to cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine." The ambition, scale and importance of that purpose would be undermined by an unduly narrow interpretation of the substantive provisions: *Dalston Projects v Secretary of State for Transport* [2023] EWHC 1885 (Admin) *per* Sir Ross Cranston at [68], *Fridman per* Saini J at [77].

135. The fact that any decision to impose sanctions must comply with the 1998 Act is an answer to any reliance on the interpretive provisions of section 3 of the 1998 Act. The Secretary of State has a statutory power to impose sanctions. That power must be exercised in a way that is compatible with the claimant's Convention rights: section 6(1) of the 1998 Act. The above conclusions as to the effect of the 2019 Regulations does not lead to any incompatibility with rights under the ECHR, because the powers under the Regulations may only be exercised where that is compatible with the ECHR. It is not therefore necessary to invoke section 3 of the 1998 Act as an aid to the interpretation of the 2019 Regulations.

Issue 4: Was the decision to maintain the claimant's designation an unlawful interference with his Convention rights?

136. The claimant's case is that the decision in this case interfered with the claimant's right of freedom of expression, his right to respect for private and family life, and his right to peaceful enjoyment of his possessions. Those rights are guaranteed by, respectively, article 10, article 8 and article 1 of the first protocol of the ECHR. By section 6(1) of the 1998 Act the defendant must act compatibly with those rights. None of those three rights are absolute. In each case (and leaving aside differences in the precise wording of the qualification clauses, which do not here matter), interference with the right is permitted where that interference is prescribed by law and is necessary in a democratic society for the protection of national security.

137. It is common ground between the parties that:

(1) The decision to be reviewed is the decision communicated to the claimant on 1 February 2023 not to exercise the power under section 23(3) to revoke the designation, in response to the claimant's request for revocation under section 23(1)(b) (rather than the initial decision to designate the claimant).

(2) That decision must be reviewed by application of the principles that apply to a claim for judicial review: section 38(4).

(3) In reviewing the decision, the court must decide for itself whether the interference with the claimant's Convention rights is justified (rather than it being for the court to review the defendant's decision that the interference is justified): *Belfast City Council v Miss Behavin' Limited* [2007] UKHL 19; [2007] 1 WLR 1420 *per* Lady Hale at [31].

(4) An interference with the claimant's rights can only be justified if it is prescribed by law: article 8(2) ("in accordance with the law"), article 10(2) ("prescribed by law"), article 1 of protocol 1 ("subject to the conditions provided for by law").

(5) An interference is only prescribed by law if the legal framework is sufficiently accessible and operates in a manner that is sufficiently foreseeable: *Sunday Times* at [49]. The law must also contain sufficient safeguards against arbitrary interference with Convention rights: *Gillan* at [34] *per* Lord Bingham.

(6) An interference with the claimant's applicable rights can only be justified if it is a proportionate means of achieving a legitimate aim: article 8(2) and article 10(2) ("necessary in a democratic society in the interests of national security"), article 1 of protocol 1 ("necessary to control the use of property in accordance with the general interest").

(7) An interference with the claimant's applicable rights is proportionate if and only if four tests are satisfied: *Bank Mellat v Her Majesty's Treasury (No 2)* [2013] UKSC 39; [2014] AC 700 *per* Lord Reed at [74].

(8) Those four tests are: (i) whether the objective of the measure is sufficiently important to justify the limitation of a protected right, (ii) whether the measure is rationally connected to the objective, (iii) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and (iv) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.

(9) Evidence that post-dates the decision may be taken into account in order to make an objective assessment of proportionality: *Miss Behavin'* at [87] – [89].

(10) Where the decision-maker has considered an issue that is relevant to the question of proportionality, the court should take account of the assessment made by the decision-maker when forming its own conclusion. Where that issue involves matters relating to national security, or foreign policy, or the conduct of foreign relations, the court should place special weight on the assessment made by the decision-maker: *Lord Carlile* at [32] *per* Lord Sumption, *Shvidler* at [90].

138. As to the question of the weight to be placed on the decision-maker's assessment, I adopt the approach set out by Garnham J in *Shvidler* at [91] – [92]:

> "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 recognise 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 Mellat*) 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 Mellat* require a similar approach."

