Neutral Citation Number: [2026] EWCR 7

Case No.: T20250107

IN THE CROWN COURT AT SOUTHWARK

1 English Grounds, London, SE1 2HU

9 July 2026

Before:

HIS HONOUR JUDGE BAUMGARTNER
THE HON. RECORDER OF WESTMINSTER

- -

Between:

REX

Respondent/Prosecution

- v -

(1) HAUSER & WIRTH GALLERY LIMITED
(2) ARTAY RAUCHWERGER SOLOMONS LIMITED

Applicants/Defendants

- -
- -

Kevin Dent KC with **Danielle Barden** (instructed by the **Crown Prosecution Service**) for the **Prosecution**
Hugo Keith KC with **Robert Morris** (instructed by **Skadden, Arps, Slate, Meagher & Flom LLP**) for the **First Defendant**
Sean Hammond (instructed by **Cartwright King**) for the **Second Defendant**

Hearing date: 5 May 2026

- -

Approved Judgment

I direct that pursuant to Crim.PR r.5.5(1) no official shorthand note shall be taken of this judgment and that copies of this version as handed down (subject to editorial corrections) may be treated as authentic.

HIS HONOUR JUDGE BAUMGARTNER:

INTRODUCTION

1. These are applications by the Defendants, Hauser & Wirth Gallery Limited (**"H&W"**) and Artay Rauchwerger Solomons Limited (**"ARS"**), to dismiss charges alleging an offence contrary to reg.46B(2)(b) and reg.46B(4) of The Russia (Sanctions) (EU Exit) Regulations 2019 (the **"2019 Regulations"**) arising out of the sale of an artwork entitled "Escape from Humanity" (acrylic, gesso, ink and wax crayon on paper, 152.4 x 102.9 cm) (the **"artwork"**) by the American contemporary artist George Condo. H&W is alleged to have sold the artwork to Alexander Popov, said to be a person "connected with Russia". ARS is a fine art logistics company engaged in the storage and transportation of artworks.

2. Chapter 4B of the 2019 Regulations, which includes reg.46B, came into force on 14 April 2022.

3. The charges allege that, between 14 April 2022 and 31 December 2022 (H&W, Count 1), and between 10 August 2022 and 31 December 2022 (ARS, Count 2), the Defendants made available a "luxury good" (*i.e.*, the artwork) to Mr Popov. Mr Popov is not a "designated person" or subject to an asset freeze under the 2019 Regulations or under any other domestic sanctions regime.

4. The applications are brought pursuant to paragraph 2 of Schedule 3 to the 1998 Act, which requires the Court to dismiss a charge, and accordingly quash any count relating to it in any indictment preferred against the applicant, if it appears that the evidence would not be sufficient for a properly directed jury to convict. Where the evidence is largely documentary and the case depends upon inferences or conclusions that the prosecution propose to ask the jury to draw from it, the judge must assess the inferences or conclusions the prosecution proposes to ask the jury to draw from the documents and decide whether the jury could properly draw them: see *R (Inland Revenue Commissioners) v Kingston Crown Court* [2001] 4 All ER 721; Archbold 2026 (para.1-54).

BACKGROUND

5. This case concerns the sale (by H&W) and consignment (by H&W and ARS) of George Condo's artwork "Escape from Humanity" to Mr Popov.

6. Sale had been agreed in July 2021 and an invoice issued to Mr Popov by H&W on 1 October 2021,[1] well before the 2022 Russian invasion of Ukraine in February that year. Mr Popov's address in the invoice was given as "*M. Gnezdnikovsky 9-7-76, 125009 Moscow, RUSSIA*".

7. The artwork was collected from H&W's warehouse on 26 August 2022 by ARS at Mr Popov's instruction, and taken to Heathrow. It was destined for Yerevan in Armenia.

[1] See J787 of the Crown Court Digital Case System (**"CCDCS"**), and Q632 of the hearing bundle at Q624-Q1027 of the CCDCS. For convenience, references to documents which follow are to documents in the hearing bundle at Q624-Q1027.

The consignment, however, was stopped and seized by a UK Border Force officer on 8 September 2022, before it left the United Kingdom.

8. According to the terms of the contract between H&W and Mr Popov, title to the artwork did not pass to Mr Popov until the balance of the purchase price was paid or upon collection of the artwork by Mr Popov's agent or release to his shippers.[2] H&W received final payment from Mr Popov on 27 July 2022, *i.e.* before the artwork left H&W's warehouse.[3]

9. It is common ground that the artwork was transferred to the customs control of Mr Popov's designated shippers Art Logistics Limited (**"Art Logistics"**) on 23 August 2022,[4] and that H&W allowed the artwork to be taken into Art Logistics' custody and control on 26 August 2022. Art Logistics then arranged for the artwork to be collected by DHL for shipment. For clarity, ARS was the fine art logistics company instructed in relation to the movement of the artwork; Art Logistics was the customs/export logistics entity referred to in the shipping documentation; and DHL was the carrier arranged for onward shipment. Although the customs export declaration completed by DHL gave a consignee address in Moscow (*per* the 1 October 2021 H&W invoice), the air waybill[5] completed by Mr Popov's shippers Art Logistics shows that the artwork was consigned to "*MR EFIMOV DMITRY, VARDANANTS STR. 10 APT.11*", Yerevan, Armenia, not to Russia.

