Neutral Citation Number: [2025] EWHC 3359 (Admin)

Case No: AC-2025-LON-001421

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 December 2025

Before :

THE HONOURABLE MRS JUSTICE COLLINS RICE DBE CB

- -

Between :

PJSC VTB BANK (A COMPANY INCORPORATED IN THE RUSSIAN FEDERATION)

Claimant

- and –

HM TREASURY

Defendant

-and-

VTB CAPITAL PLC (IN ADMINISTRATION)

Interested Party

- -
- -

Mr Tim Owen KC, Mr William Day & **Mr Tim James-Matthews** (instructed by PCB Byrne LLP) for the **Claimant**
Sir James Eadie KC, Mr Thomas Munby KC & **Mr Tom Rainsbury** (instructed by the Government Legal Department) for the **Defendant**
Ms Maya Lester KC, Mr Malcolm Birdling, Mr Alastair Richardson & **Mr Ryan Perkins** (instructed by Weil Gotshal & Manges (London) LLP) for the **Interested Party**

Hearing dates: 12th & 13th November 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 19 December 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mrs Justice Collins Rice :

Introduction

1. This application brings before a reviewing court issues about Government decision-making within the Russia sanctions regime, in an insolvency context in which both the insolvent company, and its controller and principal creditor, are subject to sanctions.

2. The Claimant is Russia's second largest bank ("the Bank"). It is majority-owned by the Russian government. It was placed under sanctions by the UK Government (and internationally) in February 2022, following the full-scale Russian invasion of Ukraine. Those sanctions extended indirectly via an asset freeze to the Bank's UK subsidiary VTB Capital plc ("VTBC", itself an investment bank), the Interested Party in this case. The effect of the sanctions was to render VTBC insolvent, and it entered into administration in December 2022. It participates in these proceedings by its court-appointed Joint Administrators (the "JAs").

3. The management of, and decision-making within, the UK sanctions regime is the responsibility of the Office of Financial Sanctions Implementation ("OFSI"), a part of HM Treasury, the Defendant in this case. OFSI made a number of adjustments to the sanctioning of the Bank and of VTBC, as VTBC's administration proceeded. The latest of these was a decision promulgated on 8th January 2025.

4. The Bank exercises its statutory right to bring that decision before the Administrative Court for review. It says the decision is unlawful on a total of six grounds.

The Sanctions Regime

5. Government-imposed financial sanctions, targeted at named individuals and commercial entities, constitute restrictions on their rights and freedoms in order to achieve specific foreign policy or national security objectives.

(a) Statutory framework

6. The Government's legal powers to do this derive from section 1 of the Sanctions and Anti-Money Laundering Act 2018 ("SAMLA"), and regulations made under it. As relevant to the present case, SAMLA provides:

> **1. Power to make sanctions regulations**
>
> (1) An appropriate Minister may make sanctions regulations where that Minister considers that it is appropriate to make the regulations—
>
> (a) for the purposes of compliance with a UN obligation,
>
> (b) for the purposes of compliance with any other international obligation, or
>
> (c) for a purpose within subsection (2).

(2) A purpose is within this subsection if the appropriate Minister making the regulations considers that carrying out that purpose would—

(a) further the prevention of terrorism, in the United Kingdom or elsewhere,

(b) be in the interests of national security,

(c) be in the interests of international peace and security,

(d) further a foreign policy objective of the government of the United Kingdom,

(e) promote the resolution of armed conflicts or the protection of civilians in conflict zones,

(f) provide accountability for or be a deterrent to gross violations of human rights, or otherwise promote—

(i) compliance with international human rights law, or

(ii) respect for human rights,

(g) promote compliance with international humanitarian law,

(h) contribute to multilateral efforts to prevent the spread and use of weapons and materials of mass destruction, or

(i) promote respect for democracy, the rule of law and good governance.

(3) Regulations under this section must state the purpose (or purposes) of the regulations, and any purpose stated must be—

(a) compliance with a UN obligation, or other international obligation, specified in the regulations, or

(b) a particular purpose that is within subsection (2).

(5) In this section "sanctions regulations" means regulations which do one or more of the following—

(a) impose financial sanctions (see section 3);

…

(g) make supplemental provision in connection with any provision of the regulations or other regulations made under this section.

…

7. This power was exercised to make, and subsequently update, the Russia (Sanctions) (EU Exit) Regulations 2019 ("the Regulations"), the current legal framework of the Russia sanctions regime. As required by section 1(3) of SAMLA, their purpose is expressly set out as follows:

> **Purposes**
>
> 4. The regulations contained in this instrument that are made under section 1 of the Act are for the purposes of —
>
> (a) encouraging Russia to cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine;
>
> (b) promoting the payment of compensation by Russia for damage, loss or injury suffered by Ukraine on or after 24th February 2022 as a result of Russia's invasion of Ukraine.

8. The Regulations give the Secretary of State power to '*designate*' persons (individuals or corporate entities) by name, and to impose a range of sanctions on designated persons. Among these available sanctions are: (a) asset-freezing - a prohibition on '*dealing with funds or economic resources*' owned, held or controlled by a designated person, (b) a prohibition on making funds and/or economic resources '*available directly or indirectly to a designated person*', and (c) a prohibition on making funds or economic resources available for the benefit of a designated person.

9. Contravention of a sanction constitutes a criminal offence. Contravention for these purposes includes '*intentionally participating in activities knowing that the object or effect of them is (whether directly or indirectly) to circumvent any of the prohibitions … or to enable or facilitate the contravention of any such prohibition*' (Regulation 19).

10. The Regulations confer on the Treasury (for these purposes, OFSI) a power to issue a '*licence*' to '*authorise acts which would otherwise be prohibited*' (Regulation 64). A licence may be general, or specific to a particular designated person. A specific licence may be granted only where the Treasury considers it appropriate for certain specified purposes set out in Schedule 5 to the Regulations. These purposes include enabling a designated corporate entity to: (a) meet '*basic needs*' such as the payment of taxes, wages, utility bills and so on, (b) pay for legal services, (c) cover the reasonable fees and charges of holding or maintaining frozen assets, and (d) implement or satisfy certain judicial decisions or comply with certain prior obligations. A specific licence may also be granted for purposes connected with insolvency, subject to a proviso that any funds flowing out of the insolvency to a sanctioned creditor must be frozen and rendered inaccessible.

11. Regulation 66 makes general provision about the power to issue licences as follows:

> **Licences: general provisions**

> 66.—(1) This regulation applies in relation to Treasury licences…
>
> (2) A licence must specify the acts authorised by it.
>
> (3) A licence may be general or may authorise acts by a particular person or persons of a particular description.
>
> (4) A licence may —
>
> (a) contain conditions;
>
> (b) be of indefinite duration or a defined duration.
>
> (5) A person who issues a licence may vary, revoke or suspend it at any time.
>
> (6) A person who, on the application of a person ("P"), issues a licence which authorises acts by a particular person, or varies, revokes or suspends that licence, must give written notice to P of the issue, variation, revocation or suspension of the licence.
>
> (7) A person who issues, varies, revokes or suspends a general licence or a licence which authorises acts by persons of a particular description must take such steps as that person considers appropriate to publicise the issue, variation, revocation or suspension of the licence.

(b) OFSI Guidance

12. OFSI publishes *UK Financial Sanctions General Guidance* (("the Guidance") - the latest version is dated 27th June 2025) which gives a general overview of the sanctions legislation and regime. It points out (at [1.4]) that '*UK financial sanctions apply to all persons within the territory and territorial sea of the UK and to all UK persons, wherever they are in the world*'; accordingly the Guidance is entirely generally addressed. That of course reflects the legal framework, which is also generally addressed in relation to contraventions (Regulation 19), as set out above.

13. The Guidance includes an extended section dealing with the licensing regime. It includes this paragraph:

> HM Treasury can vary, suspend or revoke general licences at any time. OFSI aims to engage with relevant stakeholders before taking such action unless revocation takes place because the activity or designated person specified in the general licence is no longer subject to sanctions. General licences may also be revoked when their permitted activities are provided for on a permanent basis by new exceptions added into the sanctions regulations. Where there is a specific and urgent need to revoke a general licence, OFSI will aim to give notice to its users by, for

> example, amending the licence first to include a new expiry date to give time for users to reassess their licensing needs. Applicants may wish to sign up to OFSI's e-alerts to ensure that they are notified of any upcoming changes to general licences.

(c) Designation

14. The Bank was designated under the sanctions regime on 24th February 2022. The sanctions imposed were: '*Asset freeze, Director Disqualification Sanction, Prohibition on Correspondent banking relationships and processing payments, Trust Services Sanctions*'. VTBC became subject to an asset freeze as a result. The '*Statement of Reasons*' accompanying the designation set out that '*VTB Bank PJSC is owned by and/or associated with the Russian government and has received significant financial support from the Russian government. The Russian government is involved in activities to destabilise Ukraine and undermine the territorial integrity, sovereignty and independence of Ukraine.*'.

15. The UK Government described this designation at the time as '*by far the single biggest financial sanction in history*'. The USA imposed sanctions contemporaneously, describing the Bank as '*a critical artery of Russia's financial system*'. The EU sanctioned the Bank a few weeks later, citing that its CEO had been appointed by President Putin, it had close ties to Russian intelligence, and it generated high volumes of revenue for the Russian government.

16. Some of the effects of these sorts of sanction were recently summarised in the judgment of the Supreme Court in *Shvidler v SSFCDA [2025] 3 WLR 346* as follows:

> [26.] Section 60 of SAMLA sets out definitions of some of the key terms used in the Act. The terms "funds", "economic resources" and "freezing" are given very expansive meanings. For instance, "economic resources" is defined as including assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services. The breadth of this definition is designed therefore to capture all elements of an individual's wealth. "Freezing" funds is widely defined as preventing funds from being "dealt with". That includes using, altering, moving or transferring them or allowing access to them or doing anything with them "in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination": section 60(3)
>
> ...
>
> [47.] Part 3 of the 2019 Regulations deals with what happens when a designated person is designated under regulation 6 for the purpose of an asset-freeze. Regulation 11(1) provides that a person ("P") must not deal with funds or economic resources owned, held or controlled by a designated person if P knows, or

> has reasonable cause to suspect, that P is dealing with such funds or economic resources. Regulations 12 to 15 then expand further the restrictions that apply where a designated person is subject to an asset-freeze.
>
> [48.] A person who contravenes that prohibition commits an offence: regulation 11(3). Further:
>
> > (1) It is a criminal offence for a person to make funds or economic resources available directly or indirectly to a designated person, if that person knows, or has reasonable cause to suspect, that they are making the funds or economic resources so available: see regulations 12(1), 12(3); and 14(1), 14(3).
> >
> > (2) It is a criminal offence for a person to make funds or economic resources available to any other person for the benefit of a designated person, if that person knows, or has reasonable cause to suspect, that they are making funds or economic resources so available: see regulations 13(1), 13(3); and 15(1), 15(3).
> >
> > (3) It is a criminal offence for a person to participate intentionally in activities knowing that the object or effect of them is (whether directly or indirectly) to circumvent any of the prohibitions above, or to enable or facilitate the contravention of any such prohibition: see regulation 19(1) and (2).

17. '*Making available*' is not defined in SAMLA, but the legislative context, including the antecedent EU Regulation on which it was based, encourages a wide view (see for example *LCC EuroChem North-West-2 v Societe General [2025] EWHC 1938* at [250]-[251]: '*making funds 'indirectly' available … encompasses all the acts necessary under the applicable national law if that person is in fact to obtain full power of disposal in relation to the funds or economic resources concerned*').

18. The High Court in *re KRF Services (UK) Ltd [2024] EWHC 2978 (Ch)* made this interesting observation in an insolvency context (at [99]): '*Funds (or economic resources) might be made available to designated persons, or for their benefit, when administrators deploy them in some way, but not merely by the administrators being appointed*'. That observation both goes to the breadth of the concept, and highlights the potential for administrators' duties themselves to be caught by the sanctions regime. The latter is important context for the provision made for licensing '*to enable anything to be done in connection with*' insolvency proceedings.

The Decision-Making Challenged

(a) Background

(i) Developments in 2022

19. Shortly after the designation of the Bank and the asset freeze on VTBC, on 1st March 2022, OFSI issued a General Licence to permit VTBC to make payments for (a) its '*basic needs*', (b) routine holding and maintenance charges and (c) legal fees. It also permitted third parties to receive those payments and banks to process them. The General Licence was subject to requirements for VTBC to notify OFSI of any such payments and to keep accurate records of them. It also provided that '*the permissions in this licence do not authorise any act which the person carrying out the act knows, or has reasonable grounds for suspecting, will result in funds or economic resources being dealt with or made available in breach of the Russia Regulations, save as permitted under this or other licences granted under the Russia Regulations*'. The General Licence was expressed to be in force for one year, subject to its being varied, revoked or suspended by OFSI '*at any time*'.

20. On 1st April 2022, in consequence of the sanctions, VTBC's directors applied to the Chancery Division of the High Court (the Insolvency Court) for an order placing the company into administration. OFSI amended the General Licence on the same day to include a new provision as follows:

> *Permissions: [VTBC] payments related to Insolvency Proceedings*
>
> 5. Under this licence, subject to the conditions below:
>
> 5.1 Subject to paragraph 5.3 below, any Person (including, for the avoidance of doubt, [VTBC]) may make, receive or process any payments, or take any other action, in connection with any Insolvency Proceedings relating to [VTBC], whether prior to or after the commencement of such proceedings, including, without limitation, an insolvency practitioner for the purposes of his or her functions under or in connection with Insolvency Proceedings.
>
> 5.2 Insolvency Proceedings includes, without limitation, all those set out in the Insolvency Act 1986 and the Banking Act 2009.
>
> 5.3 No funds or economic resources shall be made available to or for the benefit of a person designated under the Russia Regulations including any entity owned or controlled by such a person, except for [VTBC].

21. The directors' application came before Fancourt J on 6th April 2022. He noted (*[2022] EWHC 1106 (Ch)*) that the '*full blocking sanctions*' to which VTBC was subject were '*the only source of the company's financial difficulties*'. He noted that the directors, and the JAs-designate, were content that the amended licence would be adequate for the purposes of conducting the administration. He inferred that the 'insolvency proceedings' provision of the licence meant that '*the UK government is content for the company* [ie VTBC] *to be able to make and receive payments in the course of its business if its affairs are under the control of a licensed insolvency practitioner and are*

being conducted principally for the benefit of the company's creditors'. But there was a stumbling block in practice, because to do that VTBC also needed an equivalent licence from the US Office of Foreign Asset Control ("OFAC"); that had been applied for but not yet granted.

22. In those circumstances, Fancourt J made an 'in principle' decision as follows. The application had been made on the basis the statutory objective to be achieved was '*achieving a better result for the company's creditors as a whole than would be likely if the company were wound up without first being in administration*'. The focus of that objective was both the amount of dividend eventually received by the creditors and also how soon they would be paid. In the absence of any contrary evidence or argument, the conditions for appointing administrators could be regarded as satisfied. Fancourt J continued:

> [25] However, although the court is minded to appoint administrators for the reasons explained to me, the appointment should not take effect until it is known whether the licence from OFAC will in fact materialise; and provided that the OFSI licence remains in place at the same time. Otherwise, on the evidence before me, the appointment will be pointless. The order appointing the administrators will therefore not be made or sealed at this time, but only on the filing by CE file by the directors' solicitors of evidence that both licences are in place, assuming that there is no other relevant change in circumstances, in which case the matter should be restored for a further hearing.

23. The US OFAC licence was granted on 11th November 2022. The application came back to the Insolvency Court on 6th December 2022. Sir Anthony Mann made an order reciting the OFSI and OFAC licences, granting the application, and appointing the JAs.

(ii) January 2023 – September 2024

24. The evidence of the JAs in these proceedings is that they spent the next year and a half – from January 2023 to September 2024 – in a process of close consultation with the Bank, in its capacity as VTBC's majority shareholder and principal creditor, but also as itself a designated entity (and therefore subject to the express exclusion provided for in clause 5.3 of the March 2022 licence), with a view to progressing the administration consensually.