Prescribed by law

139. Ms Lester argues that the "prescribed by law" test should be assessed by reference to the designation itself. The legal framework does not, itself, directly interfere with the claimant's Convention rights. It is the designation that does this. Thus, it is the designation, she says, not the Regulations, which must satisfy the "prescribed by law" test. She relies on *R (Manchester Airport Holdings) v Secretary of State of Transport* [2021] EWHC 2031 (Admin); [2021] 1 WLR 6190 *per* Lewis LJ and Swift J at [59] – [60]. In that case the claimant's argument was that section 45B of the Public Health (Control of Disease) Act 1984 did not satisfy the prescribed by law test. The court held that this was the wrong target because the existence of a power in section 45B did not give rise to any interference with the claimant's Convention rights. The correct target was the regulations made under section 45B because the interference with the claimant's rights only arose when and because the regulations were made.

140. I do not accept Ms Lester's submission. Here, the interference with the claimant's rights results from the designation. It is thus the designation that must be "prescribed by law". It is therefore necessary to identify the law that authorises (or "prescribes") the designation. That law is the 2018 Act and the 2019 Regulations. The Act and Regulations themselves must satisfy the legality requirement that is inherent in the "prescribed by law" test. That follows both as a matter of principle, and by reference to the application of the test by the House of Lords and the Grand Chamber of the

European Court of Human Rights and, in the context of EU sanctions, by the EU General Court:

(1) Part of the principle that underpins the "prescribed by law" test is the need to enable citizens reasonably to foresee the consequences which their actions may entail, to allow them to regulate their conduct accordingly: *Sunday Times* at [49]. By the time an interference occurs, it is too late. It is the underlying legal framework which prescribes the interference that must operate in a manner that is sufficiently foreseeable for citizens to regulate their conduct.

(2) In *Gillan* the claimants were stopped and searched under an authorisation issued pursuant to section 44 of the Terrorism Act 2000. To assess the "in accordance with the law" requirement, the House of Lords considered whether the 2000 Act (together with a code of practice which regulated the conduct of the search) contained adequate safeguards against arbitrariness. It did not matter that the authorisation itself was not published (with the result that the authorisation was not, itself, accessible): *per* Lord Bingham at [35].

(3) In *Malone v United Kingdom* (1985) 7 EHRR 14 the applicant's telephone had been tapped by the police acting on the authority of a warrant issued by the Home Secretary. To assess the "in accordance with the law" requirement, the Grand Chamber of the European Court of Human Rights focussed not on the warrant itself (which was the direct cause of the interference) but on the underlying legal framework which regulated the circumstances in which a warrant could be issued: [70] – [80].

(4) In *Kiselev*, the EU General Court considered whether sanctions applied to Mr Kiselev were "provided for by law" by reference to the governing legislation: article 29 of the Treaty of the European Union, article 215 of the Treaty on the Functioning of the European Union and article 2(1)(a) of decision 2014/145/CFSP: [72] (read with [43]).

141. The 2019 Regulations are published and thus readily accessible. They operate in a foreseeable manner. They do not give the Secretary of State anything remotely approaching an unfettered discretion. A person may not be designated unless the Secretary of State reasonably suspects that the person is an "involved person": regulation 6(1). The test for being an "involved person" is tightly defined. The circumstances in which the power of designation might be exercised are foreseeable to a degree that is reasonable. It is, in particular, foreseeable that a person who positively supports Russia's propaganda war against Ukraine (for example, by parroting Russia's propaganda narrative), rather than simply expressing an independent view which happens to align with Russia's interests, might be subject to designation.

142. In *Kiselev* the EU General Court found that the EU legislative framework satisfied the "prescribed by law" criterion. At [73] – [74] it said:

> "73 …[article 2(1)(a)] can only be understood as meaning that it covers persons who - without being themselves responsible for the actions and policies of the Russian Government destabilising Ukraine and without themselves implementing those actions or policies - provide support for those policies and actions.

