IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
[2023] EWHC 1777 (Admin)

No. CO/1439/2023

Royal Courts of Justice

Thursday, 8 June 2023

Before:

MR JUSTICE LINDEN

B E T W E E N :

MAZEPIN — Applicant

- and -

SECRETARY OF STATE FOR FOREIGN COMMONWEALTH AND DEVELOPMENT AFFAIRS — Respondent

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MR H KEITH KC, MS R SCOTT and MR C McCOMBE (instructed by Corker Binning Solicitors) appeared on behalf of the Applicant.

MR J POBJOY, R FAKHOURY and MR F ADEKOYA (instructed by Government Legal Department) appeared on behalf of the Respondent.

J U D G M E N T

MR JUSTICE LINDEN:

Introduction

1) This is the Claimant's application for interim relief. It is made in the context of his claim, under section 38(2) of the Sanctions and Anti-Money Laundering Act 2018, to set aside the decision of the Defendant, dated 1 March 2023, to take no action in response to his request to revoke his designation under the Russia (Sanctions) (EU Exit) Regulations 2019. A full hearing of the claim is listed for 1.5 days on 19 and 20 July 2023.

2) The Claimant's application is supported by witness statements made by him on 19 April and 31 May 2023; a statement made by Mr Peter Collins who runs a motor sports consultancy in Switzerland called Allinsports GmbH, which is dated 14 April 2023; and two statements made by Ms Maia Cohen-Lask, a partner at Corker Binning who acts for the Claimant, dated 18 April and 31 May 2023.

3) The application is resisted by the Defendant. He relies on statements made by Mr David Reed, Director of the Sanctions Directorate at the Defendant dated 24 May 2023, and Mr Daniel Drake, a Deputy Director in the Sanctions Directorate, dated 2 June 2023. The Defendant applied for the latter to be admitted in evidence, given that the directions made by Chamberlain J on 3 May 2023 provided a deadline for service of any further evidence by the Claimant of 31 May 2023, but did not provide for responsive evidence from the Defendant. This application was not resisted by Mr Keith KC, although he made observations to the effect that Mr Drake's witness statement was repetitive of matters covered by Mr Reed, was argumentative and sought to give evidence about Formula 1 racing, a subject about which it did not appear Mr Drake was an expert. I have taken those observations into account in coming to my decision, although I have not necessarily accepted all of them.

4) I was also greatly assisted by written and oral submissions by Mr Keith and Mr Jason Pobjoy and their teams, and am grateful for the way in which the case has been prepared.

Background

5) The Claimant is a Russian citizen aged 24. His father is Dmitry Mazepin, a member of the Board of Directors for the Uralchem Group and CEO of Uralchem JSC, which is a large producer of fertilizer and other chemicals.

6) One of the Claimant's ambitions is to be a successful Formula 1 racing driver. In his witness statement he gives an account of his enthusiasm for car racing from the age of 6 and his progress towards achieving this ambition during his teenage years and into his early 20s. From 2016 he began to be a test driver in Formula 1 alongside Formula 2 and Formula 3 racing and, in the summer of 2020, he entered into negotiations with various Formula 1 teams with a view to being one of their drivers for the 2021 season. His father's company, Uralchem, also expressed an interest in sponsoring a Formula 1 team.

7) In December 2020 the Claimant signed a four year contract with the Haas Formula One team. Uralchem also entered into a sponsorship deal with Haas. The Claimant then completed for Hass in the 2021 Formula 1 season.

8) As is well known, on 24 February 2022 Russia invaded Ukraine. This was approximately a month before the beginning of the 2022 Formula 1 season. Haas responded by terminating its contracts with the Claimant and Uralchem on 4 March 2022, citing the sanctions regime which it said was being applied to Russian drivers following the outbreak of the Russia-Ukraine war.