10. Documentary evidence shows that, by August 2022, Mr Popov had rented his property in Moscow,[6] had obtained residential agreements in Armenia and Bosnia and Herzegovina,[7] had sought to obtain citizenship in Bosnia and Herzegovina,[8] and had sought to renounce his Russian citizenship.[9]

ISSUES

11. The applications raise two principal issues:

    (1) first, whether there is sufficient evidence that the artwork was "made available to" Mr Popov by H&W and ARS within the meaning of reg.46B(2)(b);

    (2) second, whether there is sufficient evidence that, at the relevant time, Mr Popov was "ordinarily resident in Russia", and thus a person "connected with" Russia within the meaning of reg.46B(2)(b).

    Where the evidence would not be sufficient for a properly directed jury to convict, paragraph 2 of Schedule 3 to the 1998 Act requires the Court to dismiss the charge and to quash any count relating to it in any indictment preferred against the applicants.

---

[2] Q631.
[3] Q800.
[4] Q818.
[5] Q839.
[6] Q688.
[7] Q683; Q743.
[8] Q728.
[9] Q739.

RELEVANT LEGAL FRAMEWORK

Regulation 46B

12. Regulation 46B of the 2019 Regulations provides, in relevant part (emphasis added):

> "46B.—(1) The export of luxury goods to, or for use in, Russia is prohibited.
>
> (2) A person must not directly or indirectly—
>
> (a) supply or deliver luxury goods from a third country to a place in Russia;
>
> (b) make luxury goods available to a person connected with Russia;
>
> (c) make luxury goods available for use in Russia.
>
> (3) Paragraphs (1) and (2) are subject to Part 7 (Exceptions and licences).
>
> …"

13. Whether a person is "connected with" Russia is defined in reg.21(2) of the 2019 Regulations, which provides in relevant part (emphasis added):

> "For the purposes of this Part, a person is to be regarded as 'connected with' Russia if the person is—
>
> (a) an individual who is, or an association or combination of individuals who are, ordinarily resident in Russia,
>
> (b) an individual who is, or an association or combination of individuals who are, located in Russia,
>
> …"

14. The offence in reg.46B came into force on 14 April 2022, around nine months after the sale of the artwork had been agreed. It is not retrospective.

15. As framed, the offence under reg.46B is one of strict liability.

16. Regulation 46B(4)(b) provides a defence to the offence in reg.46B(2)(b):

> "(4) A person who contravenes a prohibition in paragraph (2) commits an offence, but—
>
> …
>
> (b) it is a defence for a person charged with the offence of contravening paragraph (2)(b) ('P') to show that P did not know and had no reasonable cause to suspect that the person was connected with Russia; …"

Statutory interpretation

17. The principles of statutory interpretation in this context are set out in *PJSC National Bank Trust v Mints* [2023] EWHC 118 (Comm) at [64]-[66], where Cockerill J (as she then was) said, at [64]:

> "It is common ground that the Court should have regard to the 'ordinary' rules of statutory interpretation, which apply generally. As set out in Bennion on Statutory Interpretation, 8th ed. (2020), paragraph 11-01:
>
> i) The primary indication of legislative intention is the legislative text, read in context;
>
> ii) Parliament is assumed to be a rational, reasonable and informed legislature pursuing a clear purpose in a coherent and principled manner; and
>
> iii) The rules, principles, presumptions and canons which govern statutory interpretation are aids to construing the legislative text.

Cockerill J further said, at [65], the:

> "overarching requirement is that a court should give effect to the intention of the legislator as objectively determined, having regard to all relevant indicators and aids to construction."

18. Importantly, this overarching requirement includes the presumption against doubtful penalisation:

> "… the court should strive to avoid adopting a construction which penalises someone where the legislator's intention to do so is doubtful, or penalises him in a way which is not made clear":

see *Ricketts v Ad Valorem Factors Ltd* [2004] BCC 164 at [30], *per* Simon Brown LJ, cited in *PJSC National Bank Trust v Mints* at [223].

19. The omnipresent principle of statutory construction is that (1) the intention of Parliament is an objective concept, and not a subjective one, and (2) that intention is not found in the subjective intention of the minister or other persons who promoted the legislation, or, for that matter, the draftsman, or in the Explanatory Notes to the legislation (prepared under the authority of Parliament), or in commentary from circulars prepared by the promoting minister's department or other departments. The sole exception is where the legislative text is ambiguous or obscure or leads to an absurd result: in those limited cases, resort may be had to extrinsic material to aid interpretation. Otherwise, such material is inadmissible by the rule in *Pepper v Hart* [1993] AC 593, at 643 *per* Lord Browne-Wilkinson.

20. The key elements in the offence are, for these purposes, "make available" and "ordinarily resident". I turn to consider the parties' submissions on the meaning of those words.

DISCUSSION AND ANALYSIS

21. Regulation 46B(2)(b) provides that a person must not directly or indirectly "make luxury goods available to" a person "connected with" Russia. There is no dispute that the artwork is a "luxury good"[10] for the purpose of reg.46B.