> 74 In addition, it must be stated that the criterion at issue does not cover all forms of support for the Russian Government, but rather concerns forms of support which, by their quantitative or qualitative significance, contribute to the continuance of its actions and policies destabilising Ukraine. Interpreted, subject to review by the Courts of the European Union, by reference to the objective of exerting pressure on the Russian Government in order to force it to put an end to those actions and policies, the criterion at issue thus objectively establishes a limited category of persons and entities which may be subject to fund-freezing measures…"

143. The domestic legislative framework is no less accessible or foreseeable in its operation. Regulation 6(3)(a) of the 2019 Regulations refers to "support" whereas article 2(1)(a) of decision 2014/145/CFSP refers to "actively support". That does not make a material difference to the foreseeability of the application of the Regulations. The reasoning in *Kiselev* applies equally to the present case.

144. There are strong safeguards against arbitrariness. Aside from the need for reasonable suspicion of being an "involved person", and the tightly drawn test for being "an involved person":

(1) The purpose of the Regulations is explicitly prescribed, in clear and narrow terms: "encouraging Russia to cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine": regulation 4(a).

(2) The power to designate a person may only be exercised for the narrowly drawn statutory purpose: *Padfield* at 1030C *per* Lord Reed.

(3) The 2019 Regulations were subject to the made affirmative procedure, and, for the first 3 years of their operation, the Secretary of State was required to provide annual reports to Parliament on their operation: section 30 of the 2018 Act.

(4) The need for the designation to be publicised, together with a statement of reasons: regulation 8(2)(b), 8(6)(a)(ii).

(5) The obligation to withdraw a designation when it no longer fulfils its statutory purpose: section 22(3) of the 2018 Act.

(6) The system of exceptions (for example, to allow payments to be made into a frozen account): regulations 58 - 63.

(7) The system of licences (whereby a designated person may seek authority to do anything which would otherwise be prohibited by a sanction): regulations 64 – 68.

(8) The right to request an administrative review of the designation: section 23 of the 2018 Act.

(9) The right to challenge a decision made on an administrative review, with that challenge being determined by the court: section 38 of the 2018 Act.

(10) The statutory duty not to act incompatibly with Convention rights: section 6(1) of the 1998 Act. It follows that any decision under the Regulations that interferes with qualified Convention rights must be justified. In particular, the stringent four-part proportionality test must be satisfied before a person can be designated: *Bank Mellat* at [74].

145. Mr Hitchens gives a number of examples which are intended to show that the 2019 Regulations are not sufficiently foreseeable in their application, or that they do not contain sufficient safeguards: attending a demonstration in support of Russia, "merely" expressing support socially or on social media, arguing that Western support for Ukraine should cease, arguing that Ukraine should accept a loss of Crimea, alleging (as Amnesty International has done) that Ukraine has breached international law in its conduct of the war, a speech in Parliament by an MP which is seen as supportive of Russia (Mr Hitchens says "the Bill of Rights would not necessarily apply"). None of these examples show that the Regulations are uncertain in their application or that they contain insufficient safeguards. In effect, each of the examples involves straightforward political dissent which attracts the highest degree of protection. "Mere" political dissent does not, by its "quantitative or qualitative significance", contribute to Russia's "actions and policies destabilising Ukraine." It can be foreseen with reasonable certainty that (absent some further critical context) the Regulations could not lawfully be applied in those examples, because of the obligation to act in accordance with the purpose of the Regulations (which is to sanction support for actions and policies that destabilise Ukraine, not to sanction "mere" political speech), and because of the Secretary of State's obligation to act compatibly with the ECHR.

Proportionality (i): objective sufficiently important to justify the limitation of a protected right

146. Mr Hitchens conceded this issue. He was right to do so. The evidence as to the impact of Russia's invasion is clear (see paragraph 11 above). There is a high degree of international consensus (reflected in General Assembly resolution ES-11/1) as to the "paramount importance" of the United Nations Charter and the need for "urgent action… to save this generation from the scourge of war." The objective that is pursued by the sanctioning of the claimant is to encourage "Russia to cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine." It is a foreign policy objective "of the highest order" and "of the greatest importance": *Shvidler* at [138] and [81]. That objective comes within the scope of "national security" as that term is used in the ECHR: *Rehman v Secretary of State for the Home Department* [2001] UKHL 47; [2003] 1 AC 153 *per* Lord Slynn at [16] – [20], Lord Hoffmann at [53] and Lord Hutton at [64], *RT France* at [160] – [167]. That objective is sufficiently important to justify the limitation of the claimant's qualified Convention rights: *Dalston* at [81], *Shvidler* at [138]. In *Shvidler* Garnham J said (at [83]): "the scheme as a whole is plainly proportionate to the objective in view" but that it was necessary to "address the separate question whether the making of an individual designation is necessarily proportionate". I respectfully agree. Whether the designation of the claimant is proportionate depends on the second, third and fourth *Bank Mellat* questions, which I address below.