25. The JAs had formed a view that the primary objective of the administration which had been confirmed by Fancourt J – *achieving a better result for the company's creditors as a whole* – would best be served by a 'scheme of arrangement'. This is a company law measure, by which the JAs envisaged VTBC's assets could be distributed as quickly and efficiently as possible among its creditors, including by factoring in to their notional entitlements assets which were unlikely in practice to be realised in the insolvency proceedings, for example more than £237m of VTBC's assets either held in Russia or owed to it by the Bank and entities under the Bank's control. A creditors' scheme of arrangement requires (a) approval by a majority in number of creditors (or

each class of creditors) voting *and* a 75% majority of those creditors by value and (b) approval by a court. This court approval is also known as a 'sanction'.[1]

26. The JAs had been discussing with the Bank over the first half of 2023 a proposed scheme of arrangement which envisaged the Bank's limited participation in the VTBC administration, but nevertheless to a degree not provided for in the March 2022 OFSI licence. It envisaged some participation of the Bank in the distribution of VTBC assets, albeit on a 'frozen' basis, and deferred until the non-sanctioned creditors had been paid – a proposition the Bank had given an early indication it would be willing in principle to accept. This plan was set out in a memorandum the JAs sent the Bank in January 2023. Discussions with the Bank continued on the detail of the proposed scheme, including by way of general updates in May and June of 2023. On 15th July 2023, the JAs sent the Bank a draft of the scheme, with explanatory notes, and invited feedback. The Bank offered no comments at the time. Further correspondence ensued and fresh drafts of the scheme were circulated in November 2023.

27. By May 2024, the proposed scheme had progressed to a point at which, from the perspective of the JAs and without demur from the Bank, it was nearing its final form. It contained three provisions of particular note for present purposes. First, the Bank, as a sanctioned creditor, was to be treated as having elected to defer its claims to VTBC assets behind the claims of non-sanctioned creditors (but there were opt-out provisions). Second, the scheme made general provision to the effect that if any creditors took enforcement action against any of VTBC's assets, the value of those assets would be deducted from the creditor's ultimate share. Third, VTBC's assets included a substantial amount of money it was owed by other commercial entities owned or controlled by the Bank. The scheme provided that the Bank would be treated as electing to receive those debts *in specie* (ie unenforced) as part of its share, but again there were opt-out provisions.

28. From the JAs' perspective, this was a solution they considered would enable the orderly winding up of VTBC as quickly as possible, the maximisation of the funds available for distribution to creditors, and ensuring that the Bank and other sanctioned creditors had no funds or resources made available to them from the administration until the non-sanctioned creditors had been paid. The JAs were proceeding on the understanding that the Bank recognised that, as a sanctioned creditor, its position in the administration was otherwise more restricted, and that there was at least a degree of acknowledged self-interest in the objectives of speed and simplicity.

29. On 27th May 2024, the Bank submitted a 'proof of debt' in the VTBC administration in a total amount in excess of £205m. On 31st May 2024, OFSI amended the General Licence by way of some detailed provisions tailored to enabling the JAs to administer the proposed scheme as drafted. These included, for example, reflecting the scheme's provisions for setting up various blind trusts for the receipt, holding and management of VTBC assets on behalf of the Bank for the duration of the application of the sanctions, and the payment of fees for the administration of those trusts, so that funds or resources would not be 'made available' to it meanwhile.

[1] '*Contronym*' – a word with two different meanings that are opposites. To sanction can mean both to approve and contrarily to penalise. I note the need to avoid ambiguity in the present context.

30. The antecedent Ministerial submission of 8th May 2024 had noted that elements of the scheme would contravene the existing General Licence provision that '*no funds or economic resources shall be made available to or for the benefit of a person designated under the Russia Regulations … except for [VTBC]*'. That was because the scheme did enable distribution to sanctioned creditors albeit on an interim inaccessible basis. The submission recorded some concern by officials that the scheme would nevertheless result in:

> … the making available of funds to designated persons (even though no funds would be made directly available to them), and the provision of trust services to or for the benefit of those persons and potentially persons connected to Russia. It also risks setting an unhelpful precedent … . However, this risk is mitigated by OFSI only proposing tightly defined carve outs to permit those elements of the scheme which engage those prohibitions. This will include a requirement that those funds being made available will be held by specific types of trust where they will be frozen and may only be unfrozen should OFSI grant a licence or sanctions be lifted. This should hopefully reduce the risk of the making available and trust services prohibitions being undermined, while also implementing the [General Licence's] policy intent (that is to allow for the orderly and timely wind down of VTBC).

31. On 24th June 2024, the JAs issued a claim in the Insolvency Court seeking approval for the proposed scheme of arrangement. On 1st July 2024, Sir Anthony Mann gave directions for a 'scheme meeting' – a meeting for the relevant creditors to decide whether to approve the scheme – and the subsequent listing of a hearing for the Court to approve ('sanction') the scheme if approved by sufficient creditors. The scheme meeting was scheduled for 5th September 2024.

(iii) September 2024 – December 2024

32. On 4th September 2024, the day before the scheme meeting, and following 19 months of consultation on the scheme without any in-principle objections having been made, the Bank took the JAs completely by surprise by announcing that it was going to vote against the scheme. By virtue of its dominant value position as the JAs understood it, that would have meant the scheme would not be approved at the meeting. The JAs also learned on the same day that the Bank had instructed English solicitors. They received a letter from them which stated '*whilst VTB Bank disagrees with certain terms of the Scheme as currently proposed, it is supportive of the Scheme in principle. In this context, VTB Bank is hopeful that amendments can be agreed with the Joint Administrators which are acceptable to VTB Bank, but still address the Administrators' concerns about distributions*'.

33. The JAs responded on the same day, 4th September 2024, reminding the Bank of the benefits to it of the scheme, and setting out that the alternative would be that '*the Administrators will seek to achieve the same outcomes as proposed in the Scheme, but through applications to the English court, with the consequent reopening of discussions*

with OFSI…'. It set out that the JAs would apply to the Insolvency Court for rulings to achieve results in insolvency law as close as possible to those of the scheme – but that the process would inevitably be slower, VTBC's assets eroded by increased costs, all creditors would get a lower return, and sanctioned creditors such as the Bank would not have the advantage of VTBC assets being held for their benefit in trusts. In short, by voting against the scheme, the Bank would be '*harming all creditors, including itself, without any obvious benefit*' to itself. The JAs sought urgent discussions with the Bank. The scheme meeting and the Insolvency Court hearing were postponed.

34. The nature and course of the ensuing discussions between the JAs and the Bank are subject to rival colouration from each. The Bank says the discussions were insufficiently responsive to its concerns, increasingly characterisable as an attempt simply to override its entitlement to veto the scheme, and ultimately inconclusive. The JAs say they '*worked hard to facilitate a consensual solution and provide reassurances to address [the Bank's] concerns with the Scheme in September and October 2024, but in October [the Bank] terminated any meaningful engagement, turning down the offer of a principals' discussion with the Joint Administrators*'. The JAs also say they did nevertheless maintain a regular and close dialogue with the Bank's English solicitors to seek to address the Bank's concerns with the proposed scheme over the period – and beyond (the rescheduled scheme meeting had been fixed for 30th January 2025).

35. But on 29th October 2024, the JAs came to understand that (a) the Bank had taken direct enforcement action over VTBC's cash accounts in Russia, obtaining around £42.4m worth of assets, and (b) the Bank's English solicitors had been unaware of that, having understood that no action was being taken by the Bank pending the continuing scheme discussions. The JAs alerted OFSI on 31st October 2024, and sent the Bank's solicitors a letter asking for further details and the answers to a list of specified questions. The JAs say they have never had clear answers to those questions or to the request for full details.

36. On 25th November 2024, the JAs sent a long note to OFSI setting out the position as they saw it. They said they had sought to engage with the Bank's lawyers every week since the beginning of the month without '*substantive responses to any of our questions or suggested way forward*'. As a result, since the Bank was likely to make up more than 25% by value of voting creditors, it '*had the ability to veto the Scheme and disrupt the progress of the administration*'.

37. The JAs understood that not only had the Bank seized more than £40m of VTBC's cash assets, it had obtained freezing orders over another £17m of assets and a $10m loan. They explained that without the scheme, the position in insolvency law could be that the value of these assets would be deducted from the value of the Bank's *claim* rather than from its ultimate (pro rata) *share*, giving it an advantage over other (unsanctioned) creditors as a direct result of being able to operate freely in Russia (and of the sanctions regime having precipitated the insolvency of VTBC in the first place).

38. The JAs also noted that, without the scheme's provision for the Bank to be treated as electing to receive debts owed to VTBC by Bank-controlled debtors *in specie* as part of its share, (a) the Bank's claim would be against the total *realisable* assets of VTBC in direct competition with other (unsanctioned) creditors, which would likely result in VTBC's insolvent failure, defeating the purpose of the administration, and (b) the Bank-controlled debtors would be '*extremely unlikely to pay even if a very long and*

expensive enforcement process were pursued'. In other words, they said the Bank stood to benefit twice over – there would be no incentive for the VTBC debtors over which it had control to meet their obligations to pay into the VTBC administration, and the Bank would also expect a larger share of the assets at the expense of unsanctioned creditors.

39. The JAs' note to OFSI continued as follows:

> [10] Since the potential outcomes of: (i) benefit from enforcement , and (ii) a double recovery for [the Bank in relation to the debts owed to VTBC over which it had control], are obviously not consistent with the policy objectives of the UK's sanctions regulations, we would like to suggest a sanctions solution to OFSI. This could involve the following:
>
> a) First, on other schemes, the High Court has held that creditors who are designated persons or who are otherwise subject to the asset freeze and other financial restrictions contained in The Russia (Sanctions) (EU Exit) Regulations 2019 ("Sanctioned Creditors") are prohibited from voting. However, in an exchange of letters in May this year, OFSI confirmed that the General Licence permits Sanctioned Creditors to vote on the VTBC Scheme. One potential step would be for OFSI to amend the General Licence to prevent Sanctioned Creditors from voting, enabling VTBC to achieve the requisite majorities to seek sanction [ie approval] of the Scheme from the court. This may in turn allow VTBC to amend the Scheme or propose a restructuring plan to force [the Bank] to accept distributions *in specie* of [the Bank-controlled debts] ([the Bank] currently has an option whether to accept these under the Scheme).
>
> b) Secondly, OFSI could amend the General Licence to state that:
>
> > i) VTBC and the Administrators should not pay distributions on [the Bank's] claim, nor make provision for any such distributions, without first deducting from the distributions or provisions the value of (aa) [the Bank's] enforcement efforts, and (bb) [the Bank-controlled debts];
> >
> > ii) in order to prevent [the Bank] from making a profit in Roubles from the UK insolvency process, that for these purposes both the proceeds of [the Bank's] enforcement and the [Bank-controlled debts] should be converted to Sterling at the administration date FX rate, being the same rate that applies to the conversion of creditors' claims to Sterling for the purposes of proof in the administration; and

> iii) in order to prevent [the Bank] profiting from the calculation of statutory interest in the administration, that VTBC and the Administrators should not pay nor provide for statutory interest on VTB Bank's claim with respect to any period of time over which distributions are not paid as a result of these deductions.

40. The JAs proposed a form of words to be inserted into the General Licence to achieve the second of the two options they had identified. They indicated that if such an amendment were made, they would expect to apply to the Court for permission to make distributions in accordance with the amended requirements of the General Licence '*to avoid any conflict between sanctions law and insolvency law*'. They set out in detail what it was they would be asking the Insolvency Court to do.

41. The JAs also informed OFSI that they had arranged a hearing before the Insolvency Court in a few days' time to consider an urgent *ex parte* application seeking an order permitting a distribution of VTBC assets among its creditors. The purpose of that application can be summarised as seeking to crystallise out at least some of the creditors' interests in the insolvency before the Bank was able further to affect them, including by ensuring that the Bank's 'self-help' measures would be set off against its ultimate share.

42. OFSI responded to the JAs on 27th November 2024, indicating that it would consider their proposals further, but checking (a) whether the first option would require the JAs to apply to the Insolvency Court for this to be permitted '*to avoid any conflict between sanctions law and insolvency law*' and (b) whether the second option would require the Bank and/or other sanctioned creditors to support the proposed scheme of arrangement – it now being unclear that they would do so.

43. The JAs replied the following day, 28th November 2024, to the effect that (a) the JAs would *not* be required to apply to the Court, but would expect to draw attention to developments at or before any hearing seeking approval for the scheme (at the time scheduled for 30th January 2025) and (b) the Bank's support for the scheme would *not* be required. The licence amendment, combined with a direction from the Court to make distributions in accordance with it, would produce an effect similar to the scheme whether or not the scheme itself were approved. The JAs' note explained that, as such, '*the amendment would give very material benefits to creditors even if the Scheme were not approved. Nevertheless, the best outcome would be a combination of the amendment of the General Licence and the approval of the Scheme*'. The amendment they sought would also, they thought, '*give the benefit of increasing the possibility of the Scheme being approved*'.

44. The Insolvency Court hearing the JAs had arranged for 2nd December 2024 took place in private before Adam Johnson J. His judgment notes the evidence the JAs put before him that the Bank had been progressing its own claims in Russia against VTBC and had recently taken enforcement steps against VTBC assets in Russia. The judgment (*[2024] EWHC 3196 (Ch)*) continues:

> [8] Perhaps of more concern, there is also evidence that [the Bank] is undertaking its own proposed restructuring. The proposed restructuring entails a transfer to a new company of [its] assets and liabilities to unfriendly counterparties amounting to up to RUB 170 billion (circa £1.34 billion) and this is due to take place by the end of 2024.
>
> [9] The Administrators are concerned that further executions against [VTBC's] assets in Russia will prejudice its creditors generally, as would any counterparty restructuring that denied [VTBC] the benefit of insolvency set off by reason of a fracturing of the mutuality of claims. Therefore the Administrators seek permission to distribute at this time.

45. Adam Johnson J noted that the JAs had made clear their intention to make a first distribution *either* following Court approval of the scheme (a hearing was now listed for 6th February 2025) *or* it becoming clear that the creditors would not agree the scheme. He noted that the Court order extending the JAs' term of office on 10th October 2024 '*has already recognised that the administration is effectively 'in distribution mode"*. He noted that '*no creditors objected either to the extended term of the Administrators or indeed to the distribution application when originally put forward as part of the Scheme. All such matters, in my view, make it clear that it is only a matter of time before a distribution is actually made and the relevant timescale is intended to be a relatively short one*.'.

46. The judgment then addresses itself to '*the propriety of the Administrators' objectives*'. The Judge noted that '*in the present context it seems to me that the question of whether to permit the distribution should be looked at from the perspective of the creditors' interests as a whole*'. The fact of the general estate being better off was a factor in favour of granting permission '*even if it comes at the expense of a particular creditor*'. He granted the application in the terms sought, including that the judgment remain private until notice of intention to distribute had actually been given; that measure, and holding the hearing in private, was justified in view of the '*risk of further enforcement or other activity in Russia, which might defeat the object of the application*'. His order included liberty to apply for the benefit of creditors, enabling any creditor wishing to dispute the decision to do so before any distribution was actually made. That, he considered, struck a fair balance between the interests of creditors generally, and the interest of any particular creditor (even though the notice of intention to distribute would itself trigger automatic effects which could not then be unwound).

47. The JAs reported back to OFSI on 9th December 2024, enclosing the hearing transcript, approved judgment transcript and order, together with the evidence and submissions they had put before the Judge, and the notice to creditors of intended dividend which had been given immediately after the judgment. They said that the permission to distribute '*does not detract from the importance of the suggested amendments to the General Licence*'.

48. The JAs sent a further note to OFSI the following day, 10th December 2024. They had come to understand that the Bank had successfully taken legal action in Russia against

one of the companies it controlled, obtaining judgment to the extent of RUB 9.8 billion. This company owed VTBC about £48m. The JAs also informed OFSI of recent calls they had had with the Bank's English solicitors, who '*had no substantive updates for us on [the Bank's] position*'.

49. The JAs' solicitors updated OFSI on 19th December 2024 as follows:

> The Administrators have today issued their latest six-monthly progress report to creditors, and I attach a copy for your information.
>
> In the meantime, we thought it would be helpful to summarise the key dates in the Scheme and distribution process. As I suggested in my email of 28 November, if we are to take account of any changes to the General Licence in that process, we would ideally know by 6 January whether, and to what extent, the General Licence is to be amended.
>
> If there is a material delay beyond 6 January, that could lead to a disproportionately large delay in the process, as any delay to the 6 February hearing date would be likely to lead to something in the region of two months' delay before a new hearing could be arranged.
>
> With that in mind the timeline is as follows:
>
> a) Ideally by 6 January, substantive response from OFSI.
>
> b) Ideally by 9 January, amended Scheme and Supplemental Explanatory statement to be circulated by the Administrators to creditors to reflect any amended General Licence, to allow 21 days for creditors to consider it ahead of the creditors' meeting.
>
> c) 30 January: Creditors' meeting to consider the Scheme and any proposed amendments. NB: If the creditors' meeting is delayed, there is likely to be a delay of possibly two months before the date for which the sanction hearing could be rearranged.
>
> d) 6 February: Sanction [Court approval] hearing. NB: If the Scheme is not approved, the Administrators may use this hearing to obtain directions with respect to making a distribution to creditors outside of the Scheme.
>
> e) 4 March: The last date for creditors to submit proofs of claim in order to be included in the first distribution.
>
> f) Early May: Payment of first distribution to creditors.
>
> As set out in my emails below, [the Bank] is taking steps to enforce over VTBC's assets and over the assets of one of VTBC's key

> debtors. At the same time, [the Bank] is not taking steps to ensure that its subsidiaries pay their debts to VTBC. Without changes to the General Licence, [the Bank's] actions could mean that it is the creditor that does best from VTBC, as it will effectively have stepped ahead of VTBC's other creditors.
>
> We would welcome the opportunity to talk you through this, if helpful.