9) In fact, the Claimant had not yet been sanctioned but, on 9 March 2022, he and his father were made subject to EU sanctions pursuant to Council Implementing Regulation (EU) 2022/396 which added their names to Annex 1 to Regulation EU269/2014. The reason for including the Claimant's name on the list was said to be:

> "8. …
>
> 1. 'Nikita Mazepin is the son of Dmitry Arkadievich Mazepin, General Director of JS CUCC Uralchem. As Uralchem sponsors Haas F1 Team, Dmitry Mazepin is the major sponsor of his son's activities at Haas F1 Team.
>
> 2. He is a natural person associated with a leading businessperson (his father) involved in economic sectors providing a substantial source of revenue to the Government of the Russian Federation, which is responsible for the annexation of Crimea and the destabilisation of Ukraine.' "

10) On 15 March 2022, the Claimant was then designated under the "urgent procedure" in the United Kingdom pursuant to section 11 of the 2018 Act and Regulations 5 and 6 of the 2019 Regulations. The effect of this was, in broad terms, that he was not able to travel to the United Kingdom and his assets in this country were frozen. His designation was subsequently certified by the Defendant under the "standard procedure" on 9 May 2022 pursuant to section 11(2A) of the 2018 Act.

11) The Claimant is also sanctioned in Canada. The Canadian sanction decision is subject to proceedings there but his initial challenge to his designation was filed on 27 April 2023 and his detailed application was filed this week. No hearing has been listed, and there is no evidence that his designation in Canada has any prospect of being lifted or modified in the near future.

12) On 30 September 2022, the Claimant requested the revocation of his UK designation pursuant to section 23 of the 2018 Act. That request was refused by the Defendant on 1 March 2023 as I have noted.

13) Meanwhile, on 25 November 2022, the Claimant also brought an action in the EU General Court for annulment of the restrictive measures. On 9 December 2022, he applied for interim measures. In a decision which was handed down on 1 March 2023, the President of the General Court ordered the suspension of the EU restrictive measures to the extent that the Claimant was permitted:

> "(i) to enter the European Union in order to negotiate and conclude agreements with a race team or with sponsors not linked to the activities of his father or to natural or legal persons whose names are included on the lists set out in the annexes to Decision 2014/145 and Regulation No 269/2014,
>
> (ii) to enter the European Union in order to participate as a full or reserve driver in Formula 1 championships of the FIA or in other championships, training sessions, tests or free sessions, also with a view to obtaining the renewal of his Super License,

(iii) to enter the European Union in order to undergo the medical examinations required by the FIA or his race team,

(iv) to enter the European Union in order to participate in racing, sponsorship and promotion events at the request of his race team or sponsors,

(v) to open a bank account in which a salary, bonuses, benefits from his race team and financial contributions from the sponsors accepted by his team can be paid to him and,

(vi) to use the bank account and a credit card only to cover those costs that enable a professional driver to travel in the European Union, to negotiate and conclude agreements with a race team or with sponsors and to participate in championships, Grand Prix, races, training sessions, tests or free sessions in the Member States of the European Union."

14) In coming to his decision the President accepted, without prejudging the matter, that the Claimant's case appeared "prima facie not unfounded" and went on to find that:

"78. The resulting damage to the applicant, in the absence of the suspension sought, may be characterised as particularly serious because it would be extremely difficult – if not impossible – for him to resume his career as a Formula 1 driver in view of his age, the fact that he would not be able to train regularly in Formula 1 cars in the meantime and the likelihood that he would not be able to renew his Super License after an interruption of more than three years, should the Court annul the contested measures at the end of the dispute in the main proceedings.

79. Thus, in the absence of the suspension sought and having regard to the potential duration of the proceedings in the main action, the possibility of the applicant resuming, at the end of the main proceedings, his career as a Formula 1 driver, which very often requires his presence in the European Union, in particular in order to participate in Grand Prix, appears to be remote or, in any event, severely limited." (emphasis added)

15) The President went on to find:

"97. Furthermore, the applicant claimed, without being challenged by the Council on that point, that he is not involved in any Russian business, has always maintained a neutral position on the war as a professional athlete, raced under a neutral flag during the 2021 season of Formula 1 and is ready to sign the Driver Commitment required by the FIA for Russian and Belarusian drivers to continue to compete."

16) Proceedings under section 38 of the 2018 Act were issued by the Claimant in the Administrative Court on 20 April 2023. As part of this Claim, the Claimant sought interim relief which mirrors the interim measures ordered by the EU General Court, set out above, in that it would allow him to do in the United Kingdom that which he is permitted to do in the European Union.

17) Swift J gave directions on 24 April 2023 and there was a further directions hearing before Chamberlain J on 3 May 2023 at which it was directed, amongst other things, that the Claim would be listed on 19 and 20 July.