"Make available"

22. As far as H&W is concerned, the Prosecution's case is that, following sale, the artwork was "made available" to Mr Popov by its release into the control of Mr Popov or his agent ARS. In relation to ARS, the Prosecution's case is that, by taking possession of the artwork and arranging for its onward shipment pursuant to Mr Popov's instructions, it participated in the process by which the artwork was "made available" to him. ARS's role is therefore factually distinct: it did not sell the artwork, but is said to have acted as an intermediary facilitating its transfer within a logistics chain.

23. The Prosecution's case against each Defendant turns upon the true meaning and effect of the words "make available" in reg.46B of the 2019 Regulations. There is limited authority on the construction of the words "make available" in reg.46B. The starting point must be the words used by Parliament in the legislation.

24. As a matter of ordinary English language, the words "make available" denote practical availability for use or disposal, or the ability to derive an actual benefit. I do not consider that those words are satisfied by a mere entitlement or the transfer of legal title to the artwork alone. The Explanatory Notes suggest they include delivery; even if the notes were a permissible resort I do not think they expand the ordinary and natural meaning of the words: "make available" undoubtedly includes delivery.

25. To me, the words "directly or indirectly" at the beginning of paragraph (2) of reg.46B qualify the process preceding the making available of the artwork, as opposed to qualifying or attenuating the legal requirement for the artwork to be made available.

26. In *Re Petropavlovsk Plc (in administration)* [2022] EWHC 2097 (Ch), Jonathan Hilliard QC (sitting as a Deputy Judge of the High Court) accepted the Administrator's argument that, where the luxury goods were not themselves moved but mere ownership rights passed to a person connected with Russia, this did not breach the prohibition in reg.46B of the 2019 Regulations. The judge held (in the section to his judgment headed "Appendix: the application of the relevant sanctions legislation to the present case") (emphasis original):

> "**The export of luxury goods and gold**
>
> 34. Starting with the export of luxury goods, regulation 46B(1) of the Regulations prohibits the export of luxury goods to, or for use in, Russian [sic]. Regulation 46B(2) provides that 'a person must not directly or indirectly- (a) supply or deliver luxury goods from a third country to a place in Russia; (b) make luxury goods available to a person connected with Russia; (c) make luxury goods available for use in Russia'.

[10] As defined in reg.21 and paragraph 21 of Schedule 3A to the 2019 Regulations: "Works of art, collectors' pieces and antiques …".

> 37. … Therefore, both in respect of the doré and the gold bars [*i.e.*, the "luxury goods" which were the subject of the judgment], the question arises whether the transfer of such subsidiaries to UMMC, a Russian company, would constitute the export of luxury goods in contravention of regulation 46.
>
> 38. The Administrators make two submissions as to why this would not be the case:
>
> (1) The Proposed Transaction does not move the doré or gold bars into Russia, so it cannot constitute the export of luxury goods to Russia. The doré and gold bars are made in Russia and at no point are they transferred *into* Russia. The Proposed Transaction simply transfers the shares of the Company's subsidiaries from a UK company to a Russian one. That is not the same as transferring the goods themselves.
>
> …
>
> 39. The Administrators appear to me to be correct that the Proposed Transaction would not involve the export of luxury goods to Russia for the purposes of regulation 46(1) of the Regulations. The purpose of the ban on luxury goods is to stop luxury items being moved to Russia to be enjoyed by those there. Therefore, the literal meaning of regulation 46(1), namely that the goods themselves must be moved to Russia to engage that provision, appears to me to be the correct one. …"

27. Hugo Keith KC, who with Robert Morris appears for H&W, submits that this approach is consistent with existing jurisprudence from other fields, and that reg.46B(2)(b) of the 2019 Regulations requires the physical delivery of the artwork to the recipient, even though that is not provided for in the 2019 Regulations. Sean Hammond, for ARS, adopts that submission. Together, they rely on a number of authorities in this connection.

28. The words "make available" were also considered in *PJSC National Bank Trust v Mints* in the context of whether the act of entering judgment amounted to the "making available" of funds or economic resources within the meaning of reg.12 of the 2019 Regulations. Cockerill J set out, at [123] (emphasis added), the defendants' argument that:

> "the expression 'make available' is broad and encompasses all acts necessary for a designated person to obtain <u>full power of disposal in respect of the funds</u>."

At [133] she tended to this view, but disposed of the issue otherwise and did not have to make any finding on the argument put.

29. In *Customs and Excise Commissioners v Thorn Materials Supply Ltd* [1998] 1 WLR 1106, at 1115, Lord Hoffman (who delivered a dissenting opinion, but not on this issue) observed, in the context of considering the meaning of s.4(2) of the Value Added Tax Act 1983, which refers to "making available", that the proper meaning of that provision was to be determined by reference to art.10 of the Sixth Council Directive of 17 May 1977 (77/388/EEC). Article 10 uses the term "when the goods are delivered".