(b) The Challenged Decision

(i) The Officials' Submission

50. OFSI's licensing team prepared a submission to their senior decision-makers on 2nd January 2025. It indicated the timing was '*urgent*' in view of the timetable set out in the JAs' note of 19th December 2024 and the JAs' '*strong preference*' for the (amended) scheme and explanatory statement due for circulation on 9th January to reflect amendment to the General Licence. The submission briefly set out the background, and the JAs' proposal for a licence amendment to state that (a) the blind trusts could be retained but no distribution made into them on the Bank's claim without first deducting from the distributions the value of any VTBC assets which had been or were subject to the Bank's enforcement action, and of the debts owed to VTBC by entities controlled by the Bank, and (b) statutory interest should not be paid for any time over which distributions were not paid because of these deductions. It noted the JAs had also floated an alternative option to prevent sanctioned creditors from voting on the scheme, but recommended against that on the basis '*it would essentially be using the Russia Regulations to impose a prohibition in respect of an activity which should be regulated by insolvency law since the vote would be made as a normal part of these insolvency proceedings and it is not clear that the voting would be a breach of the Russia Regulations*'.

51. The advice contained in the submission recited that:

> The policy aim of the Russia Regulations is to encourage Russia to cease actions destabilising Ukraine or undermining or threatening Ukraine's territorial integrity, sovereignty, or independence. Making the suggested amendments is in keeping with these policy aims since it will ensure that [the Bank], a state-owned Russian bank, does not: i) make a double recovery, ii) benefit from taking enforcement action which would lead to it stepping ahead of non-sanctioned creditors (over 50% of which are UK persons) meaning these creditors may not receive distributions, iii) unduly profit from statutory interest.

52. It set out that, given the proposed scheme of arrangement had not been approved and the sanctioned creditors formed a blocking vote which could veto it, OFSI officials had had concerns about whether the proposed licence amendment would have any practical

benefit. However the JAs had advised that the combination of an amended General Licence, and a direction from the Court to make distributions in accordance with the amended General Licence, would have an effect similar to the scheme even if the scheme were not approved.

53. It also set out that:

> Not amending the GL [General Licence] could attract criticism as i) [the Bank] would arguably be in a better position vis-à-vis the administration (for the reasons set out above), and ii) OFSI could be viewed as acting inconsistently since the GL was amended in May to partly ensure that safeguards are in place if any enforcement action is taken against VTBC, therefore not amending the GL to add further safeguards could be viewed as incompatible with OFSI's previous decision.

54. The submission concluded by seeking agreement that OFSI amend the Licence '*to prevent [the Bank] from making a double recovery, stepping ahead of other creditors, and/or profiting from statutory interest in the administration*'.

55. The decision-maker confirmed the same day that he was content for the General Licence to be amended as proposed, recording that he considered the submission's '*rationale is persuasive*'. Correspondence between OFSI and the JAs in the ensuing days discussed the detailed drafting of the proposed amendment, including one detail concerning future provisions. The final version of the amended General Licence was published on 8th January 2025. It is this document ("the Amended Licence"), and the decision-making leading to it, which is challenged by the Bank in these review proceedings.

(ii) The Amended Licence

56. The Amended Licence retained the original 'basic needs' provision for VTBC, the measures to enable the insolvency proceedings, and all the other provisions made up to this point, including the detailed provision made on 31st May 2024 tailored to enabling the JAs to administer the proposed scheme of arrangement as drafted – the setting up of blind trusts for the receipt, holding and management of VTBC assets on behalf of the Bank and other sanctioned creditors, the payment of fees for the administration of those trusts, and so on. These latter provisions, contained in [5.3] of the Amended Licence, continued to be expressed by way of a carve-out from the principle that '*no funds or economic resources shall be made available to or for the benefit of a person designated under the Russia Regulations including any entity owned or controlled by such a person*' except for VTBC.

57. The new provision made in the Amended Licence was as follows:

> [5.3A] Paragraph 5.3 above is subject to the condition that no funds or economic resources shall be made available, including the making of any provision with a view to making a payment of funds or a transfer of economic resources at a later date, in each

> case to [the Bank] or any person to whom [the Bank] have transferred, or in the future transfer, their claim in [VTBC's] Insolvency Proceedings ("a Transferee"):
>
> a. Without first deducting the value of:
>
> i. any of [VTBC's] assets over which [the Bank] or a Transferee has taken or is taking enforcement action; and
>
> ii. [the debts owed to VTBC by entities controlled by the Bank];
>
> such values to be reduced by the value of any provision or distribution made with or from such assets or [debts]; in each case valued at their nominal amount (plus any interest) in the case of receivables, other debts and cash, and at their market value in the case of other assets, in each case as determined by [VTBC]; and in each case … converted to Sterling at the conversion rates applicable as at 6 December 2022 for the purposes of converting creditors' claims to Sterling in [VTBC's] Insolvency Proceedings.
>
> b. With respect to any statutory interest that might otherwise be due to [the Bank] or a Transferee with respect to any period of time over which distributions are not paid as a result of (a) above.

(iii) Subsequent Developments

58. The JAs published an amended version of the scheme of arrangement on 10th January 2025, its terms reflecting those of the Amended Licence. The explanatory note set out that there had been no reason to think OFSI would permit distributions to the Bank on any other basis, and that therefore there would be no benefit to the Bank from causing the scheme to fail, since the same deductions would have to be made in any event.

59. At the creditors' meeting on 30th January 2025, chaired by one of the JAs, the Bank voted against this latest version of the scheme. But because the estimated value of its interest in the VTBC administration had been reduced in accordance with the deductions provided for in the Amended Licence, the Bank no longer had the power of a blocking vote to veto the scheme. The scheme accordingly passed with the necessary majorities. The JAs confirmed they would therefore proceed to ask the Insolvency Court to approve the scheme and thereby give it legal effect.

60. That hearing had been scheduled for 6th February 2025. This was adjourned after the Bank confirmed it would oppose the application. The JAs then issued an application to the Court for a distribution to be made in accordance with the terms of the Amended Licence. At this point, and before the application had been served, the Bank indicated its intention to challenge the Amended Licence itself by way of the present proceedings. It issued the present review application on 2nd May 2025. The Insolvency Court proceedings have been paused pending the outcome of these review proceedings.

The Challenge

61. Section 38 of SAMLA provides (as relevant) as follows:

> **38. Court review of decisions**
>
> (1) This section applies to—
>
> (a) any decision under section 23(3) or 24(2) (decision, following a request to or review by an appropriate Minister, on whether a designation of a person made under a designation power should be varied or revoked);
>
> …
>
> (d) any other decision of an appropriate Minister in connection with functions of that Minister under this Part or regulations under this Part …
>
> (2) The appropriate person may apply to the High Court … for the decision to be set aside.
>
> (3) "The appropriate person" means—
>
> (a) … the person named by the designation …
>
> (4) In determining whether the decision should be set aside, the court must apply the principles applicable on an application for judicial review.
>
> (5) If the court decides that a decision should be set aside it may make any such order, or give any such relief, as could in the absence of this section be made or given in proceedings for judicial review of the decision… .

62. It is not controversial in the present proceedings that the decision-maker authorising promulgation of the Amended Licence did so in exercise of delegated Ministerial powers. The Bank accordingly exercises its statutory right to ask the Administrative Court to review the Amended Licence decision on a judicial review basis, and does so by reference to six public law grounds of unlawfulness. Three of these are of a procedural nature, challenging how the decision was taken. Three are of a substantive nature, challenging the content and effect of the decision. The Bank asks for the Amended Licence to be set aside.

63. Perhaps the principal substantive challenge (**Ground 4**) is that OFSI acted in exercise of its licensing powers for an improper purpose and in breach of the *Padfield* principle that a statutory power must be exercised for the purpose for which it was conferred (*Padfield v Minister of Agriculture, Fisheries & Food [1968] AC 997*). The Bank says OFSI made the Amended Licence for the improper collateral purpose of prejudicing the economic interests of the Bank and to defeat its legitimate claims in the VTBC insolvency – including by engineering the elimination of its blocking vote to achieve the imposition of a scheme of arrangement it could not otherwise have achieved.

64. This is linked to the challenge it makes on the basis of Article 6 of the European Convention on Human Rights (**Ground 6**). The Bank says making the Amended Licence was an unlawful interference with its right to have its interest in the insolvency determined according to insolvency law and ultimately by the Insolvency Court – it simply cut across what ought to have been a judicial process.

65. The third substantive challenge (**Ground 5**) is an irrationality challenge to two specific aspects of the Amended Licence – (a) its imposition of historic exchange rates, being an arbitrary measure resulting in the substantial over-valuation of the deductions and (b) the prohibition on '*making provision*' in respect of those deductions, thereby effectively precluding any distribution to the Bank even in respect of debts in relation to which there is no dispute.

66. The procedural challenges raise issues about what the Bank contends was an unfairly one-sided process, OFSI working closely with the JAs to the exclusion of the Bank. **Ground 1** proposes procedural unfairness, in that OFSI failed to provide the Bank with an opportunity to make representations prior to the making of the Amended Licence, while it allowed and considered representations from the JAs. **Ground 2** proposes a failure to comply with OFSI's own published policy aim of engaging with '*relevant stakeholders*' before making licensing decisions.

67. The third procedural challenge alleges failure of OFSI's *Tameside* duty (*Secretary of State for Education and Science v Tameside Metropolitan Borough Council [1977] AC 1014*) (**Ground 3**). The Bank says that OFSI appears to have proceeded on the basis of adverse factual conclusions regarding the Bank's conduct, or of assumptions about the risk of the Bank's acting in future to circumvent sanctions, in a manner which was procedurally unfair and without obtaining the information that was reasonably necessary to determine those matters.

Consideration

68. The context of this public law challenge is insolvency litigation in which the Bank and the JAs are now vehemently at odds, and in which there are accusations and counter-accusations of lack of transparency and misconduct. My task is, however, a relatively narrow one. The parties agree I am not required to intervene in or enter into the substance of the insolvency dispute or any related conduct issues, nor am I required to resolve any point of insolvency or company law, in order properly to discharge my present functions. I am not being asked to decide whether and how the sanctions to which VTBC and the Bank are subject do or do not precisely constrain the Bank's activities in relation to VTBC's administration in general. Nor am I conducting a full merits-based analysis of the decision about the Amended Licence, nor attempting to substitute for a function Parliament has carefully assigned to the Treasury, in a matter in which the Administrative Court clearly has limited '*institutional competence*'.

69. The insolvency proceedings are important context for my present task, but my functions are straightforwardly those of a court of review, examining a challenged decision of a public authority on ordinary judicial review terms. In the circumstances, I have aimed to refer to the points in issue in the underlying proceedings only where necessary to understand the public law issues, and then as simply, concisely and sparingly as possible, avoiding technical terms and concepts where I can.

(a) The Padfield challenge (Ground 4)

70. I start with the *Padfield* challenge because it engages at a fundamental level with the nature of OFSI's statutory powers, and therefore necessarily frames much of the analysis which follows. It is also a good starting point for understanding how and why an improper purpose challenge differs from a *vires* challenge or an irrationality challenge. The Bank does not challenge that OFSI had *no power* to make the Amended Licence, nor that it acted irrationally in doing so other than in the particular respects specified. It says OFSI used the power it had for an improper extraneous purpose.

(i) The Bank's Challenge

71. Mr Owen KC, leading counsel for the Bank, helpfully summarised its 'core proposition' on the *Padfield* ground at the hearing as follows. OFSI was asked by the JAs to provide a '*sanctions solution*' to enable them to '*force*' a scheme of arrangement on the Bank. The scheme of arrangement finally voted by the creditors would impose on the Bank four terms in particular: (a) deductions in relation to debts owed to VTBC by foreign entities under the Bank's control, (b) restricting the accrual of statutory interest, (c) the imposition of historical currency conversion rates and (d) restricting future provisioning. These could have been imposed *only* by a company law scheme – these terms would not have been capable of being imposed by ordinary insolvency law. And they could have been imposed by a scheme *only* because of the Amended Licence.

72. That in turn is because the Amended Licence, by way of the 'deductions' provisions, had the effect of demolishing the Bank's blocking power to veto the scheme, and of preventing the proposal or approval of any other scheme (because it fundamentally altered the company law '*creditor rationality*' test in relation to those four issues, and would cause any alternative scheme to run into '*roadblock*' issues).

73. Therefore, submits Mr Owen KC, OFSI acted for the improper purpose of '*loading the dice*' in favour of the scheme and, specifically, of the JAs' preferred outcomes. Sanctions should not be used to confer a litigation advantage on one private party (the JAs) against another (the Bank) on issues of private (insolvency) law – especially since the scheme would, as a result of the four terms, largely or wholly extinguish the Bank's entire rights and interests as a creditor in the administration.

74. Mr Owen KC developed the Bank's core proposition in oral submissions before me along the lines that the proper purpose of the statutory power is to *freeze* the assets of sanctioned bodies, and there is a bright line between that and *expropriation*. The Amended Licence is the wrong side of that line, because its effect is to extinguish rights. It is no part of the sanctions regime to disrupt the proper administration of an insolvent company otherwise than for the purpose of preventing circumvention of the asset freeze. It is not a legitimate purpose to use the sanctions to advantage other creditors at the expense of a designated entity, nor to frustrate litigation conducted by a private party.

75. Mr Owen KC accepted that if insolvency law had been left to take its course, and the outcome was that a sanctioned creditor would stand to benefit in some way, then, depending on the circumstances, it *might* be a proper exercise of the power to refuse to authorise such a benefit to be conferred. But that, he says, is not what happened here. Instead, the power was used to forestall that process and divert insolvency law from its

course, advantaging the JAs and prejudicing the Bank's position within the proceedings. It was not a protective or preventative measure; it was actively intended to frustrate the consideration of good faith private law claims.

(ii) The *Padfield* Principle

76. There is no material dispute about the relevant legal principles to be applied in a *Padfield* challenge. They are well established. The principle was put this way in *Padfield* itself:

> Parliament must have conferred the discretion with the intention that it should be used to promote the policy and objects of the Act [which] must be determined by construing the Act as a whole … [I]f the Minister … so uses his discretion as to thwart or run counter to the policy and objects of the Act, then our law would be very defective if persons aggrieved were not entitled to the protection of the court.

77. For a modern restatement of the principle in the context of the sanctions regime, I was taken to *Khan v Secretary of State for Foreign, Commonwealth and Development Affairs [2025] EWCA Civ 41* at [92]:

> That principle requires that a discretionary power should be exercised so as to further the objects and policy of the legislation which confers it, and not to impede or frustrate that purpose. It is not concerned with whether the exercise of a discretionary power is 'likely' to further the statutory purpose. It suffices that the discretionary power has been exercised for that purpose and not for some extraneous purpose (for example to penalise a political opponent). There need not be bad faith: the purpose of the decision may be a benign one but, if it is extraneous to the statute which confers the power, on its correct interpretation, then it will be unlawful.

78. It is not controversial that *Padfield* requires the identification of the purpose of a statutory power (a question of statutory interpretation) *and* of its exercise in a challenged decision – and that the focus of the test is on the purpose of the exercise of a power and not on its effect. A court of review is not concerned on a *Padfield* challenge with how successfully or otherwise a measure achieves the statutory purpose.

(iii) The Statutory Purposes

79. The specific statutory power exercised to make the Amended Licence was the power in Regulation 66(5) to vary a licence. Within the statutory scheme, that power is dependent on, and ancillary to, the power conferred in Regulation 64 to issue a licence in the first place.

80. The Regulation 64 power to issue a Treasury Licence is a power to authorise certain acts which would otherwise be prohibited by or in relation to a sanctioned person, and

thus to relieve those acts of criminal law consequences. It is a power therefore which wholly *relies on* or *presupposes* the effects of sanctioning, operating ancillary to sanctioning decisions by enabling the creation of limited exceptions to their criminal law effects. It may do so by removing those effects in relation to specified acts either unconditionally or conditionally (Regulation 66(4)(a)).