18) The consequence of the termination of his contract by Haas and the application of the sanctions regime has been that the Claimant missed the 2022 and the 2023 Formula 1 seasons. He says that this effectively ended his racing career. His case in relation to his application for interim relief is that if he is prevented from competing in the 2024 season beginning in March 2024, his prospects of a career as a Formula 1 driver will suffer irremediable harm. Mr Keith submitted that his career would be over. The Claimant says that in order to have any chance of competing in the 2024 season he needs to begin the process of competing for a contract with a Formula 1 team immediately, and in order to do this he needs the sanctions regime to be modified by the United Kingdom on the same terms as they were modified by the European Union. Since the process of competing for a contract begins in May/June, he cannot wait until the third week of July when it is anticipated that the outcome of his claim will be known, or at least the judge dealing with the substantive issues in the Claim will be able to consider whether modification of the sanctions regime is appropriate.

The statutory framework

19) For present purposes, it is not necessary to set out the statutory framework in detail. In summary, however, the 2019 Regulations were made under section 1 of the 2018 Act and they came into force on 31 December 2020. Regulation 4 provides that designations under the 2019 Regulations are "for the purposes of encouraging Russia to cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine."

20) Regulation 5 confers a power on the Secretary of State to designate persons for the purposes of imposing financial or immigration controls. Under Regulation 6, the criteria to be applied in deciding whether to designate a person are set out. This regulation provides, so far as material, as follows, with emphasis added:

> "(1) The Secretary of State may not designate a person under regulation 5 unless the Secretary of State –
>
> a. **has reasonable grounds to suspect that that person is an involved person**, and
>
> b. considers that the designation of that person is appropriate, having regard to –
>
> i. the purposes stated in regulation 4, and
>
> ii. the likely significant effects of the designation on that person (as they appear to the Secretary of State to be on the basis of the information that the Secretary of State has).
>
> (2) **In this regulation an 'involved person' means a person who** –
>
> **(a) is or has been involved in -**

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

(ii) obtaining a benefit from or support the Government of Russia.

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

(c) is acting on behalf of or at the direction of a person who is or has been so involved; or

(d) is a member of, or associate with, a person who is or has been so involved.

[…]

(4) For the purposes of this regulation, being 'involved in obtaining a benefit from or supporting the Government of Russia' means –

a. carrying on business as a Government of Russia-affiliated entity;
b. carrying on business of economic significance to the Government of Russia;
c. carrying on business in a sector of strategic significance to the Government of Russia;
d. owning or controlling directly or indirectly (within the meaning of regulation 7), or working as a director (whether executive or non-executive), trustee, or other manage or equivalent, of –
(i) a Government of Russia-affiliated entity;
(ii) a person, other than an individual, which falls within sub-paragraph (b) or (c),

(6) **In paragraph (2)(d), being 'associated with' a person includes – (a) obtaining a financial benefit or other material benefit from that person**
(b) **being an immediate family member of that person**.

(7) In this regulation –

[…] **'immediate family member' means –**

[…] **(d) a child or step-child;**

[…] **'sector of strategic significance to the Government of Russia means –**
(a) the Russian chemicals sector'."

21) As the Claimant points out, he was designated on the basis of his association with his father. Mr Pobjoy told me, however, that the Defendant's position was and is that the basis for the finding of association was both Regulation 6(6)(a) and 6(6)(b), i.e. it was that there was both a financial relationship and a familial relationship between the Claimant and his father.

22) Section 22(3) of the 2018 Act provides that "if at any time the Minister considers that the required conditions are not met in respect of a relevant designation, the Minister must revoke the designation."

23) Section 23(1) of the 2018 Act provides that a person who has been designated under a power contained in regulations made under section 1 has a right to request that the designation be varied or revoked. Subsection (3) provides that on receipt of such a request, the Minister "must decide whether to vary or revoke the designation or to take no action with respect to it" subject to the requirements set out in section 22(3).

24) Sections 38(1) and (2) of the 2018 Act provide that the designated person has a right to apply to the High Court for a review of any decision under section 23(3) for that decision to be set aside. In considering such an application the court must apply the principles applicable on an application for judicial review: see section 38(4). In making an order to set aside the decision, subject to section 39 which deals with damages, the court may make any order or give any such relief as could otherwise be given in judicial review proceedings: see section 38(5).

The grounds of challenge.