30. In *GR Solutions Ltd v HM Revenue and Customs* [2012] UKFTT 234 (TC), the First Tier Tax Tribunal considered the interpretation of s.114 of the Income Tax (Earnings and Pensions) Act 2003, which provides that car benefit charges apply where a car is "made available" to an employee. The First Tier Tribunal concluded (at [31]) that the ordinary meaning of "made available" concerned the practical question of whether the employee had physical use of the car (emphasis added):

> "The expression 'made available' needs to be applied to the facts in the tax year in question, rather than to the point in time at which property titles were established, which might have occurred in a previous tax year. It follows from this, in the Tribunal's view, that the expression 'made available' should be applied to the point in time at which the vehicle is used, rather than the point in time at which it is purchased, or the point in time at which a partial property title is transferred from the company to the employee or *vice versa* … ."

31. In *GR Solutions Ltd v HM Revenue and Customs* [2013] UKUT 0278 (TCC), the Upper Tribunal upheld this approach, stating (emphasis added):

> "30. In our judgment, consistently with what was found by Pumfrey J in *Vasili*, the term 'made available' in s.114 ITEPA [Income Tax (Earnings and Pensions) Act 2003] must be given its ordinary meaning. It is correct that, in legal terms, co-ownership gives rise to a concurrent right of possession for each co-owner, but an entitlement to possession is always subject, in practical terms, to availability for use. Availability is different from entitlement. For a co-owner to use the car, he must first be entitled to use it, and secondly it must as a practical matter have been made available for his use. Furthermore, physical use is different from the co-extensive right to possession. Although a co-owner may at all times enjoy such a right as a consequence of being a co-owner, he will not have the use of the chattel at a time when it is being exclusively used by another co-owner. The question of availability for use must be considered in the light of the circumstances that exist in practice.
>
> …
>
> 34. We further agree that the expression 'made available' should be applied to the point in time at which the vehicle is used, rather than at the point in time at which it is purchased, or the point in time at which a partial property title is transferred from the employer to the employee or from the employee to the employer."

32. In their skeleton argument, Mr Keith and Mr Morris further pray in aid guidance issued by the Office of Financial Sanctions Implementation (the **"OFSI"**) in the specific context of the UK financial sanctions regimes (the **"OFSI Guidance"**), which confirms that the "making available" of funds or economic resources generally occurs where the recipient "benefits" by way of "obtaining" or being "able to obtain" a financial benefit:

> "89. What constitutes making available funds or economic resources?
>
> The OFSI general guidance outlines that making available funds or economic resources, directly or indirectly, to a designated person generally

> occurs where funds are made available (directly or indirectly) to a designated person, or economic resources are made available (directly or indirectly) that would likely be exchanged, or used in exchange, for funds, goods, or services, this may constitute a criminal offence.
>
> Making available funds or economic resources for the benefit of a designated person generally occurs where funds or economic resources are made available for the benefit of a designated person and they obtain, or are able to obtain, a 'significant financial benefit', this may constitute a criminal offence. In this case, 'financial benefit' includes the discharge, in whole or in part, of a financial obligation for which the designated person is wholly or partly responsible."

In other words, that person is enabled, practically, to get access to the funds or economic resources.

33. The authorities and materials relied upon by the Defence are said to support the following propositions:

    (1) the mere passing of title of luxury goods to a person connected with Russia does not fall within the words "make available" in reg.46B(2): *Re Petropavlovsk Plc (in administration)*;

    (2) the words "make available" encompass all acts necessary for a person to obtain a full power of disposal in relation to luxury goods: *PJSC National Bank Trust v Mints*; and

    (3) in the context of other legislation enacted by Parliament:

        (a) the words "make available" require delivery of the goods: *Customs and Excise Commissioners v Thorn Materials Supply Ltd*; and

        (b) goods are "made available" at the point in time when they are used, rather than when they are purchased: *GR Solutions Ltd v HM Revenue and Customs*.

34. I do not accept that reg.46B of the 2019 Regulations requires the delivery of luxury goods to the recipient (*i.e.*, here, a person "connected with" Russia) before they are "made available" to them, for the following reasons.

35. First, the cases upon which the Defence rely can be readily distinguished:

    (1) *Re Petropavlovsk Plc (in administration)* did not turn upon the construction of reg.46B(2)(b) of the 2019 Regulations and, quite unlike this case, involved luxury goods (the doré or gold bars) already in Russia. In any event, Jonathan Hilliard QC made it clear (at [9], [90], and [92]) that he was <u>not</u> deciding upon the construction of the 2019 Regulations in a way which would bind the OFSI, given the OFSI was not before him. The judge confirmed (at [120]) that he was not granting a declaration about the meaning of the regulations, and that any view about the interpretation of those provisions was *obiter* to his decision.

        In fact, the doré or gold bars were not being delivered to Russia as they were already in the country; the issue concerned a transfer of ownership. The judgment does not

engage with, even on an *obiter* basis, the application or scope of reg.46B and/or the meaning of words "make available" in that context.

(2) *PJSC National Bank Trust v Mints* concerned a claim for conspiracy between the defendants and representatives of the claimant bank to enter into uncommercial transactions by which loans were replaced by worthless or near worthless bonds. Russian sanctions were imposed during the litigation, which resulted in some of the claimants becoming designated persons. Although the case was not decided upon the meaning or scope of reg.46B(2)(b) of the 2019 Regulations, Cockerill J acknowledged (at [123]) that the expression "make available" was a broad one which:

> "encompasses all acts necessary for a designated person to obtain full power of disposal in respect of the funds."