81. The purpose of the licensing power, as a power to create limited exceptions to the criminalising consequences of designation, must in these circumstances be understood by reference to the purpose of the power to designate itself, and thereby place persons under the original prohibitions and consequences from which the terms of a licence may relieve them. That in turn is referable to the overall purposes of the Regulations as set out on their face (as mandated by SAMLA) in Regulation 4. Two purposes are specified – the 'encouraging' purpose of incentivising Russia to cease its specified conduct in relation to Ukraine, and the purpose of promoting the payment of compensation by Russia for the effects on Ukraine of its invasion. Both of these pursue the SAMLA purpose of '*furtherance of a foreign policy objective of the government of the United Kingdom*'. It is unusual in the case of a *Padfield* challenge to have so explicit a statutory statement of purposes by which to evaluate the exercise of a statutory power.

82. These purposes have themselves been considered in a number of decided cases. The authorities are unanimous in confirming their breadth and scope. The following observations, for example, appear in recent decisions of the High Court. '*At its most basic, [the Regulations] are intended to have an adverse impact on the Russian state, Russian industry or Russian persons*' (*Aercap Ireland Ltd v AIG Europe [2024] EWHC 144 (Comm)* at [26]). The sanctions regime is intended to have a '*deterrent and incentivising effect*' which in turn, relies on '*the public perception, at home and abroad, of the robustness of that regime*' (*Mazepin v SSFCDA [2023] EWHC 1777 (Admin)* at [80]). The 'encouraging' purpose '*is of the greatest importance and in principle justifies the limitation on the fundamental rights of those affected. … Sanctions are intended to increase pressure on Russia to desist its actions, consistently with the purpose of the regime, by inflicting cost at scale, undermining Russia's war machine, and providing strategic support to Ukraine*' (*Shvidler v SSFCDA [2023] EWHC 2121 (Admin)* at [81]). '*The Parliamentary material demonstrates that the legislative purpose has been to confer powers in the broadest possible terms to allow Ministers to impose sanctions that would exert maximum pressure on Russia in a wide variety of ways. … [T]he UK's foreign policy response … seeks to have as broad and deep an impact as possible on Russia through the sanctions regime given what is being inflicted on Ukraine and the wider geopolitical instability this has caused*' (*Dalston Projects v Secretary of State for Transport [2023] EWHC 1885 (Admin)* at [68] and [87]).

83. Singh LJ put it this way in the *Dalston* case on appeal to the Court of Appeal: '*At the risk of stating the obvious, one of the ways in which economic sanctions can be effective is … by increasing the disadvantages felt by citizens. In this sense, the aim and the purpose of sanctions are not restricted to state institutions, or those who exercise political power and influence. In this way sanctions may provide a peaceful way to impose pressure on a hostile state. …I would accept that these sanctions are both severe and open-ended. But this does not meet the fundamental point that sanctions often have to be severe and open-ended if they are to be effective. If sanctions are to be effective, a serious price has to be paid by those who are within the definition of people to be designated under the 2019 Regulations. On the other side of the balance is Russia's*

very serious violation of international law and the need to bring the invasion of Ukraine to an end. (*[2024] I WLR 3327 (CA)* at [123] and [210]). He also said this, in *Khan* at [106]: '*The underlying philosophy behind the sanctions regime is that the state concerned must come to appreciate that 'innocent' persons will suffer unpalatable consequences and so that state should change its behaviour*'.

84. The purposes of the Regulations were considered by the Supreme Court in the recent *Shvidler* case. The judgment of the Court includes the following:

> [1] … the sanctions regime [was] put in place by the United Kingdom government to put pressure on the Russian Federation to end its aggressive war against Ukraine. The primary legislation … confers extensive powers on Ministers to make regulations allowing the imposition of stringent restrictions on individuals and businesses. The people who can be subject to sanctions are not alleged to have committed any criminal offences or to have otherwise engaged in any wrongdoing either here or overseas. Ministers may target any individuals and businesses falling within broadly defined classes. Those people can then be subject to severe restrictions on their ability to … deal with their own assets, to do business and to engage in many everyday activities. Their friends and colleagues are at risk themselves of committing criminal offences if they engage with the sanctioned person in any of a wide range of different ways. The decisions taken by Ministers in the exercise of those powers can therefore have a prolonged and potentially devastating effect…
>
> …
>
> [173] There can be no doubt that the aim of limiting and deterring Russian aggression in Ukraine is one of the most vital aims that the UK government has been called upon to pursue in recent years.
>
> …
>
> [213] … the main point … is that sanctions often have to be severe and open-ended if they are to be effective. The object of the designation in relation to Mr Shvidler is that he should so far as possible be disabled from enjoying his assets … The designation contributes to the cumulative effect of the sanctions regime. If the strategy of imposing sanctions … is to have any hope of being effective, designation has to hurt those who are subject to it. …

85. There is no (purpose) challenge in the present proceedings to the designation of the Bank in the first place – and nor could there be. The purpose with which the Secretary of State acted in doing so is obvious, and obviously congruent with the statutory

purpose. The Bank *is* in the nature of '*state institutions, or those who exercise political power and influence*'. Sanctioning it strikes close indeed to the Russian regime and its purpose was to deter or limit Russian aggression in Ukraine.

86. Nor, for the same reason, is there or could there be any (purpose) challenge to the extensive if not complete asset freeze, prohibition on correspondent banking relationships and processing payments, and trust services sanctions imposed by the instrument of designation. It is a prohibition on the Bank's, and VTBC's, dealing with their own funds and economic resources in the UK, on each of them making funds or economic resources available to the other, and on third parties making funds or economic resources available to either or both – whether directly or indirectly. These sanctions are, and are intended to be (and, according to the caselaw, *need* to be) a severe interference with each designated organisation's financial rights and freedoms – one recognised as being capable of '*prolonged and potentially devastating*' effects. Wealth, not least in the hands of financial institutions, is a time-sensitive asset. Where a relevant sanction applies, the sanctioned entity cannot do business, or maximise or protect its economic interests in the UK, including by investing and disinvesting, by paying its debts or being paid by its debtors, by meeting its contractual obligations or enforcing its contractual rights – unless licensed to do so. The effects of sanctions such as these may in time prove irreversible or irremediable. The sanctions imposed in the present case reduced VTBC to insolvency, and no purpose challenge is or could be made to that in law. All of this is lawful and congruent with (or indeed demanded by) the statutory purposes.

(iv) The Purpose of the Licensing Power

87. The purpose challenge in the present case is instead to the exercise of a power to make (and vary) *exceptions* from (some of the consequences of) lawful and purpose-congruent sanctions. That power in turn must itself, on ordinary, well-established and uncontroversial principles of statutory interpretation, be construed (a) narrowly, from a purpose perspective, in accordance with the emphasis placed by the authorities on the breadth and importance of the purposes served by the designation power in the first place, and (b) in a manner informed by those purposes and the purposes of the Regulations which confer the licensing power.

88. The Court of Appeal in *Celestial Aviation Services Ltd v Unicredit Bank GmbH [2025] 1 WLR 196* endorsed (at [66]) a characterisation of the purpose of the licensing regime as being to deal with the fact that the very breadth of the sanctions regime '*risks catching arrangements that may not be seen to be within the overall mischief*' and to '*mitigate any unintended negative consequences*'. Consistently with that, as Saini J put it in *Fridman v HM Treasury [2023] EWHC 2657 (Admin)* at [59]-[60], the discretionary power to make exceptions to the criminalising effect of sanctions is not '*at large*'. It *must* be exercised consistently with the purposes of SAMLA and the Regulations read as a whole. And the power *enables* OFSI to make an exception, but it does not *require* it to do so.

89. If the exemption power is not '*at large*', a number of sub-'purposes' or themes can be traced in the sort of circumstances in which the power has properly fallen to be exercised (and these are also discernible in the detailed provision made in Schedule 5 to the Regulations for making specific licences, where they appear as limited conditions for exercising that power).

90. 'Basic needs' provision, for example, where it relates to designated *individuals*, may be understood as a humanitarian concession to basic dignity, functionality and family life; and humanitarian considerations can also be seen in the *vires* provisions relating to supporting overseas civilian populations. The 'basic needs' of companies are a little different conceptually. It may perhaps be inferred, in its statutory context, that a purpose of the exemption power here is twofold. The first aspect is the acknowledgment of the public interest in keeping sanctioned UK companies functional at some basic level for as long as possible – or, if insolvency does ensue, that it is managed in an orderly fashion leaving no room for doubt as to the position of creditors such as HMRC. The second is the recognition that it does not advance the overall statutory purpose for the consequences of designation to ripple out on an unlimited basis or in an uncontrolled manner to the *un*sanctioned (UK) employees, pensioners, utility providers, landlords, mortgagees or commercial creditors of sanctioned corporate entities. None of that creates any incentive for behaviour change by the Russian Federation. It is not within the '*overall mischief*' to which sanctions are addressed. It is unnecessary, unwanted and unintended collateral damage.

91. So there is, and could have been, no purpose challenge to the exercise of the power to make the original General Licence in March 2022 to permit certain transactions to meet VTBC's (commercial) 'basic needs'. That version expressly made *no* provision which authorised *any* funds or economic resources being dealt with or made available to the Bank, or which otherwise affected its situation as a sanctioned entity subject to a full range of measures prohibiting the relevant operational acts in the UK which had been criminalised.

92. It is not controversial that licensing powers may be exercised to enable otherwise criminalised steps to be taken in connection with insolvency or other relevant (e.g. company law) proceedings. The purpose of empowering exceptions from the consequences of designation to enable things to be done in connection with insolvency may also be understood to have a two-fold aspect similar to that of the 'basic needs' purpose – enabling insolvency to be at a basic level a *managed* process rather than leaving the effects of sanctioning to precipitate unmanaged business collapse, and acknowledging that it does not advance the overall purposes of the scheme for the consequences of designation to ripple out by way of uncontrolled collateral damage to *un*sanctioned (UK) creditors with interests or potential interests in the insolvency. As Saini J observed in ***Fridman*** at [77], an exercise of a licensing power may have a purpose of mitigating the impact of the sanctions regime on unsanctioned third parties; if so, sanctioned entities are not themselves the intended or purposed beneficiaries.

93. Approaching the decision challenged in these proceedings step by step, therefore, there was, and could have been, no purpose challenge to the limited exercise of the power in April 2022 to make provision in relation to VTBC's insolvency proceedings. The April 2022 licence simply enabled the administration of VTBC to get under way at all, and the JAs to perform their functions. The context of that exercise moreover included a double signal that the position of *sanctioned* or designated creditors was entirely unrelieved by this licence.

94. First, the April 2022 licence states on its face that the provision it makes for insolvency is subject to the proviso that '*no funds or economic resources shall be made available to or for the benefit of a person designated under the Russia Regulations including any entity owned or controlled by such a person*' other than VTBC itself. That reasserts the

full application of the effect of designation on sanctioned creditors, including the Bank. And second, the April 2022 licence in any event retained the general provision that the permissions given do not authorise any *other* act a person knows or has reasonable grounds to suspect will result in funds or economic resources being dealt with or made available in breach of the Russia Regulations. These express limitations on the scope of the licence may straightforwardly be inferred to have had the statutory purposes in mind.

95. Next, there was and could be no purpose challenge to the licence amendment of 31st May 2024 to enable the establishment of blind trusts to facilitate implementation of the scheme of arrangement in contemplation at the time – and therefore, of course, to enable swift and orderly winding up, and early distribution to the unsanctioned creditors. The inference that the power to licence, when exercised in connection with insolvency has, and was exercised for, the purpose of (a) supporting a structured process and (b) limiting the impact of designation on *un*sanctioned creditors gains clear support from the Ministerial submission of 8th May 2024. There, the stated purpose of the amendment sought was to give effect to the then proposed scheme of arrangement, the objective of which, in turn, was to '*allow non-sanctioned creditors to receive the distributions they are owed, whilst ensuring safeguards are in place if any enforcement action is taken by the Russian state against VTBC's Russian-based assets*'. The scheme, and therefore the amendment, was intended to '*allow for the orderly and timely wind down of VTBC*' and for '*better facilitating the distribution of VTBC's assets to non-sanctioned creditors as quickly and efficiently as possible*' including to '*allow predominantly UK-based non-sanctioned creditors to receive their full distributions faster and with greater certainty*'.

96. Those advising the Minister had, as noted, expressed some concerns about the extent to which, if the proposed scheme of arrangement were implemented, it would result in making resources available to the Bank. But they concluded that *not* amending the licence to permit it would be criticised – and viewed as inconsistent with the April 2022 amendment the purpose of which was '*facilitating the orderly wind down of VTBC*' – because otherwise '*non-sanctioned creditors will be forced to wait longer to receive monies owed (which will be to the detriment of the estate, as the administration process may have to remain open and thus will incur further costs) and may also receive reduced distributions*'.

97. No purpose challenge is or could, in my judgment, be made to this exercise of the licensing power. Subject to making the minimum necessary inroads into the effects of sanctioning in order to achieve it, the purpose of the licensing power and of its exercise was to facilitate orderly wind up of the insolvent company and provide maximum protection for the interests of affected creditors and others who are *not* sanctioned – as set out in the proposed scheme of arrangement.

98. It is important, in view of the submissions made on the Bank's behalf, to emphasise at this point that while the May 2024 licence made limited enabling provision for the Bank to participate in the VTBC administration on the basis of the proposed scheme, it was the sanctions themselves and the terms of scheme, as well as the conditions set out in the licence, which were to form the composite legal matrix of control limiting the Bank's enabled participation.

(v) The Purpose of the Amended Licence

99. I have set out, and analysed, the background to the decision complained of at some length, precisely in order to be able to answer in full context the question of the purpose of the Amended Licence and the exercise of the power to make it. That in turn requires locating the decision in its sequence of antecedent exercises of power under the Regulations (and for their lawful purposes).

100. To recapitulate, the *purpose* of the insolvency licensing of April 2022 had been (a) to enable the passage of VTBC into administration, removing it from the Bank's control and placing it by Court order under the control of the JAs, and thereby (b) to enable the orderly winding up of VTBC, a sanctioned bank brought to insolvency by the sanctions, and the protection of the interests of unsanctioned creditors. Those purposes were expressly recognised by Fancourt J in his 'in principle' decision in April 2022 to appoint administrators with a view to '*achieving a better result for the company's creditors as a whole than would be likely if the company were wound up without first being in administration*'. He understood the April 2022 licence to represent a decision that the overall statutory purpose, and the purpose of insolvency licensing, would be advanced if VTBC's affairs were '*under the control of a licensed insolvency practitioner and are being conducted principally for the benefit of the company's creditors*'. Those considerations in turn pointed to an insolvency administration that was (a) orderly and controlled by JAs and (b) speedy.

101. The *purpose* of the insolvency licensing of May 2024 was the same, albeit now including a degree of damage limitation – namely to give effect to what had in fact been a far from speedy process in which the Bank appeared to have acquiesced without actively advancing over very many months, but which at least looked to speed and efficiency going forward, and prioritised the interests of unsanctioned creditors.

102. And the *purpose* of the January 2025 Amended Licence was also recognisably the same. If its proximate purpose is sought in the submission of 2nd January 2025, and in the immediately antecedent history alluded to there, then it is stated on its face to be (a) the maximisation of the overarching 'encouraging' purpose of the Regulations and (b) the protection of the interests of unsanctioned creditors. But the damage limitation element was by now more clearly to the fore.

103. The newly express *conditions* placed on what had already been the limited authorisation of sanctioned creditors participating in the administration were now designed to enable the best that could be achieved for unsanctioned creditors by (a) continuing to permit the administration to go forward notwithstanding the changed circumstances, and (b) continuing to permit some outflow of resource into blind trusts for the Bank's benefit, but also (c) limiting the adverse effects on unsanctioned creditors of any relevant and uncontrolled activities of a sanctioned creditor operating outside the ambit of the JAs' functions, the orderly exercise of which had itself been a principal purpose of the original insolvency licensing.

104. Notwithstanding its sanctioned status, the combination of the May 2024 licence and the legal constraints expected at the time to be set out in the scheme of arrangement had been intended to achieve the best for the unsanctioned creditors even at the price of relieving the Bank of some of the penal consequences it would otherwise have suffered. But that limited concession, together with the supervening uncertain status of the scheme and its constraints, and the Bank's apparent willingness and ability to continue to operate in its own interests in Russia, had combined to open up a prospect that the

Bank could manage to reduce the proportion of VTBC's assets ultimately available to unsanctioned creditors, and delay distribution in order to maximise its ability to do so, (including by means such as corporate restructuring, and controlling the enforcement of VTBC's foreign debt claims). That would undermine the purpose of the May 2024 licence, and made the case for the new conditions. The evidence before OFSI was that not only were the delays in progressing the administration ever increasing, but the process was becoming increasingly disorderly – both of which were at unsanctioned creditors' expense. That was the ostensible purpose of the Amended Licence – OFSI acted to place its previous licences under express conditionalities which restored their original policy purposes.