147. In the written arguments, there was a dispute between the parties as to whether the protection of Ukraine's territorial integrity is a legitimate aim within the meaning of article 10(2). The defendant contended that it was. The claimant said that the reference to "territorial integrity" in article 10(2) is a reference to the territorial integrity of the

state that is taking the impugned measure (so, here, the UK not Ukraine). It is not necessary to resolve this issue. For the reasons given above the legitimate aim of (the UK's) national security is engaged, and that is sufficiently important to justify a limitation of protected rights.

Proportionality (ii): measure rationally connected to the objective

148. If the claimant was an objective, independent and fair-minded journalist who had happened to say some things that did not align with the defendant's foreign policy objectives, then it is difficult to see how his designation could possibly be rationally connected to the objective of safeguarding UK national security. For the reasons given above, however, he is not an independent journalist. He is, to all intents and purposes, a Russian asset who has signed up to Russia's propaganda war.

149. There is no realistic prospect that the designation of the claimant will, in itself, cause Russia to withdraw from Ukraine, or to cease its propaganda war. That is not the test. The designation of the claimant does not stand in isolation. He is one of very many people and organisations who have been designated by the UK (over 1,000 designations were made under the 2019 Regulations between February and July 2022 alone). Nor do the UK sanctions stand in isolation. The European Union, the United States of America, Australia, Canada and New Zealand have each imposed wide-ranging sanctions in order to address Russia's propaganda war. This reflects a high degree of international consensus, demonstrated by successive resolutions passed by the United Nations General Assembly with overwhelming majorities.

150. Further, sanctions are not intended to be an end in themselves. The report that was laid before Parliament on 11 April 2019, pursuant to section 2(4) of the 2018 Act, states:

> "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…"

151. It is thus artificial to consider the designation of the claimant in isolation; it is necessary to consider it as part of a wider package of measures: *Dalston* at [86]; *Shvidler* at [136] – [137]. In aggregate, the sanctions imposed under the 2019 Regulations significantly degrade Russia's propaganda capacity. They deter others from propagating Russian propaganda. In the language of the defendant, they "send a message" to Russia, to the claimant, to others who might otherwise be minded to disseminate Russian propaganda,

and to the international community, that Russia's conduct is not acceptable and that it will be met with stringent consequences. Once Russia withdraws from Ukraine, and stops undermining Ukraine's sovereignty and territorial integrity, the sanctions will stop: section 22(3). The imposition of sanctions thus achieves the purpose of the 2019 Regulations of encouraging Russia to cease actions that destabilise Ukraine or undermine or threaten the territorial sovereignty of Ukraine. That, in turn, protects the UK's national security. There is therefore a rational connection between the designation of the claimant and the protection of national security.

152. The claimant suggest that this was "a designation made for domestic political purposes." That is tantamount to an allegation of bad faith, but the claimant disclaimed any allegation of bad faith and did not seek to cross-examine the defendant's witness. I do not accept that the designation of the claimant was made for "domestic political purposes" as opposed to the purpose prescribed by the Regulations. The claimant relied on the documentation relating to the initial designation of the claimant. For the reasons given above (at paragraphs 32 - 34), there is a good explanation for (a) the close personal interest taken by the Foreign Secretary, (b) the apparent speed with which the designation was initially approved, (c) the involvement of communications advisors and a media strategy (involving, potentially, an exclusive briefing to a newspaper), and (d) the delay before the designation of the claimant was ultimately implemented.

153. Mr Hitchens points out that the reasons given by the defendant for concluding that there is a rational connection between the designation of the claimant and the objective being pursued (see paragraph 36 above) are materially identical to the reasons given in *Shvidler* (as recorded by Garnham J at [93]), and that the defendant has therefore "recycled stock arguments deployed in fundamentally different cases." The level of generality at which the reasons are expressed is such that they are apt for different categories of case. The use of similar reasoning is not objectionable, so long as the reasoning withstands scrutiny on the facts of the individual case. Here, as in *Shvidler*, it does.