As Cockerill J pointed out (at [238]), the aim of the sanctions regime was:

> "a way of inflicting personal financial pain on those associated with the regime and thereby hoping that it will influence a change in policy."

Whilst this case was not concerned with reg.46B(2)(b) and therefore provides only limited assistance, it tends to support a construction of "make available" directed towards a practical power of disposal rather than the formal transfer of title. For goods like the artwork, that would extend to mere possessory title.

(3) In *Customs and Excise Commissioners v Thorn Materials Supply Ltd*, Lord Hoffman relied upon art.10 of the Sixth Council Directive to confine "making available" to "when the goods are delivered". There is no such fetter in reg.46B of the 2019 Regulations.

(4) *GR Solutions Ltd v HM Revenue and Customs* was a tax case about the tax year to which the use of a motor vehicle made available to an employee applied, rather than when the sale, supply, or ownership of the car took place. It focussed on the significance of the use of co-ownership of goods and their use. I do not find the reasoning of the first instance and appeal tribunals to assist in this case.

36. Second, to the extent that the Defence suggest that reg.46B(2)(b) of the 2019 Regulations is concerned solely with prohibiting the export of luxury goods "to, or for use in" Russia, I reject such a construction. It is contrary to the ordinary meaning of the words in reg.46B(2)(b), which contain no such geographic limit. I accept that reg.46B(1) prohibits the "export of luxury goods to, or for use in, Russia", but reg.46B(1) is not the statutory offence created by reg.46B. It is, as I see it, a statement of the overarching effect and intention of Parliament. As far as relevant to this case, reg.46B(4)(b) provides that the statutory offence (*i.e.*, contravening the prohibition) is the contravention of making luxury goods available to a person connected with Russia, prohibited by reg.46B(2)(b).

37. Read literally, the single offence in reg.46B is based upon prohibitions against supply or delivery to a place in Russia, making available goods to a person ordinarily resident in Russia or located in Russia, or making available goods for use in Russia. While reg.46B(2)(a) and reg.46B(2)(c) revolve around prohibitions on the making available of

the luxury goods within the geographical confines of Russia (through the words "in Russia"), reg.46B(2)(b) is not so confined: it prohibits making luxury goods available to a person "connected with" Russia. The overarching effect and intent of Parliament in enacting reg.46B(1) is met by making it an offence to "make luxury goods available to a person connected with Russia", as reg.46B(2)(b) does, which closes a loophole in making such goods available to a person "connected with Russia" who might take delivery of the goods outside of Russia and then onforward them to where the person is "ordinarily resident" in Russia. For that reason I cannot accept Mr Keith and Mr Morris's contention that goods must have been made available to a person "connected with Russia" within the geographical confines of Russia. That would frustrate the effect and intent in reg.46B(1). The wording of reg.46B(2)(b) reveals no such construction, and is consistent with paragraph 6 of Schedule 1 to the 2018 Act and (to the extent resort to it is permissible) the Explanatory Notes to the 2018 Act, the latter provides that "making available" is intended to cover situations other than export where goods are made available, including delivery.

38. Nor can I accept Mr Keith and Mr Morris's reliance on the OFSI Guidance to confine the words "make available" to where the recipient "benefits" by way of "obtaining" or being "able to obtain" a financial benefit; the words of reg.46B are plain from their ordinary and natural meaning, and resort to the OFSI Guidance would offend the rule in *Pepper v Hart*. As Kevin Dent KC and Danielle Barden (who appear for the Prosecution) set out in their skeleton argument, the words employed by Parliament in reg.46B(2)(b) do not require any physical proximity between the recipient and the luxury goods.

39. On the facts of this case, it is unnecessary for me to decide whether the passing of title to and final payment by Mr Popov on 27 July 2022 was, without more, sufficient to amount to the artwork being "made available" to Mr Popov within the meaning of reg.46B(2)(b). By that date, Mr Popov had acquired legal entitlement (and a practical ability) to direct what should happen to the artwork. In any event, and within the periods alleged in the Indictment, the artwork was made available to Mr Popov by 26 August 2022 at the latest, when it was released into the custody and control of those acting on his instructions for onward shipment. My finding therefore does not rest on title alone, but on the combination of title, payment, constructive possession, and the release of the artwork into the logistics chain directed by Mr Popov.

40. For all those reasons, I am satisfied that the artwork was "made available" to Mr Popov within the meaning of reg.46B(2)(b) of the 2019 Regulations as the two counts in the Indictment aver. The Defendants' case on this aspect of their applications accordingly fails.

41. Taking the Prosecution's case at its highest, I am satisfied that a properly directed jury could properly conclude:

    (1) in Count 1, that H&W made the artwork available to Mr Popov by releasing it to him following sale; and

    (2) in Count 2, that ARS, by collecting and transferring the artwork pursuant to Mr Popov's instructions, participated in its making available.

42. I turn next to consider the Defendants' second principal issue: whether there is sufficient evidence that, at the relevant time, Mr Popov was "ordinarily resident" in Russia, and thus a person "connected with" Russia.