(v) Analysis

105. The Bank makes no *vires* challenge to the Amended Licence. It is correct not to do so. Its own designation, and the attachment to both it and VTBC of extensive sanctions, are unchallenged. A discretionary power to lift the criminal consequences of designation in connection with insolvency is just that – it may not be exercised at all, and it may be exercised subject to restrictions and conditions. There is no case being advanced that OFSI *must*, in the present circumstances, have exercised the power – at all or in any particular way. It appears from the submission of May 2024 that the 'scheme licence' was already going some way beyond precedent (and policy comfort) in enabling the transfer of assets from a UK subsidiary to blind trusts for the benefit of a sanctioned Russian bank in the first place; there has never been any suggestion that OFSI was *obliged* to do that nor, once issued, that it was *unable* in law to place any subsequent conditions or limitations on its licence.

106. The Amended Licence limited the generality of the May 2024 'scheme licence' by imposing some conditions on the availability of the blind trusts which it had permitted to receive distributions for the Bank. The exercise of the power to make the May 2024 licence had never been *expressly* subject to, or dependent on, the Bank's having consented to a scheme or to its having been approved by the Insolvency Court. It had rendered those things *possible* by removing what would otherwise have been the criminal law consequences of the scheme as proposed. But with or without a scheme, OFSI had the *legal power* to revoke or vary the blind trust provision and/or make it subject to conditions. The Bank makes no argument otherwise. Instead, it makes a *Padfield* challenge.

107. The declared purposes of the Amended Licence were threefold: (a) the overarching purpose of the Regulations (the 'encouraging' purpose), (b) the purpose of the designation of the Bank and the imposition of sanctions (asset freeze, prohibition on correspondent banking relationships and processing payments, and trust services sanctions), and (c) the purpose of the licensing power as exercised (enabling orderly insolvency administration and limiting the impact on undesignated creditors). These are correct and relevant statutory purposes.

108. To these may also be added the inference to be drawn in the present case from Saini J's observations in *Fridman* at [60]: '*where the effect of granting a licence would be to undermine the policy objectives of the sanctions regime, OFSI may exercise its discretion to refuse a licence*'. Where a limited and conditional licence has already been granted, but the effects of that licence are or may be facilitating the undermining of the policy objectives of the sanctions regime in ways that were unforeseen and are

unintended, then OFSI may, and in appropriate cases must, address that by reference to the terms of the licence. That is also a legally correct and relevant purpose in the present case.

109. To the extent (although it is not quite put this way) that the Bank's challenge is that these were not the *true* purposes, I cannot find such a challenge sustainable on the documentary evidence. No other purpose appears from it, and the ostensible purposes fully account for the decision. The references in the documentation to '*preventing*' or '*forcing*' actions by the Bank are not inconsistent with these being the true purposes; this is the language of sanctioning after all, and is descriptive of outcomes for the Bank rather than being referable to some distinct ulterior or extraneous purpose.

110. The *Padfield* principle identifies the unlawfulness of purposes which '*thwart or run counter to*' – or '*impede or frustrate*' – the statutory purposes. I cannot find in or infer from the contemporary documentation anything to suggest the Amended Licence was issued for such a purpose. If anything, the indications are all in the direction that it was issued precisely to avoid impeding or frustrating the purposes of the anterior exercise of the power – that is, the purposes of securing orderly administration under the control of the courts and the officers of the courts, and the protection of the position of undesignated creditors.

111. To the extent that the Bank complains of the *consequences* of the Amended Licence for its position in the insolvency of VTBC, care is needed. Mr Owen KC correctly accepted that the *Padfield* principle is not concerned with consequences or outcomes. A deleterious effect on the Bank is not evidence of a lack of congruence with the statutory purposes, rather the reverse – including by way of its contribution to enabling the administration to proceed in a controlled way as directed by the Insolvency Court, and to protecting the position of the unsanctioned creditors. To the extent that the Bank argues that OFSI were not legally entitled to achieve the effects complained of *at all*, in exercise of its licensing amendment powers, then that may conceivably be understood as a *vires* challenge or as a rationality challenge, but it is not on a proper analysis recognisable as a *purpose* challenge.

112. I cannot identify in the Bank's *Padfield* challenge a basis, by reference to the purpose for which the power was exercised, for setting aside the Amended Licence. Mr Owen KC says the effect of the Amended Licence was expropriatory and deliberately so – it went beyond an asset freeze to the effective diminution or extinction of the Bank's rights *qua* historic creditor in the VTBC insolvency – and thereby crossed a 'bright line'. The contemporaneous documentation indicates that – whether or not that was the outcome or consequence – the *purpose* of the Amended Licence was to limit what might be described as any unintended and unforeseen consequences of not making more restrictive licensing provision sooner and relying instead on the effects of the terms of the proposed scheme. It was, in other words, purposed by its decision-maker as an anti-avoidance measure to support the statutory purposes rather than have them thwarted.

113. But if the 'bright line' challenge is not recognisable as a *Padfield* source of potential unlawfulness, nor is it made as a *vires* challenge. Sanctions are always capable of having the effect of wasting, diminishing or even extinguishing financial and economic assets – up to and including precipitating insolvency. And there is an inescapable logic that the protection of one set of creditors in an insolvency will necessarily be at the

expense of the rest. The alleged 'expropriatory' effect is, however, at the centre of the Bank's Article 6 challenge.

(b) The Article 6 Challenge (Ground 6)

(i) Legal Principles

114. Article 6 ECHR provides, as relevant, that '*in the determination of his civil rights and obligations …, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law*.

115. There is no dispute as to the legal principles applicable for present purposes. The ECHR jurisprudence itself (*Grzęda v Poland (2022) 53 BHRC 631* at [257]) indicates that Art.6 will be engaged if there is a genuine and serious dispute between parties as to the existence, scope or manner of exercise of what is at least arguably a legal right, and a decision which is '*directly decisive*' for the right.

116. I was taken to the decision of the Supreme Court in *R (G) v Governors of X School [2012] 1 AC 167* for further guidance on the circumstances in which Art.6 will be engaged in relation to an administrative decision taken in the context of judicial procedure. Lord Dyson JSC approved the analysis (at [34]-[35]) of the Court of Appeal in that case that the test is:

> …likely to be met where the decision in the relevant proceedings has a substantial influence or effect on the later vindication or denial of the claimant's Convention right. … I do not mean any influence or effect which is more than de minimis: it must play a major part in the civil right's determination. I do not intend a hard and fast rule. Principles developed by the Strasbourg court for the interpretation and application of the Convention tend not to have sharp edges; as I have said, the jurisprudence is generally pragmatic and fact-sensitive. The nature of the right in question may make a difference. So may the relative authority of courts, tribunals or other bodies playing their respective parts in a case, such as the present, where connected processes touch a Convention right.

(ii) The Bank's Challenge

117. At the core of the Bank's Art.6 challenge is what it says is the impact of the four provisions of the Amended Licence to which it objects – those going to the setting off of debts owed to VTBC by entities under the Bank's control, the restriction on the accrual of statutory interest, the imposition of historical currency conversion rates, and the prohibition on the making of 'provision' with a view to making future payments or transfers to the Bank. These, submits Mr Owen KC, were designed to – and would – produce outcomes for the Bank in the continuing insolvency proceedings which could not have been achieved by the JAs under insolvency law, and which had the effect of artificially demolishing the Bank's ability to block their being achieved by a scheme of arrangement under company law.

118. Mr Owen KC put it this way in his written submissions:

> By Ground 6, the Bank submits that the Disputed Licence Amendment constitutes an unlawful interference with the Bank's rights, pursuant to Article 6 ECHR. The logic of the Bank's position is straightforward: in the ordinary course of the administration of [VTBC], the complex issues of fact and law raised by the Disputed Deductions would have been subject to a judicial determination in the Chancery Division …
>
> However, the Disputed Licence Amendment reflects an unprecedented intervention by OFSI in the ordinary course of the administration of [VTBC]. Rather than allowing contested issues to be subject to an independent judicial determination, OFSI has usurped the function of the High Court in the insolvency proceedings, and has arrogated to itself responsibility for determining the manner in which distributions are to be made. That is incompatible with the Bank's right of access to a court.

119. Mr Owen KC says there is an existing, genuine and serious dispute between the JAs and the Bank as to the existence, scope or exercise of the Bank's rights or obligations in the administration of VTBC – including as to the value of its claim in the insolvency and as to the terms on which it may advance that claim. And he says the Amended Licence is directly decisive of the dispute – or at least has a substantial influence or effect on the disputed issues.

120. The dispute itself, he says, is fundamentally ill-suited to resolution by administrative decision, even if subsequently subject to public law review. It raises complex issues of fact and law (including foreign law). OFSI's decision-making has no mechanisms for considering these, no relevant standard of proof, and no adversarial procedure. And the resolution of the dispute turns at least in part on matters (such as insolvency and restructuring) outwith OFSI's expertise. '*The Bank accepts that, following the orderly resolution of the insolvency issues in the Chancery Division, OFSI will have a role to play in determining whether or not to grant a licence in respect of whatever arrangements are ultimately approved*'. But, submits Mr Owen KC, that does not justify OFSI prematurely foreclosing on the Insolvency Court's due process and its functions of supervising the administration in accordance with insolvency law.

(iii) Analysis

121. Responding for OFSI, Sir James Eadie KC placed some reliance on the observation of Lord Dyson JSC at [34] of the *R (G) v Governors of X School* case to the effect that if there is '*no connection at all*' between the administrative decision-making and the court proceedings '*it is obvious that article 6 has no role to play*' in the administrative proceedings: '*ex hypothesi, they have nothing to do with the civil right in question*'.

122. The Bank's Article 6 challenge, and OFSI's response, place a high premium on the correct analysis of the legal relationship between the sanctioning and licensing powers

on the one hand, and insolvency law and procedure on the other. And what is notable about the parties' positions on this issue is not so much a difference in the analysis of the law and its application to the facts, but a fundamental difference in starting point. For the Bank, the starting point is its claimed interest *qua* creditor in VTBC's administration, a matter any other creditor could ordinarily have expected to be worked out in the Insolvency Court, as Mr Owen KC set out. For OFSI, the starting point is the Bank's status *qua* designated entity under the Russia Regulations, subject to comprehensive sanctions criminalising an extensive range of ordinary dealings with property and thereby limiting the Bank's freedom to advance *any* of its economic and financial interests in the UK *at all*.

123. This fundamental difference in starting point was productive of a certain amount of argument at risk of being at cross-purposes. It explains how and why I received submissions from the Bank that the effect of conditions introduced by the Amended Licence on its financial interests was *determinative* if not catastrophic – '*expropriatory*'; and at the same time submissions from OFSI that it made '*no difference*' to the Bank's rights. These are submissions on different conceptual planes, and have to be understood as such.

124. The correct starting point – historically at any rate – is that VTBC was the Bank's UK subsidiary and a substantial economic (business and financial) asset for it. Then Russia began its full-scale invasion of Ukraine. The Bank was sanctioned and both the Bank and VTBC had their UK assets frozen. That quickly rendered VTBC insolvent and ended its prospects as a going concern. OFSI issued early, limited, licences to decriminalise (a) meeting VTBC's basic corporate needs for so long as it continued in any sort of operation and (b) enabling it to go into administration under the supervision of the JAs and the Insolvency Court. Nothing in these early licences expressly or impliedly decriminalised any step in relation to VTBC's insolvency which would have been inconsistent with the sanctions to which *the Bank* was subject – indeed that outcome was expressly ruled out. The Bank's sanctions were comprehensive, but of course if there *were* steps which could have been taken in relation to the insolvency which were *not* inconsistent with those sanctions, well then they could always be taken and the licensing regime was irrelevant to them in any event.

125. The JAs, and the Insolvency Court, proceeded accordingly. In May 2024, Treasury Ministers took their difficult decision to decriminalise certain steps towards enabling the Bank to participate in and benefit from a distribution of VTBC's assets under company law (subject to those assets being immediately frozen and held in blind trusts). They did that because they understood a scheme of arrangement was in imminent prospect which (a) offered the best prospects to unsanctioned UK creditors of a quick and orderly distribution of VTBC's assets and maximised their chances of recovering their debts and (b) contained a number of features – especially deferring the Bank's claim behind those of the unsanctioned creditors – which would strictly limit the extent of its receipts *and* make sure that those receipts were instantaneously frozen and rendered inaccessible. The May 2024 licence did not, however, as a matter of drafting *require* or *depend on* the existence of such a scheme. Of itself, it conferred, and could confer, no legal powers (that is, *vires*) on creditors or the Court to approve such a scheme: those powers still had to be found in company and insolvency law. Nor did it oblige them to approve any scheme. Instead, it decriminalised the (future) use of some of those powers – powers of the JAs to set up and enable the administration of blind

trusts for the benefit of the Bank, and the exercise by the Court of its own powers under company or insolvency law. That was on the basis that that formed part of a solution that was in the best interests of the unsanctioned creditors. The sanctioning of the Bank remained otherwise unaffected. It remained a criminal offence to do anything (else) in relation to the administration of VTBC which was inconsistent with the sanctions on the Bank.

126. The May 2024 licence had nothing to say about the administration of VTBC other than the limited, prospective decriminalisation of the blind trust mechanism on which the proposed scheme would partly depend. But it was, if not in legal terms in policy terms, dependent on the scheme proceeding as planned – including because, although the scheme *would* allow the otherwise criminal participation of the Bank in the administration, it was expected to do so on the limited and tightly controlled terms of the scheme to be approved in due course by the Insolvency Court. The licence had no effect in the meantime beyond the enabling of preparatory steps by the JAs. There was no expectation that the licence would otherwise affect the Bank, or decriminalise any act by or in relation to it otherwise subject to sanction, unless and until the scheme took effect. It gave rise to no expectation that further decriminalisation would follow should the scheme *not* take effect – it had nothing to say about that scenario at all.

127. When the Bank refused to support the scheme in September 2024, then the default position was that any and all sanctioned participation by the Bank in the VTBC administration remained sanctioned, aside from the limited prospective authorisation of the trust mechanisms put in place in the May 2024 licence. The JAs had a choice. They could abandon their plan and allow insolvency to take its course, the Bank participating to the extent that that was not prohibited by the sanctions to which it was subject. That would involve delay, and the steady erosion of the assets available to unsanctioned creditors by reason of (a) the accumulation of costs and (b) the lack of control over any self-serving operations of the Bank outside the jurisdiction. Or the JAs could ask the Insolvency Court, and OFSI, for permission to make a quick distribution subject to the sort of tight restrictions on the Bank's participation OFSI had already indicated, when it made the May 2024 licence amendment, that it had accepted justified the exercise of the licensing power in the interests of the unsanctioned creditors. Those tight restrictions would now appear on the face of the licence rather than being wholly dependent on appearing in a creditor- and Court-approved order. But *however* the administration proceeded – whether by way of a company law scheme or insolvency law – those would remain the terms under which the Bank's participation would be decriminalised.

128. The Amended Licence did not on this analysis usurp any role of the Insolvency Court. It enabled, subject to tight conditions designed to protect the interests of the unsanctioned creditors, the participation of the Bank in the VTBC administration in respects which would otherwise have been prohibited by sanctions, by a limited measure of decriminalisation. Decriminalisation is the only thing a licence can achieve. If the Bank's hopes of participating in the administration had not run up against sanctions, the Amended Licence could and would have had no effect on it. To the extent that it *did* or *would* run up against sanctions, the Amended Licence was a limited and conditional exercise in lifting them. But the default position was never that the Bank was free to participate in the administration like any other creditor. The default

position was that its participation was limited to the extent that it was inconsistent with the sanctions to which it was subject.

129. On that analysis, the *licensing* decision was not '*directly decisive*' of any civil right of the Bank. The legally operative administrative decision affecting rights was the anterior *sanctioning* decision. It would be wholly artificial to try to characterise a later decision to make limited decriminalisation provision as '*directly decisive*' on the ground that it did not make more or different provision – particularly so when the purpose for which the relevant power was being exercised was to promote the swift and orderly winding up of VTBC in the interests of the unsanctioned creditors.