154. Mr Hitchens further relies on the fact that the claimant's audience is "predominantly British". He says that there is no evidence that anyone in Government in Moscow has ever heard of the claimant. Accordingly, he says, the claimant's designation could not have the effect of encouraging Russia to cease its actions in Ukraine. I do not agree. Some of the claimant's output is in Russian (although the majority is in English). The fact that his videos have been viewed well over 100 million times suggests that he has an audience outside the UK. He has been given awards by Russia's Federal Security Service and by the Luhansk People's Republic (a proxy Russian administration). It is reasonable to infer that the Russian Government monitors the imposition of sanctions. In any event, even if the claimant's audience is entirely British that would not invalidate his designation. Russia's propaganda war is not limited to its domestic or Ukrainian audience. It is intended to have worldwide effect, including in English speaking countries. It is entirely understandable that sanctions intended to combat that war should likewise respond to propaganda activities around the world. The sanctions against RT France were upheld by the EU General court even though the activities of RT France were predominantly targeting a French audience (together with audiences in other French-speaking countries): *RT France* at [3].

Proportionality (iii): less intrusive measure

155. The claimant says that the defendant should, instead, have asked social media companies to remove his content. That does not seem to me to be an obviously less intrusive measure, at least so far as freedom of expression is concerned. It would more directly and significantly interfere with the claimant's right to freedom of expression than the sanctions themselves (which do not prevent him from using social media and which do not require social media companies to remove his content for those outside the UK). It would thus, at least arguably, and from the standpoint of article 10, be a more (rather than a less) intrusive measure.

156. Further, it has not been shown that this is a realistic option. Simply to persuade YouTube to remove the video of a prisoner of war took considerable effort over several days. There is no indication that social media companies more broadly would have been willing to take down the claimant's content or to stop him posting further content, or that it would have been effective in preventing the claimant from operating a pseudonymous account. Nor has the claimant identified any power that the Secretary of State has to require social media companies to remove the claimant's content outside the UK. Further, the evidence indicates that the claimant has been able to move with agility across different social media platforms, including Telegram and Rumble.

157. Nor would the simple removal of the claimant's content be likely to have the same impact as sanctions in achieving the national security objective (in terms of "sending a message" and deterring others). The defendant is best placed to assess the least intrusive means of achieving the intended objective. The defendant considers there are no other less intrusive measures that would be as effective as sanctions. Weight should be given to that assessment. It has not been shown to be unreasonable. I do not consider that the maintenance of the designation of the claimant was disproportionate on the grounds that some other less intrusive (but effective) measure could have been imposed.

Proportionality (iv): fair balance

158. Convention rights have a limited jurisdictional ambit. Subject to exceptions that do not here apply, they do not have effect outside the territorial jurisdiction of the UK. The claimant has been continuously outside the UK since before the decision to maintain his designation until now. It might therefore be said that there is currently no direct impact on his Convention rights. However, a significant part of his social media audience is based in the UK. The right to freedom of expression extends to his audience's right to hear the claimant's views. Further, it is necessary to take account of the "chilling effect" of any measure that restricts freedom of expression: *Miller* at [68] – [76]. The claimant has family in the UK. They have their own article 8 rights to respect for their family life. Any restriction on the claimant's ability to engage with his family impacts on their article 8 rights. Moreover, the claimant is entitled to return to the UK, and he could return to the UK whenever he wishes. If and when he returns to the UK, he will be within the territorial jurisdiction of the 1998 Act. For all these reasons, it is appropriate to consider the fair balance issue, notwithstanding the fact that the claimant is currently outside the UK.

159. It is permissible to take account of evidence that post-dates the decision. Mr Hitchens points out that the claimant's social media following has significantly diminished. He currently has 38,000 followers on X, and fewer on each of Rumble, Telegram and

Facebook. I do not place any great weight on this point. If the designation is set aside, the claimant could once again build up his social media following. The claimant's own evidence is that his designation has amplified his reach and influence. Further, this point cuts both ways. The smaller the claimant's following and influence the less his designation is likely to contribute to the aim that is pursued, but also the less the impact on article 10 rights.