"Ordinarily resident"

43. Regulation 46B(2)(b) of the 2019 Regulations provides that a person must not directly or indirectly make luxury goods available to a person "connected with" Russia.

44. Regulation 46B was enacted pursuant to s.5 of, and paragraph 6 of Schedule 1 to, the Sanctions and Anti-Money Laundering Act 2018 (the **"2018 Act"**). Section 5(1) permits regulations to impose trade sanctions if they impose prohibitions or requirements for one or more of the purposes mentioned in Schedule 1 of the 2018 Act. Paragraph 6 of Schedule 1 to the 2018 Act provides one of the purposes as being (emphasis added):

> "6 Preventing goods or technology of a prescribed description from being made available—
>
> (a) to, or for the benefit of—
>
> (i) designated persons,
>
> (ii) persons connected with a prescribed country, or
>
> (iii) a prescribed description of persons connected with a prescribed country,
>
> (b) for the benefit of, or for use in, a prescribed country, or
>
> (c) for use in connection with specified ships."

45. Regulation 21 of the 2019 Regulations provides that an individual is connected with Russia if they are "ordinarily resident" in Russia or located in Russia. It follows that the offence requires proximity between (a) the time at which the luxury goods are made available to the person, and (b) that person, at that time, being either ordinarily resident in Russia or located in Russia. I note that the 2019 Regulations do not prohibit making luxury goods available to those who are Russian citizens who are not "ordinarily resident" in Russia.

46. The question here is whether, taking the Prosecution's case at its highest, there is evidence upon which a jury could properly conclude that Mr Popov remained "ordinarily resident" in Russia at the material time.

47. The Prosecution does not allege that Mr Popov was located in Russia at the material making-available dates, namely 27 July 2022 on one possible analysis or 26 August 2022 on the analysis on which I ultimately rely, or, indeed, at any time there in between. Instead, the Prosecution alleges that he was "ordinarily resident" in Russia at the relevant time.

48. "Ordinarily resident" is not defined in either the 2018 Act or the 2019 Regulations. It is, however, used in a number of other, different areas of law:

(a) In *Levene v Inland Revenue Commissioners* [1928] AC 217, the Appellate Committee of the House of Lords held that ordinary residence:

> "connotes residence in a place with some degree of continuity and apart from accidental or temporary absences",

at 225, *per* Viscount Cave LC), and:

> "In particular it is in my opinion impossible to restrict its connotation to its duration. A member of this House may well be said to be ordinarily resident in London during the Parliamentary session and in the country during the recess. If it has any definite meaning I should say it means according to the way in which a man's life is usually ordered"

at 232, *per* Lord Warrington of Clyffe.

(b) In *MacRae v MacRae* [1949] P 397, which concerned an issue as to whether a court had jurisdiction to consider a complaint of desertion on the basis that the respondent husband was no longer ordinarily resident in England when he had left his wife and moved to Scotland, the Court of Appeal (Bucknill and Somervell LJJ and Wynn-Parry J) held, at 403 (emphasis added):

> "The husband decided to leave the wife and he goes up to Scotland, where his home was, where his mother is, and he says he intends to settle there, and he describes in the letter in detail the arrangements that he is making for providing himself there with a home. In those circumstances it seems to me that only one conclusion is possible, namely, that he was ordinarily resident there at that time. The fact that the desertion took place in England and that he was ordinarily resident in England up to a short time before, does not seem to me to affect the matter. Ordinary residence can be changed in a day. A man is ordinarily resident in one place up till a particular day: he then cuts the connexion he has with that place – in this case he left his wife; in another case he might have disposed of his house or anyhow left it and made arrangements to make his home somewhere else. Where there are indications that the place to which he moves is the place which he intends to make his home for at any rate an indefinite period, then as from that date in my opinion he is ordinarily resident at the place to which he has gone."

(c) In *R v Barnet London Borough Council, Ex parte Nilish Shah* [1983] 2 AC 309, Lord Scarman (with whom the other Law Lords agreed) held, at 343, that:

> "'ordinarily resident' refers to a man's abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration."

(d) In *R v Immigration Appeal Tribunal, Ex parte Ng (Sai Ho Frederick)* [1986] Imm AR 23, Webster J held that, when an individual decides to leave a country for the

> foreseeable future, this leads to the inevitable conclusion that he does not remain ordinarily resident in that country. This was, in that case, despite the applicant holding UK citizenship and having lived in the United Kingdom for 4 years and 360 days previously.

49. From these authorities it is clear that ordinary residence is a question of fact and degree. It may, in principle, exist in more than one country: see *Inland Revenue Commissioners v Lysaght* [1928] AC 234. However, it is equally clear that ordinary residence may be brought to an end where there is a genuine departure and establishment of life elsewhere. A distinct break in the pattern of life is required: see *R (Davies) v Revenue and Customs Commissioners* [2011] 1 WLR 2625.

50. From all those authorities I draw the following general principles: it is clearly established that, whilst for some purposes, an individual may be considered to be ordinarily resident in more than one country (such as for tax purposes), where an individual has left a country and made substantial efforts to cut his ties with that country for the foreseeable future, he is no longer ordinarily resident in that country.