130. Nor is any '*genuine and serious dispute*' between the JAs and the Bank about the value of what it might ultimately receive out of the administration – *to the extent that its participation in the administration did not (any longer) constitute prohibited and criminal acts* whether by itself, by the JAs or by anyone else – one with which OFSI's Amended Licence decision has anything to do. To the extent that the Bank has been afforded *any* relief from the criminal consequences of sanctioning by OFSI's licensing decisions, enabling it to benefit from either company law or insolvency law solutions to VTBC's insolvency that would not otherwise have been available to it, that has essentially been as a by-product of licensing decisions directed at releasing VTBC's assets for rapid and orderly distribution to its (mainly UK) unsanctioned creditors. And relief from criminal sanctions is all that a licensing decision can achieve.

131. In these circumstances, I am unpersuaded that the Amended Licence decision engaged Article 6 on the basis advanced by Mr Owen KC. It is undoubtedly the case that the Bank's decision in September 2024 to veto the original scheme on which the May 2024 licensing decision had been predicated – and signs of extra-jurisdictional steps to try to enable the Bank to benefit from VTBC's insolvency while procedural uncertainty remained – was a prompt for the JAs and OFSI to review the licensing situation. The Bank's participation in VTBC's administration had always been impacted by the sanctions on both; it had never been in any position other than as a sanctioned creditor and that had consequences for it in the criminal law. The Amended Licence relieved it of some of those consequences, in line with the in-principle decision OFSI had already taken in May 2024. It is still in a distinctly less advantageous position than VTBC's unsanctioned creditors. It always was. The counterfactual position of how it would have been placed had it been an unsanctioned creditor itself is an irrelevant one.

132. I cannot agree in these circumstances that the Amended Licence decision was one OFSI was not entitled to take because it was an inherent usurpation of the functions of the Insolvency Court, or one inherently unsuitable to be taken otherwise than by that Court. That is not, of course, to say that Article 6 is irrelevant to OFSI's decision-making. But it is to recognise that Parliament has made bespoke provision for access to court in relation to the *operative* decision-making that is challenged in these proceedings – that is to say the provision invoked by the Bank and set out in section 38(1)(d) of SAMLA.

133. The way section 38 works was considered in some detail by Singh LJ in the Court of Appeal decisions in *Dalston* at [2]-[21] and *Khan* at [143]-[146]. A section 38(2) review *satisfies* the requirements of Article 6 in relation to any decision to which it relates. It does not require a full merits review of that decision; it requires the application of judicial review principles. And that '*guarantees sufficient access to an independent court's adjudication in this context*'. Those principles do, of course,

include, in a case in which interference with a (substantive) ECHR right is alleged, the possibility that the reviewing court may itself have to undertake a proportionality assessment.

134. The complaint made by the Bank in the present case, although not cast in these terms, is in essence one to the effect that the decision complained of constituted an unwarranted interference with its property rights under Article 1 of the First Protocol to the Convention ('*Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No-one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law…*). Section 38 provides a framework in which a sanctioned person can ask the High Court to review (a) whether that right is engaged, (b) whether, if so, it has been interfered with, and (c) whether, if so, and the right is a qualified one, that interference is a proportionate one. *Because* it provides that framework, it satisfies the requirements of Article 6.

135. The Bank did not, however, ask me to do that, when it invoked section 38. I received no submissions directed towards proportionality. In the circumstances, I confine myself to the following short observations.

136. First, for the Article 1 Protocol 1 right to be engaged, it would be necessary to characterise a licensing decision as a decision, to the extent that the power was not *further* exercised, to '*maintain*' a sanction. Otherwise, as analysed above, it does not engage with property rights and interests otherwise than by decriminalising some dealings with them. That looks like a distinctly artificial approach to construing the power in the first place. And the challenge in the present case was not made to the *maintenance* of a sanction as such.

137. Second, A1P1 gives *qualified* protection to property rights by providing that it 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…*'. I am aware of no doubt expressed in the authorities that the powers to sanction and license (or not) in the Russia Regulations may in principle be regarded as exercisable as necessary in accordance with the general interest. On the contrary, their exercise in the public interest is heavily endorsed as of particular importance.

138. Third, *if* a challenge in a case such as the present were to reach the stage of a reviewing court conducting a proportionality test, that would take the form of applying the familiar four-stage approach set out in *Bank Mellat v HM Treasury (No.2) [2014] AC 700* and asking: (a) whether the objective of the measure is sufficiently important to justify the limitation of a protected right; (b) whether the measure is rationally connected to the objective; (c) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective; and (d) whether the measure's contribution to the objective outweighs the effects on the rights of those to whom it applies.

139. In the present case, the following points may be relevantly reprised. First, the objective, or purpose, of the Amended Licence was to make the minimum exceptions to the sanctions on the Bank consistently with enabling – after a complex history in which the Bank's conduct was a matter of concern to the JAs and the Court – the orderly and swift winding up of VTBC and the protection of the unsanctioned creditors. These were, not least in making *minimum* carve-out of the sanctions, objectives of the highest

importance. Second, the rationality of the connection between the measures in relation to those objectives appears clearly from the contemporary documentation and is not challenged in the present case (I consider the limited rationality challenge made below). Third, there is no apparent case that a less intrusive measure could have achieved the same outcomes. The Amended Licence achieved the same outcomes (that is, in relation to decriminalisation) as the (unchallenged) May 2024 licence would have done in combination with the proposed scheme of arrangement. And fourth, sanctioning and licensing are ultimately acts of the executive (and legislature) in the field of foreign policy, a field in which courts have limited institutional expertise or democratic accountability. They are powers to advance foreign policy precisely *by* interfering with private property rights. The authorities are clear that they are very broad powers pursuing a very important objective. The Bank takes no issue in these proceedings with its sanctioned status. *Any* decriminalisation of the Bank's participation in the VTBC administration could be considered to undermine the sanctions regime. Its consonance with the sanctions regime in the present case depended on the extent to which it could enable the swift and orderly distribution of VTBC's assets among its unsanctioned creditors – matters to which the Bank had given some cause for a concern that it was at best indifferent. A court of review might be expected to take some persuading to discern disproportionality in such circumstances.

140. It is uncontroversial, and emphasised in the authorities, that sanctions are capable of criminalising ordinary dealings with property and property interests. That can and may convert those interests into something wasting, depreciating or even ultimately valueless. Sanctions can indeed have '*prolonged and potentially devastating effects*'. Section 38 is the mechanism provided by Parliament for ensuring court oversight of decisions relating to sanctioning, and for ensuring compliance with Article 6.

141. I am unable in all these circumstances to find a breach of Article 6 arising out of OFSI's decision-making in relation to the Amended Licence.

The Irrationality Challenge (Ground 5)

(i) Legal Principles

142. The relevant legal principles are uncontroversial, and were set out clearly, succinctly and recently by Chamberlain J in <u>*R (KP) v SSFCDA*</u> *[2025] EWHC 370 (Admin)* at [55]-[63]. He said this:

> <u>Rationality: two aspects</u>
>
> [55] In most contexts, rationality is the standard by which the common law measures the conduct of a public decision-maker where there has been no infringement of a legal right, no misdirection of law and no procedural unfairness. It encompasses both the process of reasoning by which a decision is reached (sometimes referred to as "process irrationality") and the outcome ("outcome irrationality") …
>
> [56] Process rationality includes the requirement that the decision maker must have regard to all mandatorily relevant considerations and no irrelevant ones, but is not limited to that.

> In addition, the process of reasoning should contain no logical error or critical gap. This is the type of irrationality Sedley J was describing when he spoke of a decision that "does not add up – in which, in other words, there is an error of reasoning which robs the decision of logic" … . In the same vein, Saini J said that the court should ask, "does the conclusion follow from the evidence or is there an unexplained evidential gap or leap in reasoning which fails to justify the conclusion?" …
>
> [57] Outcome rationality, on the other hand, is concerned with whether – even where the process of reasoning leading to the challenged decision is not materially flawed – the outcome is "so unreasonable that no reasonable authority could ever have come to it" … or, in simpler and less question-begging terms, outside the "range of reasonable decisions open to a decision-maker"…

143. Chamberlain J went on to consider the *standard* of review on an irrationality challenge. It is context- and fact-sensitive. The degree of intensity of review will depend on considerations variously expressed as '*gravity of the issue which the decision determines*', '*the legal context (the nature of the right asserted) and the factual context (the subject matter impugned)*', '*the nature of any interests engaged and the gravity of any adverse effects on those interests*' and '*the significance of the right interfered with, the degree of interference involved, and notably the extent to which … the court is competent to reassess the balance which the decision-maker was called on to make given the subject matter*'.

(ii) The Bank's Challenge

144. The Bank challenges on rationality grounds two particular features of the Amended Licence: (a) the condition introduced in [5.3A(a)] that the decriminalisation of the blind trust mechanism was subject to there being specified deductions on what could be paid in to the trusts, those deductions being '*converted to Sterling at the conversion rates applicable as at 6 December 2022 for the purposes of converting creditors' claims to Sterling in [VTBC's] Insolvency Proceedings*'; and (b) the condition introduced by the opening of [5.3A] that the decriminalisation of the blind trust mechanism was subject to the condition that no funds or economic resources be made available to the Bank (or any transferee of its claim) '*including the making of any provision with a view to making a payment of funds or a transfer of economic resources at a later date*'. The rationality of [5.3A] – including the deductions themselves – is not otherwise challenged.

145. In relation to the exchange rate challenge, Mr Owen KC explains this is a controversial and complex issue in the insolvency proceedings and capable of making a substantial difference to the value of the Bank's claim (he gives as an example one recovery made by the Bank, valued at £42m at the time, which at the December 2022 exchange rate would produce a further deduction of more than £25m). He says there was nothing *at all* in the January 2025 submission to the decision-maker dealing with this, either explaining why it was even an issue, or explaining the conversion date chosen. Instead, he says, OFSI simply rubber-stamped what the JAs had asked for; and that failed the test for process rationality *in limine*.

146. He also points out that there is no direct evidence from the decision-maker in these proceedings as to what, if anything, was in his mind in relation to this issue (the decision-maker having since retired). In these circumstances, he says, I am not in a position to interrogate what considerations were or were not taken into account, or to analyse whether there was a problematic gap between what was before the decision-maker and the decision taken.

147. He argues that the provision is also outcome irrational. The date chosen, and the effect produced, is arbitrary.

148. In relation to the provisioning challenge, Mr Owen KC says the process problem is even worse, because this was a late addition to the drafting made *after* the decision-maker had made the decision, and apparently accepted without *any* substantive consideration. It is also outcome irrational. The status and effect of any provisioning was again a matter of some complexity, and would be contested in the insolvency proceedings. The Amended Licence appeared arbitrarily to foreclose on the issue on no rationally explicable basis.

(iii) History

149. The rationale for the exchange-rate provision was articulated to OFSI in the long note the JAs' lawyers sent on 25th November 2024. It said this:

> [I]n order to prevent [the Bank] from making a profit in Roubles from the UK insolvency process, … for these purposes both the proceeds of [the Bank's] enforcement and [the debts to VTBC owed by entities under the Bank's control] should be converted to Sterling at the administration date FX rate that applies to the conversion of creditors' claims to Sterling for the purposes of proof in the administration …

The 'administration date' was the date on which the Insolvency Court (Sir Anthony Mann) had granted the final Administration Order – 6th December 2022.

150. The submission to the decision-maker of 2nd January 2025 identified that, for the purposes of the deductions conditions of the Amended Licence, both the Bank's deductible enforcement actions and the deductible debts due to VTBC that the Bank controlled would be '*converted to Sterling to prevent [the Bank] making a profit in Roubles*'.

151. On 3rd January 2025, OFSI officials confirmed in an email to the JAs' lawyers that decision-maker approval had been granted for a licence amendment to provide:

> i. no distributions on [the Bank's claim] should be made or provided for without first deducting from the distributions the value of any VTBC assets which have been or are subject to [Bank] enforcement action, and the [Bank-controlled VTBC debts] (with the value of any

> such enforcement action and [debts] being converted into Sterling); and
>
> ii. statutory interest should not be paid for any time over which distributions are not paid because of these deductions.

The JAs were thanked for their suggested drafting to achieve that, as set out in their 25th November note, but a substantially redrafted version was proposed and set out instead, on which the JAs were invited to comment.

152. The JAs' lawyers responded by email on 6th January 2025 with a detailed response to the revised drafting and some further suggested revisions. The email opened as follows:

> Thank you very much for your response.
>
> We have reviewed the revised drafting for the suggested amendments and have three comments/questions.
>
> First, thank you for confirming that you have decision maker approval to amend the GL [General Licence] to state that "no distributions on VTB Bank's claim should be made or provided for without first deducting from the distributions …" (emphasis added).
>
> We have suggested some language … below to reflect this, in order to avoid any doubt that provisions for distributions are covered as well as the distributions themselves. This is to address a potential argument from [the Bank] that instead of making distributions to the Holding Period Trust (with deductions) the Administrators should make provision for its distributions in cash (without deductions) and hold those provisions on VTB Bank's behalf.
>
> …

153. OFSI responded by email on 7th January 2025 that they were content with JAs suggested changes, subject to some further revisions of their own to the JAs' suggested language. The JAs' lawyers confirmed the same day they were content, and the Amended Licence was published the next day.

(iv) Analysis

154. The *context* of both challenged provisions was a review of the May 2024 licence in the light of (a) the Bank's sudden and unforeseen veto of the proposed scheme of administration in September 2024 after a long process, and (b) the emergence of information about direct measures the bank was taking – including extraterritorial enforcement and corporate restructuring – to maximise its interest in the VTBC administration at the expense of unsanctioned UK creditors.

155. The *premise* of both provisions was the (rational) decision to respond by making the previous (limited) decriminalisation of the Bank's participation in the administration of

VTBC subject to express conditionalities designed to protect the unsanctioned creditors and restore the *status quo ante*. The decriminalisation was not to take effect unless balancing deductions had been made from any VTBC assets that could be dealt with for the Bank's benefit. Although not stated expressly, it is also straightforward to infer that there was an element in this response designed to deter continuing or future 'self-help' measures by the Bank, by neutralising in advance their potential effect on the relative interests of the Bank and the unsanctioned creditors.

156. The two challenged provisions are rather different in nature, but both are points of detail about the limits of the licensing: decriminalisation is to have effect *provided that* the deductions on which it is conditional are *not* made in either of two ways which could *themselves* create an advantage for the Bank at the expense of the unsanctioned creditors.

157. It is important therefore to note that neither provision depends on or assumes that insolvency law necessarily could or would produce the outcomes the two measures are addressed to. To the extent that it would, both of the challenged measures were conceived as loophole-closing or anti-avoidance measures. To the extent that it would not, they are pieces of 'for the avoidance of doubt' language. But both provisions operate *if but only if*, in their absence, the outcome would otherwise have been inconsistent with the sanctioning of the Bank and VTBC. That is the universal premise on which any licensing provision operates.

158. From a process rationality perspective therefore, I remind myself that I am reviewing whether the decision-maker's mind was fully relevantly, and not irrelevantly, engaged, and whether there are signs of gaps in the evidence or logic on which the decision relied or ought to have relied. In order to make this licensing decision in a process-rational manner, the decision-maker's proper and principal focus needed to be on what was to be done, in the light of developments since early September 2024, to ensure that any participation of the Bank in VTBC's insolvency was decriminalised *only* to the extent that that was necessary for and consistent with the swift and orderly conclusion of the process and the protection of the interests of unsanctioned creditors. That required the decision-maker to understand and deal with any risks that the deduction solution to be set out in the Amended Licence went no wider than it needed to and itself contained no *unintended* opportunities for the Bank to operate in ways otherwise prohibited by the sanctioning.

159. The JAs flagged up in their 25th November 2025 note that sterling valuation potentially offered one such opportunity. Unless expressly dealt with on the face of the Amended Licence, there was a risk of ambiguity that the Bank's *claim* in the insolvency, and the offset *deductions*, could be the subject of *different* conversion rates which could maximise the former, minimise the latter, and allow the Bank to 'make a profit in roubles'. That risk was – once identified and stated – an obvious one *in principle*, and it was equally obvious that OFSI had no intention of licensing it if and to the extent that it materialised in practice in any form otherwise prohibited by the sanction. That was not how the deductions were supposed to work.

160. It was not in these circumstances necessary for the decision-maker to be otherwise than simply apprised of the risk. That is what the 2nd January 2025 submission duly did. That the JAs had identified it, and were concerned there was a loophole, was the single most important relevant consideration before the decision-maker in considering the

point. He did not need to be apprised of the detail of how the risk might or might not eventuate in the insolvency proceedings or in practice. He needed to understand its conceptual existence, and its incompatibility with the purpose of the deductions solution. It was, in that sense, a drafting point rather than a distinct policy point.