160. Ms Lester initially submitted that the claimant's article 10 rights were not engaged at all, relying on observations in *RT France* at [136]. Ultimately, she was content to proceed on the assumption that his article 10 rights were engaged, but in a way that only commands limited weight. I agree and proceed on that basis. There has been an interference with the claimant's freedom of expression which has to be justified, but, for the reasons I have explained, the nature of the claimant's activities means that his freedom of expression does not merit the level of protection that is afforded to political speech. I do not consider that there is any significant broader "chilling effect" on the free speech of others. There is no evidence of such an effect, and it is difficult to see why the designation of the claimant should deter anyone from expressing disagreement with UK foreign policy (as opposed to going to the front line, aligning with the Russian military and assisting the Russian propaganda war).

161. Ms Lester also submits that the claimant's article 8 rights are not engaged. I disagree. The freezing of his assets means that his ability to travel to see his family, or even to communicate with them, is severely restricted unless he is granted a licence to release any necessary funds. He is unable to pay the council tax on his home, and he faces a potential court summons. All this amounts to an interference with his article 8 rights. The fact that he can seek a licence lessens but does not remove the interference. Nor does it mean, as the defendant suggests, that any interference is "a very modest one indeed." The mere fact that the claimant needs the Government's permission to spend money to travel to see his family amounts to a significant interference with the family's article 8 rights. So too, more broadly, does the fact that he needs the Government's permission to do anything that would involve spending money. He effectively is forced to surrender his personal autonomy to the state. This is a significant interference with his core article 8 rights. In *Shvidler*, Garnham J considered that there was no doubt that on the facts of that case the imposition of sanctions had a significant restriction on the claimant's rights under article 8 ECHR: [62]. The same applies here.

162. On any view, the claimant's right to peaceful possession of his assets is also engaged to a considerable degree. The effect of his designation is that his assets are frozen. Although he is not deprived of them altogether, he is deprived of their use for so long as the sanctions are in force, and he is unable to access them without a licence. The impact of the sanctions is potentially ameliorated by the possibility of seeking a licence, but the mere fact that he needs a licence to do anything with his assets amounts to a significant impact on his right to peaceful enjoyment of his property, in the same way as it does in respect of his right to respect for his private and family life and his home.

163. It follows that the designation of the claimant significantly interferes with his right to peaceful possession of his assets and his right to respect for private and family life and his home. It interferes to a more limited extent with his right to freedom of expression.

164. As against that, the legitimate aim that is being pursued is of the greatest national and international importance, engaging as it does the interests of international peace and

security and the UK's national security. The defendant considered that a fair balance had been struck when the sanctions were first imposed, and maintained that view when considering the claimant's application for revocation. Significant weight should be given to the defendant's view (see paragraph 138 above). It has not been shown that the defendant's view is unreasonable. Indeed, I think the defendant's view is correct: the designation of the claimant does strike a fair balance between his Convention rights and the legitimate aim of the UK's national security. The claimant decided to set his face against an overwhelming international consensus, to align himself with Russia's invasion of Ukraine, to travel to the frontline, and to help Russia fight its propaganda war. He has not shown any journalistic responsibility or ethics. His actions directly support Russia in its policies or actions that destabilise Ukraine. There are good reasons to take a firm stand against that conduct so as to pursue the purpose of the 2019 Regulations and seek to encourage Russia to change its course. The sanctions pursue a legitimate aim, are rationally connected to that aim, and there is no other less intrusive measure that could have the same impact. They also strike a fair balance between the claimant's Convention rights and the legitimate aim that the defendant seeks to pursue.

165. They are therefore proportionate.

166. It follows that the interference with the claimant's Convention rights is justified, and that the continued designation of the claimant is lawful.

Outcome

167. The 2018 Act authorises the making of regulations that interfere with common law and Convention rights. The 2019 Regulations permit the imposition of sanctions that have that effect. They are not *ultra vires* the 2018 Act. The 2018 Act and 2019 Regulations satisfy the ECHR legality requirement. The designation of the claimant is proportionate to the legitimate aim of protecting the UK's national security. The continuation of the designation is therefore compatible with the ECHR. It has not been shown that it is unlawful on any public law ground.

168. Accordingly, applying judicial review principles, I refuse the application to set aside the decision to maintain the claimant's designation.