51. That approach is consistent with the structure of the 2019 Regulations, which distinguishes between luxury goods made available in or for use in Russia, and luxury goods made available to a person connected with Russia. The concept of ordinary residence therefore requires more than nationality, historic connection, or continuing business links; it requires evidence that Russia remained part of the settled and regular order of the person's life at the material time.

52. The Prosecution relies upon Mr Popov's continuing connections with Russia, including his financial, business and administrative links, and his communications suggesting ongoing ties, to show that he was "ordinarily resident" within the meaning of the 2019 Regulations. In this regard, in sum the Prosecution relies upon the following facts and matters:

    (1) Mr Popov's Russian passport was valid between 2016 and 2026. His request to renounce his Russian citizenship was denied in April 2023, and he remained a Russian citizen at the material time.

    (2) Mr Popov owned two businesses in Russia, which both operated from the same building in Moscow.

    (3) Mr Popov was evidently residing in Moscow on 9 May 2022.[11]

    (4) Mr Popov was evidently residing in Moscow on 15 July 2022.[12]

    (5) By 26 July 2022,[13] Mr Popov had only "*temporarily*" opened a bank account outside of Russia, to evade sanctions.

    (6) As of 2 August 2022, the plan was to send the artwork to Moscow.[14]

[11] Q707.
[12] Q774-Q775.
[13] Q774.
[14] Q804.

(7) As of 12 September 2022, Mr Popov had only indicated an inclination to move from Russia, suggesting he remained based there.[15]

(8) As of 20 September 2022, Mr Popov indicated that he was registered as residing in Bosnia and Herzegovina according to their systems, indicating an intention to create a paper trail consistent with residence elsewhere.

(9) As of 23 September 2022, his artworks were still in Russia.[16]

(10) On 5 October 2022, payment was made by Mr Popov using a Russian address.

(11) Mr Popov's business registered in Bosnia and Herzegovina appears not to have traded.

(12) Mr Popov remained the owner of the residential property in Moscow to which the first invoice for the artwork was addressed.

(13) Mr Popov's wife continued to work as an art lecturer in Russia at least until September 2025.

53. Be that as it may, I am satisfied that, taking the Prosecution's case at its highest, there is no sufficient evidential basis upon which a properly directed jury could properly conclude that Mr Popov was "ordinarily resident" in Russia in July 2022, in late August 2022, or in the intervening period, for the following reasons.

54. The served and unused material shows that:

(1) On 15 April 2022, Mr Popov moved 23 of his paintings from Russia to Kyrgyzstan;[17] on 29 April 2022, he moved them from Kyrgyzstan to a storage warehouse in Yerevan, Armenia,[18] where he also obtained a lease agreement for an apartment in Yerevan, Armenia.[19]

(2) On 1 May 2022, Mr Popov rented out his Moscow residence – the same address given on the H&W invoice for the artwork.[20]

(3) On 10 May 2022 and 6 June 2022, Mr Popov entered into agreements with a visa company to try and obtain visas to reside in other countries.[21]

(4) In an email to Zoe Sperling of H&W on 8 June 2022,[22] Mr Popov said:

> "*I hate the man (you understand)* [Putin] *who puts us in this position ... Believe it or not, they even block shares on the stock exchange under the pretext that they care about the citizens of the country because of the sanctions. But what is the care when a citizen of this*

[15] Q852.
[16] Q893.
[17] Q663.
[18] Q670.
[19] Q683.
[20] Q688.
[21] Q714 and Q728.
[22] Q737.

> *country cannot sell his shares on the stock exchange, withdraw the currency abroad where he needs and use it at his own discretion – they forgot to explain this ... I hope that soon we can get out of all this and start a new life ... .*"

(5) On 15 June 2022, Mr Popov sought to renounce his Russian citizenship,[23] although this was subsequently denied on 10 April 2023.[24] It is clear from Mr Popov's prepared statement[25] that he made a further application to renounce his Russian citizenship after this date.[26]

(6) On 19 June 2022, Mr Popov told Zoe Sperling:[27]

> "*I am in actively process* [sic] *in the complete transfer of all my financial assets from the country in order to no longer be in these restrictions and continue to live freely as people live in other countries and be able to continue to develop our collection, our passion for art and the development of our foundation.*"

(7) On 30 June 2022, Mr Popov arrived in Bosnia and Herzegovina and received a registration card confirming his registration there. Further, he had been assigned an individual taxpayer reference and had commenced the process of obtaining citizenship.[28]

(8) On 1 July 2022, Mr Popov leased an apartment in Bosnia and Herzegovina.[29]

(9) In August 2022, Mr Popov had leased a property in Italy.[30] Mr Popov's prepared statement makes clear that he was in Italy in August 2022 and had spent time thereafter in relation to preparations for an exhibition for the Azerbaijani artist Aidan Salakhov.[31]

(10) On 12 August 2022, Mr Popov obtained a tax payer registration from Bosnia and Herzegovina.[32]

(11) On 5 September 2022, Mr Popov entered into an agreement to rent storage space in Yerevan to store the artwork.[33]

(12) On 23 September 2022, twelve of Mr Popov's paintings were shipped from Russia to Kyrgyzstan.[34]

---

[23] Q739.
[24] Q944.
[25] Q1014.
[26] Q1004.
[27] Q748.
[28] Q907, Q815, and Q742.
[29] Q743.
[30] Q635.
[31] Q1010 and Q807.
[32] Q815.
[33] Q841.
[34] Q892.