161. The solution proposed to, and by, the author of the submission was to eliminate the risk of ambiguity expressly by drafting the Amended Licence to reference *all* the relevant valuations in the deduction mechanism to the same date – the date of administration. The logic of that appears to speak for itself.

162. The 'provisioning' point was even more clearly a drafting point rather than a distinct policy point. The 'read-out' email of 3rd January coloured the decision as approving the application of the deductions mechanism to '*distributions*' to the Bank from the insolvency '*made or provided for*'. At first glance that might have been thought a simple reference to the decriminalisation of actual distributions and preparatory steps toward future distributions. The submission was (and the sanctions regime is, at least potentially) concerned with both. But (although the JAs' note of 25th November to OFSI had already raised the issue of provisioning) this particular phrase evidently triggered in the mind of the JAs' lawyer another possible loophole in the deductions mechanism Was the Amended Licence in danger of inadvertently permitting the Bank to avoid the deductions, by asking the JAs *not* make deducted distributions into the blind trust but to '*make provision*' for future distribution in some other (undeducted) manner?

163. The nature and extent of any such risk in practice is not apparent from the contemporaneous documentation to which I was taken. Process rationality requires that decisions requiring evidence and analysis are taken accordingly. However, the 'provisioning' language complained of in the Amended Licence did not require the principal decision-maker's attention; the decision he was asked to, and did, take was to '*agree OFSI may amend the [General Licence] to prevent [the Bank] from making a double recovery, stepping ahead of other creditors and or profiting from statutory interest in the administration*'. How that was done by the drafters was a matter requiring them to deliver that decision accurately and effectively. They had *no authority* from the decision-maker to produce an instrument with any wider effect – including the inadvertent decriminalisation of *any* other dealing with VTBC's assets capable of producing an effect in which the Bank benefited from the insolvency, or from its own self-serving actions, *at the expense of unsanctioned creditors*. The whole point of the Amended Licence was to ensure VTBC could be wound up swiftly without that happening.

164. I am invited by Sir James Eadie KC to have regard to OFSI's formal responses to a number of requests for further information made on behalf of the Bank in these proceedings probing how the challenged provisions ended up in the Amended Licence. These confirmed that the author of the 2nd January 2025 submission to the decision-maker had indeed considered the appropriateness of the exchange rate provision and not simply rubber-stamped the JAs' proposals. I note that, and that the tenor of the correspondence between the JAs' lawyers and OFSI officials in general was informed, thoughtful and probing on both sides.

165. So far, then, as process rationality is concerned, I am able to discern no operation of irrelevant considerations, or failure to take account of relevant considerations, or gaps

of evidence or logic, or other defect of rationality, in either the taking of the decision to issue an Amended Licence, or in the drafters' implementation of that decision, as regards the insertion of either the currency conversion provision or the reference to 'provisioning' as part of the process of giving effect to the decision. Both were ancillary to the principal (rational) decision to set up a deductions mechanism as a condition for licensing the Bank's participation in the VTBC insolvency in ways which would *otherwise* have breached the terms of the sanctions. Both were concerned to ensure that the deductions mechanism operated as intended – to achieve the *minimum* decriminalisation consistent with achieving the best outcomes for unsanctioned creditors.

166. The effects of the (unlicensed) sanctions on the insolvency procedure, and the effects of the insolvency procedure, were not otherwise the concern of the decision-maker, or the drafters. They did not rubber-stamp freestanding policy or litigation interests of the JAs. They took cognisance – as indeed they were obliged to – of concerns that the drafting of the Amended Licence needed to avoid specific dangers that the new deduction mechanism *itself* could have unintended consequences inconsistent with the sanctions regime and the objectives of the Licence. No process irrationality appears in that.

167. In terms of outcome rationality, it is plain that both provisions were sensibly tailored to dealing with the dangers flagged, and effective to do so. There had never been any intention other than to secure the continuing application of the sanctions regime to the Bank's participation in the VTBC insolvency except in the strictly limited and conditional manner duly provided for in the Amended Licence. There was no case, consistent with the purposes for which the licensing power had to be exercised, for permitting any 'profit in roubles' to be made from the deductions mechanism to which the sanctions regime would otherwise apply. There was no such case for permitting any 'provisioning' as an alternative to the deductions. To the extent that these were real world possibilities, it was entirely rational – well within the range properly available to a rational decision-maker in the circumstances and on the materials before him in this case, and for the reasons cited – for the Amended Licence to include the two provisions complained of to exclude them. To the extent that these were not real world possibilities –the insolvency procedure will or may not produce them at all – their citation in the Amended Licence has no effect.

168. In these circumstances, and for these reasons, the irrationality challenge must fail.

(d) The Consultation Challenges (Grounds 1 and 2)

(i) Legal Principles

169. Both parties referred me to the observations of Lord Neuberger JSC in *Bank Mellat v HM Treasury (No.2) [2014] AC 700* on the 'duty to consult':

> [178.] As Lord Sumption JSC says in paras 29–30, where the executive intends to exercise a statutory power to a person's substantial detriment, it is well established that, in the absence of special facts, the common law imposes a duty on the executive to give notice to that person of its intention, and to give that person an opportunity to be heard before the power is so

> exercised. While this has been described as a "rule of universal application … founded on the plainest principles of justice" …, it has more recently been expressed in somewhat more measured terms. In *R v Secretary of State for the Home Department Ex p Doody [1994] 1 AC 531*, 560, Lord Mustill said that "fairness" will
>
> > "very often require that a person who may be adversely affected by the decision will have an opportunity to make representations … either before the decision is taken … or after it is taken, with a view to procuring its modification …"
>
> [179.] In my view, the rule is that, before a statutory power is exercised, any person who foreseeably would be significantly detrimentally affected by the exercise should be given the opportunity to make representations in advance, unless (i) the statutory provisions concerned expressly or impliedly provide otherwise or (ii) the circumstances in which the power is to be exercised would render it impossible, impractical or pointless to afford such an opportunity. I would add that any argument advanced in support of impossibility, impracticality or pointlessness should be very closely examined, as a court will be slow to hold that there is no obligation to give the opportunity, when such an obligation is not dispensed with in the relevant statute.

170. I have also been directed to the recent helpful summary and analysis of the Court of Appeal in *R (Timson) v SSWP [2023] PTSR 1616* at [50]-[64].

(ii) The Bank's Challenges

171. The Bank makes extensive challenge going to the submitted procedural unfairness of OFSI issuing the Amended Licence (a) in close consultation with the JAs but (b) without consulting the Bank.

172. Mr Owen KC says in the first place that OFSI's procedure was straightforwardly unfair at common law, within the four corners of the *Bank Mellat (No.2)* test. He says the Amended Licence '*significantly detrimentally affected*' the Bank by imposing new conditions on the May 2024 licence which had the effect of extinguishing (entirely, or materially) valuable interests of the Bank, particularly by way of demolishing its blocking vote against the scheme of arrangement and by preventing 'provisioning'. The *only* purpose and effect of the Amended Licence was to constrain the Bank's position: it was singled out for specific adverse treatment, and without first being heard.

173. The Bank accepts that the requirements of procedural fairness are flexible and context-specific. But Mr Owen KC says that here, the JAs were effectively manoeuvring to enable payments to unsanctioned creditors *by means of* attacking the Bank's position. He says '*whatever the position in form, in substance this is obviously a draconian power targeted at the extinguishment of the Bank's substantive rights*'. Precisely

because the JAs were in a powerful position as officers of the Court, the Bank was correspondingly vulnerable. OFSI *needed* as a matter of fairness and good decision making to hear the Bank before acting to its detriment. And precisely *because* UK government interests were so intensely engaged in the sanctions regime and with the Bank's Russian significance, the Bank was, again, especially vulnerable.

174. Mr Owen KC submits that the common law demands of fairness are further enhanced by OFSI's own policy statement that it '*aims to engage with relevant stakeholders*' before making decisions affecting existing licences. It is uncontroversial that public bodies have a general public law duty to follow their published policies unless there is a good reason not to. Here, Mr Owen KC says OFSI's policy in effect raised a legitimate expectation that the Bank would be consulted before 'its' licence was amended, and there was no good reason not to do so.

(iii) Analysis

175. Where a statutory power is to be exercised, what is required by way of procedural fairness depends on the statutory context and the circumstances of the proposed exercise.

176. The Regulations themselves impose no express statutory duty to consult. Regulation 66(5) indicates that OFSI, having issued a licence, '*may vary, revoke or suspend it at any time*'. There are provisions in Regulation 66 dealing with *ex post facto* notice of variation (Regulation 66(6) makes provision for *written notice* of variation to be given in circumstances where a person has applied for and received a *specific* licence; and Regulation 66(7) makes equivalent provision in the case of variation of a *general* licence, requiring such steps as OFSI considers appropriate to *publicise* it). So the statute itself is silent as to consultation, and I concur with the parties that what was required in the present case is highly context-dependent. Nevertheless, the sanctions regime as a whole, and the nature of the licensing power in particular, are an important part of that context.

177. According to the *Bank Mellat (No.2)* test, the key questions are (a) would the Bank foreseeably be significantly detrimentally affected by the exercise of the power to vary? And if so (b) did the circumstances in which the power was to be exercised render it impossible, impractical or pointless to afford such an opportunity?

178. As regards the first question, there is no doubt that the power to *sanction* is a '*draconian*' one. It is capable of criminalising a very wide range of a person's otherwise lawful dealing with their own property and interests. I asked Mr Owen KC whether he considered there to be a general duty to consult before *sanctioning*, and he did not seek to argue that; he accepted that imposing asset freezes are often (usually) done without notice, and a sanctioning decision may well partake of that nature. Of course, the (usual) reason for imposing asset freezes without notice is to avoid giving an opportunity for the dissipation of the assets where that is in prospect. There is often a measure of urgency about that.

179. Mr Owen KC's argument for the Amended Licence having a *draconian* impact, implying a duty to consult, therefore cannot stand in apposition to the decision to *sanction* the Bank in the first place. It can only stand in apposition to the May 2024 licensing decision.

180. As analysed above, that decision set out a limited decriminalisation permitting the JAs to manage blind trusts, for the benefit of the Bank, to hold distributions from the VTBC insolvency *in accordance with the scheme of arrangement* both the JAs and OFSI understood to be the subject of imminent agreement. The Bank had been fully consulted on, and was fully aware of, the terms of that scheme, including its provision for the Bank's own interests to defer to the interests of the unsanctioned creditors. It had been afforded the fullest opportunity to engage with the detail of that scheme over many months, and indicated its generalised support for it, but its engagement had, particularly in the latter months, apparently not been active. That it had a clear incentive to engage with the scheme, and to consent to it, had been consistently represented to the Bank by the JAs. Proceeding in accordance with the scheme would decriminalise the Bank's participation in the VTBC administration to that extent – and, of course, to the extent to which it had been prohibited by sanction in the first place. The Bank had been on clear notice of all of this. It did not demur.

181. In these circumstances, there was not, even arguably, any expectation raised at the time or subsequently that the May 2024 licence was a decriminalisation provision for the Bank's benefit *whether or not it participated in the scheme*. On the contrary, it was entirely predicated on the Bank's participation. I was shown no evidence that there can have been any doubt about that at the time. Mr Owen KC's argument that the Amended Licence adversely impacted the Bank's position relies on that position having been one in which it was free to take the benefit of the May 2024 decriminalisation without acceding to any of its policy – and legal – conditionalities or procedural expectations as clearly set out to it. That is not on the face of it a sustainable premise.

182. If the Bank had had an argument that it had not needed or benefited from the May 2024 licence in the first place, because what it purported to decriminalise was not criminalised by the sanctions regime to start with, it did not and has not said so. Its argument now that it was impacted by the Amended Licence to a draconian extent necessarily presupposes (a) the Bank's reliance on the decriminalising effect of the May 2024 licence but (b) that, absent the new conditions to which objection is made, the Bank was free to take the benefit of that effect otherwise *unrestrained by the sanctions regime*. It has not made its argument in quite those terms either. But the argument advanced by Mr Owen KC relies on the *Amended Licence*, rather than the *sanctioning* from which it produces decriminalising effects, producing a situation in which the Bank was left in a radically disadvantaged position *compared to unsanctioned creditors*. It is an elusive proposition.

183. It is particularly elusive, bearing in mind that the scheme of arrangement – whether the original scheme as vetoed or the replacement scheme as passed – were and are subject to an approval hearing by the Insolvency Court. That is an exercise requiring the Court to consider whether it can be satisfied that the scheme meeting was fairly conducted and the scheme itself is a fair and lawful one. The licensing, or decriminalisation, of a scheme is a necessary precondition enabling the Court to exercise its discretion accordingly. But it does not oblige the Court to approve the scheme, or to take any particular view as to its fairness, or empower it to do anything it would not otherwise have had the power to do.

184. Mr Owen KC took me to the prisoner segregation cases of *R (Osborn) v Parole Board [2014] AC 1115* and *R (Bourgass) v SSJ [2016] AC 384*. These are cases where a factually obvious detrimental impact on individuals was recognised as a base for

exploring what fairness required from the decision-maker before imposing it. The detrimental impact in the present case is not factually obvious. The comparison between the situations in which (a) OFSI had created a decriminalisation effect to give effect to a specific and detailed scheme which the Bank then suddenly vetoed and (b) OFSI replicating that effect by setting out the scheme's conditionalities on the face of the Amended Licence rather than by reference to any actual scheme, does not speak for itself. Mr Owen KC put it as a means of subverting the Bank's *entitlement* to veto the scheme – *nevertheless* having the benefit of the May 2024 licence. That was not a compound entitlement I heard adequately constructed as a starting point.

185. What fairness required of OFSI by way of pre-decision consultation in this case has to take account of the following features of the history. First, the Bank was fully consulted on the proposed scheme of arrangement (and the licence amendment which was to enable it). That was, so far as the history appears from the materials I was shown, a conspicuously lengthy and detailed consultation process. The Bank was fully informed as to the decriminalisation effect that the JAs and OFSI intended to achieve. It was predicated on the Bank's *agreement* to the scheme, not on its *being able to veto* the scheme. The Bank, so far as I can see, at the very least allowed the JAs and OFSI to proceed on that understanding. Had the Bank given a plain indication at the time that it was minded to veto the scheme, I saw nothing in the materials before me to give the least indication that OFSI would have made the May 2024 licence amendment in any event.

186. Mr Owen KC candidly put the Bank's case to me at one point as being that the Bank saw benefit to itself in the May 2024 licence amendment in its own right, and proceeded accordingly. Had the Bank been engaged and transparent about its intentions and operations throughout the consultation process, it appears that the likely outcome would have been that OFSI would have proceeded to make a licence in the terms of the Amended Licence in the first place, without proceeding via the intermediary stage of the May 2024 licence. It is hard to see that the Bank could in those circumstances have raised any complaint about the fairness of the consultation procedure. So the Bank's present unfairness challenge has to be seen in a procedural context somewhat of its own creation.

187. It is also a conspicuous feature of the history that on the very day the Bank notified its intention to veto the originally proposed scheme – 4th September 2024 – the JAs clearly indicated, by return, their intention in the alternative to *'seek to achieve the same outcomes as proposed in the Scheme, but through applications to the English court, with the consequent reopening of discussions with OFSI…*'. The JAs also sought to engage with the Bank on the information they had received as to its enforcement and restructuring activities. The Bank was on notice of the problems identified and the proposed solutions, and its engagement invited, throughout. It seems to have preferred not to do so.

188. The other feature of the history of this matter of real significance for the question of procedural fairness is that the Amended Licence decision was plainly time-sensitive. The time-sensitivity is apparent in the Insolvency Court proceedings themselves (including being registered as such by Adam Johnson J). The timetable for the Court hearings and creditors' meeting was in place and the case had been made by the JAs for an *early* distribution of assets.

189. The reason for that, in turn, was concern that the Bank's apparent activities, about which it had not been transparent, were potentially tending towards an outcome in the insolvency proceedings – by means of extra-jurisdictional operations in Russia and elsewhere – with a view to maximising its own advantage at the direct expense of the unsanctioned creditors. The concern was that it was, in other words, intensely engaged in a process of putting the assets of a sanctioned entity, VTBC, beyond the reach of UK administration procedure and enriching itself thereby. Those concerns were recognised as legitimate by Adam Johnson J to the extent of his willingness to hear the JAs on 2nd December 2024, on an urgent basis, in private and without putting the Bank on notice, to accept their evidence, and to approve the application they made for an early distribution. Steps were taken subsequently to make the Bank aware of his judgment. It was not challenged, notwithstanding the express liberty to apply to do so.

190. If the Bank were indeed engaged in such a process, it was irreversible. But its effects could be neutralised, and its continuation deterred, by the imposition of conditions on the decriminalising of the Bank's (continuing) participation in the administration. There was a degree of urgency about that. It was in the nature of a freeze or brake on the depletion or dissipation of VTBC's available assets in the administration.

191. In these circumstances, the case that *fairness* required a fresh consultation process with the Bank *before* OFSI took action is not apparent. If not '*impossible, impractical or pointless*', such an exercise would have introduced delay, and thereby a further and counterproductive opportunity for the Bank to take advantage of an already overextended and underproductive consultation process to continue activities apparently depleting VTBC's assets in the administration.

192. There is a final, and related, point. The authorities are clear that an opportunity for consultation *after* a decision is taken is no answer where fairness demands an opportunity *before* the decision is taken. The possibility of making representations towards the undoing of a decision is not at all the same thing as the possibility of influencing the decision in the first place, especially where irreversible results flow from that decision. In the present case, however, OFSI's implied duty to keep the exercise of its licensing powers under review, and the nature of the Amended Licence as an exercise in limited, conditional and *prospective* decriminalisation is not wholly irrelevant either. A 'return date' opportunity for a proper review of where the Amended Licence left and leaves the interaction between the administration proceedings and the sanctions to which the Bank is subject, including as those proceedings continue, is a meaningful intrinsic safeguard against unfairness which is provided by the Insolvency Court. A licence, obviously, can be (re-)amended if fairness and effectiveness so requires. It appears that the Bank was expressly afforded the opportunity to make post-decision representations, but it does not appear that it took the opportunity before pursuing the present statutory review.

193. The guidance of the authorities about what consultative fairness requires before a statutory power is exercised is that that is dependent on considering the nature of that power in its full statutory context, the consequences of its exercise on any particular occasion in all the relevant circumstances, and an evaluation of all the possible functions of consultation within that composite matrix.

194. I was taken to no authority, or body of authority, which points me to a finding of unfair failure by OFSI to consult the Bank before making the Amended Licence. The Bank

had been fully consulted before the licensing decision of May 2024 as to the outcome it was intended to achieve, by means of the Bank's voluntary participation in a detailed scheme of arrangement. It was given no basis in that process for expecting the May 2024 licence to operate unconditionally on any other premise. The Bank did not engage transparently and constructively with that consultative process, instead giving cause for concern that it could be taking advantage of it to act, about which it was again not transparent, to place the assets of VTBC beyond the effective reach of the administration for its own benefit.

195. The Bank was on notice that further consultation with OFSI – that is, a review of the licence – was in prospect, and of the effect it was intended to achieve, as soon as its intention to veto the original scheme of arrangement had been communicated. It appears to have made little effort to respond to the JAs' persistent and urgent efforts to engage with it and understand its position, choosing instead to let events take their course with a view to bringing the present challenge after the event. The JAs meanwhile pursued urgent remedial measures through the Insolvency Court. OFSI placed the conditionalities of the May 2024 licence, which had been extensively consulted over, on the face of the Amended Licence. *Fairness* did not require the Bank to be provided with further opportunities for consultation before that step could properly be taken. The Amended Licence was on the contrary an exercise in undoing the potential for unfairness, including procedural unfairness, in the Bank's own conduct.

196. I am unpersuaded that a different outcome can be reached by considering the position through the lens of OFSI's policy statement that '*HM Treasury can vary, suspend or revoke general licences at any time. OFSI aims to engage with relevant stakeholders before taking such action.*' On its face, it is expressed in aspirational and implicitly conditional language.

197. To an arguable extent, the policy aspiration acknowledges that some persons operating in reliance on the terms of a licence may have something in the nature of a legitimate expectation that those terms will not change without affording an opportunity to adjust their operations and reliance accordingly. But it does not obviously *create* such expectations where none existed before. And it is interesting that where the policy does refer to giving advance notice ('*where there is a specific and urgent need to revoke a general licence, OFSI will aim to give notice to its users by, for example, amending the licence first to include a new expiry date to give time for users to reassess their licensing needs*') it does so by reference to revocation alone, rather than to variation. It also makes a noticeable distinction between licence 'users' and 'stakeholders'; the latter, while apt to include, for example, the JAs in an insolvency context, is not obviously apt to include the former.

198. For the reasons I have set out, I cannot recognise the May 2024 licence as having created circumstances and expectations on which the Bank was entitled to rely otherwise than on the basis of its voluntary participation in a scheme of arrangement. That was a basis the Bank chose not to fulfil. Its expectations of further consultation on the consequences for it of that choice were not, in all the circumstances, materially enhanced by this policy statement. These are not circumstances in which it is possible to discern either that OFSI's policy materially added to the common law duty of fairness, or that it was breached on the facts of the present case.

199. In any event, for the reasons I have set out, I am satisfied that the Bank was fairly consulted in substance, and afforded a fair opportunity for engagement, throughout the process of the JAs' conduct of the administration, including by being put fairly on notice as soon as they considered licence review had to become a live prospect. For these reasons, the Bank cannot succeed on either Ground 1 or Ground 2 of its challenge.

(e) The Tameside Challenge (Ground 3)

(i) Legal Principles

200. It is one aspect of the requirement for fair consultation that a decision-maker should be alert to the possibility that a consultation exercise will yield facts or considerations of which it might not otherwise have been aware, and from which the decision-making process would benefit. The *Tameside* rule however has a particular focus on the factual aspects of decision-making by public bodies, so-called by reference to the principles set out by the House of Lords in *Secretary of State for Education v Tameside MBC [1977] AC 1014*, that public bodies should take steps to assemble all relevant information reasonably necessary to the taking of such decisions, not (only) as a matter of fairness but as a matter going to the rationality of ostensibly evidence-based decision-making.

201. For a modern statement of the general *Tameside* duty I was directed to *R (Plantagenet Alliance) v SSJ [2015] 3 All ER 261*, and the decision of the Court of Appeal in *Balajigari v SSHD [2019] 1 WLR 4647*. Underhill LJ said this, in *Balajigari*, at [70]:

> The general principles on the Tameside duty were summarised by Haddon-Cave J in R (Plantagenet Alliance Ltd) v Secretary of State for Justice [2014] EWHC 1662 (Admin) at paras. 99-100. In that passage, having referred to the speech of Lord Diplock in Tameside, Haddon-Cave J summarised the relevant principles which are to be derived from authorities since Tameside itself as follows. First, the obligation on the decision-maker is only to take such steps to inform himself as are reasonable. Secondly, subject to a Wednesbury challenge, it is for the public body and not the court to decide upon the manner and intensity of enquiry to be undertaken: see R (Khatun) v Newham LBC [2004] EWCA Civ 55 , [2005] QB 37, at para. 35 (Laws LJ). Thirdly, the court should not intervene merely because it considers that further enquiries would have been sensible or desirable. It should intervene only if no reasonable authority could have been satisfied on the basis of the enquiries made that it possessed the information necessary for its decision. Fourthly, the court should establish what material was before the authority and should only strike down a decision not to make further enquiries if no reasonable authority possessed of that material could suppose that the enquiries they had made were sufficient. Fifthly, the principle that the decision-maker must call his own attention to considerations relevant to his decision, a duty which in practice may require him to consult outside bodies with a particular knowledge or involvement in the case, does not spring from a duty of procedural fairness to the applicant but

> rather from the Secretary of State's duty so to inform himself as to arrive at a rational conclusion. Sixthly, the wider the discretion conferred on the Secretary of State, the more important it must be that he has all the relevant material to enable him properly to exercise it

202. Where decision-making involves the predictive evaluation of future risk, the Court of Appeal in *R (Campaign Against the Arms Trade) v Secretary of State for International Trade [2019] 1 WLR 5765* emphasised that to the extent that that evaluation is based on a perceived pattern of past conduct, it may be important to analyse and evaluate that past pattern first, including by resolving any disputes of fact about it. The Supreme Court made observations to similar effect in *R (Pearce) v Parole Board [2023] AC 807*:

> [74] In the Guidance under challenge (para 2) the term "allegation" is said to refer to conduct alleged to have occurred which has not been adjudicated upon. A prisoner with a history of past offending is vulnerable to such allegations. If an allegation could, if true, affect the Board's risk assessment, the Board's task, so far as it can on the information which has been made available to it or which it is able to obtain, is to explore the nature of that allegation and its surrounding circumstances in order to make such findings of fact as it can about either or both on the balance of probabilities. By this means the Board gives due consideration in its assessment both to the public interest and to the prisoner's interests and acts with procedural fairness.

(ii) The Bank's Challenge

203. The Bank submits that OFSI's decision to issue the Amended Licence, and in particular the Amended Licence's provisions for making deductions, depended on those deductions being appropriate to offset the Bank's apprehended actions in advantaging itself at the expense of the unsanctioned creditors. That, Mr Owen KC says, made this an exercise in understanding and evaluating a past pattern of behaviour, and in making an assessment of the risk of the Bank acting similarly in future. And OFSI acted unlawfully in this regard in three ways.

204. First, it proceeded solely on the basis of information and evidence provided by the JAs. It made no attempt to test that with, or seek any evidence or information from, the Bank. That was procedurally unfair.

205. Second, OFSI did not recognise that the factual allegations made by the JAs in relation to the Bank's past conduct might be (or were) contested. It failed to investigate and resolve the history. It was therefore not in a position to make and rely on any assessment regarding the Bank's future conduct.

206. Third, additionally or in consequence, these defects breached the *Tameside* principle.

(iii) Analysis

207. There is a preliminary question in this challenge about the extent to which (potentially contestable) fact-finding or factual assumptions, and predictions of future risk, properly played a part in the Amended Licence decision. The exercise of the licensing power was not in and of itself an exercise in the evaluation of risk in the sense that a Parole Board decision quintessentially is. Nor was its exercise in the present case predicated on an exercise in finding any particular facts (beyond, of course, that the Bank was a sanctioned entity and that the scheme of arrangement understood in May 2024 to have been about to be given legal effect by the creditors of VTBC and then by the Insolvency Court had not in fact come about).

208. It is certainly the case that the submission of 2nd January 2025 set out the JAs' understanding that the Bank had been taking certain specified enforcement action, and of the impact that action was having on VTBC's assets and the interests of the unsanctioned creditors. The key *factual* premise of the submission remained, however, the prospect of the failure of the proposed scheme of arrangement without the voting support of the sanctioned creditors, and the unintended consequence of a default situation in which the Bank was licensed to receive distributions into the blind trusts *without* having agreed to defer to the interests of the unsanctioned creditors or to receive its interests in the debts of entities it controlled *in specie*.

209. The risk inherent in that was not a *factual* one, however. OFSI was not, and did not need to be, engaged in a factual analysis of what the Bank had done or with what precise effects, or in a risk analysis of its propensity or otherwise to act similarly in future or, again, with what effects. As the January 2025 submission set out clearly, the risk that had been identified was a *policy* risk. It was a risk inherent in the situation in which a licensing or decriminalisation decision made in May 2024 on an expectation of certain carefully prescribed and managed events had to be reviewed when those events did not come about as expected. It was a risk of unintended consequences fundamentally at odds with the original policy.

210. The JAs' account of the Bank's various 'self-help' initiatives is not challenged in these proceedings as being wholly unfounded. No doubt it is incomplete. The JAs asked the Bank about what had been going on, but did not find that their questions were fully engaged with or addressed. In any event, what mattered for OFSI's purposes was not the detail of the Bank's activities, but the fact that the JAs' concerns illustrated a policy risk that a limited decriminalisation predicated on its being effective only within the constraints of a legally enforceable scheme of arrangement had, in the absence of that scheme, left the door open to an outcome which was the polar opposite of what had been intended: delay, disorderliness and the hollowing out of the interests of the unsanctioned creditors.

211. I remind myself that, as set out by Underhill LJ, the core of a *Tameside* challenge is a rationality test. A court will intervene only if no reasonable authority could have been satisfied on the basis of the enquiries made that it possessed the information necessary for its decision. The court should establish what material was before the authority and should only strike down a decision not to make further enquiries if no reasonable authority possessed of that material could suppose that the enquiries they had made were sufficient.

212. I also remind myself that strictly speaking, in the context of a *Tameside* challenge, the issue of OFSI's reliance on the input, or concerns, of the JAs is not a question of fairness as between parties to a dispute (in contrast to a consultation challenge), it is a question of the rationality of OFSI's not testing or going behind what the JAs had said when it made the decision it did.

213. There are two important considerations supporting the rationality of OFSI's entertaining the JAs' advice and representations at face value. The first is that the JAs were themselves subject to direct judicial oversight of the VTBC administration – appointed and empowered by, and accountable to, the Insolvency Court and subject to legal duties of independence, integrity, efficiency and acting in the interests of creditors as a whole. The second is that the JAs were themselves dependent on the licensing regime in order to ensure that their own functions did not cross the line into criminality, dealing as they were with the assets of sanctioned entities. Both of these placed intensely focused legal duties on the JAs to ensure that the interface between the sanctions regime and insolvency proceedings were carefully maintained and that unintended consequences of any sort were avoided. After all, under-licensing exposed unsanctioned participants (including the JAs) to unintended *criminal* consequences, and over-licensing undermined the sanctions regime and exposed unsanctioned participants to unintended *financial* consequences.

214. The Bank, I am told, is now challenging elsewhere the conduct of the JAs in advancing the case for the Amended Licence to OFSI, as being a potential breach of their duties. But *Tameside* is a rationality challenge. The possibility that the JAs were misconducting themselves does not require OFSI to proceed on that basis, or to verify for itself whether or not they were. It was not *irrational* for OFSI to accept the JAs' concerns at face value. And these considerations are, of course, over and above the reliance entirely rationally placed on the JAs' professional expertise and the concerns inevitably arising out of their perception of the Bank's disengaged or unpredictable conduct. Their concerns were supported by documentary evidence, including from public sources, and indeed by the judgment of Adam Johnson J.

215. Then there is the position of the Bank. It was on notice that licence review was in contemplation, and of the basis of the JAs' concerns. The basis of those concerns were matters entirely within its own knowledge. It was represented by expert legal advisers. I find it difficult to discern a public law basis for drawing a conclusion in these circumstances that OFSI had, and failed to discharge, an independent factual investigative burden where it had been given insufficient cause by the Bank or anything else at the time to doubt the JAs' factual account.

216. But the core question for the present *Tameside* challenge is really whether it is right for me to find that *no reasonable decision-maker* could have been satisfied that it had all the information it needed to make the Amended Licence. I am not persuaded that it is. The fit between the sanctions regime and the administration of VTBC had become unstable, as a result of decisions and actions taken by the Bank. There was a need to review the May 2024 licence accordingly, but the policy intent of that licence was unchanged. The aim now was to secure the same outcome whether or not underpinned by a scheme of arrangement and whether or not the Bank had taken extra-jurisdictional measures at the potential expense of the unsanctioned creditors thereby undermining the effectiveness of the original licensing – and sanctioning – policy. *Even if* that risk were wholly theoretical, OFSI would have been entitled to conclude it was one it could

and should rule out. Further factual inquiries were unnecessary in order to render its decision-making rational.

Conclusions and Decision

217. The sanctions to which VTBC, the Bank's UK subsidiary, was exposed reduced it to insolvency. OFSI permitted it go into administration so that, under the control of the Insolvency Court and the JAs appointed by it, unsanctioned creditors should be as far as possible protected from the consequences of the insolvency and enabled to settle their claims against VTBC. It was never any part of OFSI's policy intention to relieve the Bank and other *sanctioned* creditors of any of the effects of the sanctions in the process, other than to the minimum extent necessary to make VTBC's assets available to unsanctioned creditors in as swift and orderly a matter as possible under Court supervision.

218. That minimum extent had been crystallised out in policy terms in the form of the terms of a proposed legally binding scheme of arrangement. OFSI was on balance prepared to remove sanctions barriers to that scheme, including by decriminalising any *residual* flow of resources out of the insolvency and towards the Bank, subject to limitations on how those resources would be held, managed, and kept inaccessible to the Bank during the currency of the sanctions.

219. The Bank, at a late stage and without notice then withdrew from the proposed scheme and prevented its coming into force. It also gave cause for concern to the JAs, the Insolvency Court and OFSI that it was taking steps to achieve a flow of resource out of the VTBC administration and towards itself, at the expense of the unsanctioned creditors. OFSI was invited to, and did, intervene to place on the face of its instrument of decriminalisation certain conditions to give effect to its original policy of decriminalising the flow of resources out of the insolvency towards the Bank on a strictly residual basis, putting the interests of unsanctioned creditors first.

220. I have reviewed that decision as invited by the Bank and as provided for by Parliament. I am unable to find in the decision any element of unlawfulness warranting a court of review intervening in it to set it aside. The Bank's grounds of challenge are not made out, and its claim must be dismissed.