(13) On 3 October 2022, the remainder of Mr Popov's paintings were shipped from Russia to Armenia.[35]

55. The evidence in this regard is entirely documentary. Taking the Prosecution's case at its highest, and drawing all reasonable inferences in its favour, the question for this Court to consider is whether a properly directed jury could properly conclude that Mr Popov remained "ordinarily resident" in Russia at the material time.

56. In my judgment, the totality of the evidence relied upon by the Prosecution is incapable of supporting such a conclusion to the required standard. While the evidence suggests Mr Popov's continuing connections with Russia, it also reveals rather extensive and largely unchallenged evidence of relocation and the establishment of residential and practical arrangements elsewhere. Viewed in its entirety, the evidential inference that Mr Popov remained "ordinarily resident" in Russia in July or August 2022 is not one which a properly directed jury could safely draw such that they were sure of it.

57. I accept that the Prosecution evidence shows substantial continuing links between Mr Popov and Russia. Those links include his Russian citizenship, business interests, ownership of property, family connections, and evidence suggesting his presence in Moscow on particular occasions. Those matters are plainly capable of demonstrating a continuing connection with Russia. The difficulty for the Prosecution, however, is that the statutory test is not one of continuing connection, nationality or association, but "ordinary residence". The question is whether the evidence is capable of demonstrating that Russia remained part of the settled and regular order of Mr Popov's life at the material time. On the evidence served, I do not consider that it is.

58. To the contrary, the documentary evidence demonstrates a series of steps taken by Mr Popov between April and August 2022 consistent with a departure from Russia and the establishment of life elsewhere. This includes the transfer of artworks out of Russia, the rental of his Moscow residence, the acquisition of residential arrangements in Armenia and Bosnia and Herzegovina, efforts to secure residence rights and citizenship abroad, and his attempts formally to renounce Russian citizenship. None of those matters is necessarily determinative in isolation but, taken together, they provide substantial evidence that Mr Popov had embarked upon, and by the material time largely implemented, a process of relocation outside Russia, such that he was no longer "ordinarily resident" there.

59. I have considered whether a properly directed jury could properly conclude that Mr Popov was ordinarily resident in more than one country at the same time. As I set out above, the authorities recognise that "ordinary residence" may, in some circumstances, exist at the same time in more than one place. The possibility of dual ordinary residence cannot therefore be excluded as a matter of law. The issue is whether there is sufficient evidence capable of supporting such a conclusion on the evidence.

60. In my judgment, the evidence does not identify any continuing pattern of residential life in Russia capable of supporting such a finding. There is evidence of Mr Popov's nationality, business interests, financial arrangements, family ties and continuing connections with Russia, but there is no evidence of him continuing occupation of his Moscow property after it was let, nor other evidence capable of showing that Russia

[35] Q910.

remained a place where he was ordinarily living as part of the settled order of his life. The existence of continuing links is not, without more, sufficient to establish ordinary residence. To my mind, this is a significant failing in the Prosecution's case.

61. Nor do I consider that the evidence relied upon by the Prosecution concerning Mr Popov's apparent presence in Moscow on particular dates materially alters that conclusion. At its highest, that evidence demonstrates that Mr Popov retained significant links with Russia during the relevant period. It does not provide a sufficient evidential basis upon which a jury could be sure that Russia continued to constitute a place of ordinary residence notwithstanding the extensive evidence of relocation elsewhere.

62. The authorities show that ordinary residence is not immutable and may come to an end where there has been a genuine departure and the establishment of life elsewhere. Whether that has occurred in Mr Popov's case is necessarily fact-sensitive. The evidence relied upon by the Prosecution does not, in my judgment, provide a sufficient basis upon which a properly directed jury could properly conclude that Mr Popov continued to be ordinarily resident in Russia after the steps taken by him during the spring and summer of 2022. While those steps did not require him to sever every social, familial or commercial connection with Russia, they are inconsistent with the proposition that Russia remained part of the settled and regular order of his life at the material time.

63. Drawing all those threads together, I accept that the evidence relied upon by Prosecution is capable of demonstrating Mr Popov's continuing association and connection with Russia. It is not, however, capable of demonstrating "ordinary residence" in Russia in the sense required by the authorities. Even taking the Prosecution's case at its highest, I am satisfied that there is insufficient evidence upon which a properly directed jury could properly conclude to the required standard that Mr Popov was ordinarily resident in Russia in July or August 2022. In those circumstances, the evidential threshold required to leave that issue to a jury is not met.

DISPOSITION

64. Since proof to the criminal standard that Mr Popov was a person connected with Russia is an essential element of the alleged offences under reg.46B(2)(b) charged in Counts 1 and 2, the lack of sufficient evidence on "ordinary residence" is fatal to both counts, irrespective of my conclusion on "making available".

65. I will therefore grant the Defendants' applications, and dismiss the charges against them. It follows that both counts on the Indictment must be quashed. I will order accordingly.