25) There are six grounds of challenge.

a) Under Ground 1, it is contended by the Claimant that the criteria for designation in Regulation 6(2)(d) (that is, the power to designate on the basis of association with an "involved person") are unlawful at common law because they are insufficiently clear, coherent and accessible, and are liable to produce arbitrary and capricious outcomes.

b) Under Ground 2, the Claimant says that the 2019 Regulations are unlawful as the Secretary of State breached the public sector equality duty under section 149 of the Equality Act 2010 when introducing the Regulations, and when amending them from time to time. Furthermore, he argues that the decisions in his particular case to designate under the Urgent Procedure, to certify under the Standard Procedure and to decide to take no action under section 23 of the 2018 Act were unlawful on the grounds that they breached the public sector equality duty.

c) Under Ground 3, it is contended that the decisions to certify under the Standard Procedure and to take no action under section 23 of the 2018 Act were *ultra vires* the 2019 Regulations as they were contrary to the policy and objects of the statute by which the discretion was conferred. The Claimant relies on *Padfield v Minister of Agriculture Fisheries & Food*. [1968] AC 997, and argues that there is no rational connection between the designation of the Claimant and the purposes of the 2019 Regulations.

d) Under Ground 4, the Claimant argues that the decisions to certify under the Standard Procedure and to take no action under section 23 of the 2018 Act were unlawful as they were not considered by the Secretary of State personally; the decisions were made by his officials.

e) Under Ground 5, it is alleged that the decision to designate the Claimant constitutes an unlawful interference with his rights pursuant to Article 8 and Article 1 of Protocol 1 of the European Convention on Human Rights ("the ECHR").

f) Under Ground 6, it is said that the decisions to designate under the Urgent Procedure, to certify under the Standard Procedure and/or to take no action under section 23 of the 2018 Act unlawfully discriminated against the Claimant on the grounds of his Russian nationality in breach of Article 14 of the ECHR read with Article 8 and Article 1 of Protocol 1 and/or the Equality Act 2010.

26) Mr Keith did not address each of these grounds in turn given the nature of the application before me. It was not necessary for him to do so as the grounds are developed fully in writing in the Particulars of Claim and then helpfully summarised in the skeleton argument prepared by Mr Keith and his team. Instead, Mr Keith added a series of broad submissions on the overall merits of the case, all of which he said showed that sanctioning the Claimant was fundamentally unfair.

a) He submitted – and this was uncontroversial – that the application of sanctions to an individual is a draconian measure.

b) He took me to documents which showed that the Urgent Procedure undertaken at the first stage of the series of decisions in relation to the Claimant involved making decisions about batches of individuals, and doing so urgently. He pointed out that therefore at that stage of the process there was no individual consideration of the Claimant's case.

c) He suggested that the only basis for the finding of association in this case is that the Claimant, as he put it, "is his father's son". He also referred to this as being "an accident of his birth". He submitted that there is no evidence of financial support being provided by the Claimant's father.

d) Mr Keith argued, as he does in Ground 1, that the concept of "association" is a vague one and he pointed out that it was necessary for it to be clarified by amendments made to the 2019 Regulations in July 2022.

e) He pointed out, in relation to the arguments about the *Caltona* principle, that the decisions in this case were made by officials rather than by the Minister. He said that arguments that there would be practical difficulties with the Minister considering each designation case in turn were unfounded given that the decisions in this case had been considered by the Minister, albeit the decision had ultimately been left to his officials.

f) Mr Keith took me to documents in relation to the public sector equality duty assessment which was carried out and argued that they showed that the assessment was only made in relation to the Regulations generally rather than in relation to the individual impact on the Claimant. He also argued that, in any event, those assessments were flawed for various reasons.

g) Finally, he submitted that there is no evidence of any personal association between the Claimant and the Russian regime, nor of any public support for the Russian regime by the Claimant, nor indeed any support from him for the actions of Russia in the Ukraine.

<u>The principles applicable to applications for interim relief</u>

27) Although there is no specific provision for interim relief under the 2018 Act, it was not in dispute that the court has jurisdiction to order such relief under section 37 of the Senior Courts Act 1981, applying CPR Part 25. Nor were the principles applicable to the determination of any such application in dispute. These principles were helpfully summarised in the judgment of the Court of Appeal in *R (Public and Commercial Services Union & Ors) v Secretary of State for the Home Department* [2022] EWCA Civ 840 ("the *Rwanda* case").

28) In summary, the *American Cyanamid* principles are modified in recognition of the public law context. As is well known these principles require the court to ask as a threshold question whether there is a serious issue to be tried. If there is, the court considers whether damages would be an adequate remedy in the event that the injunction was wrongly granted or wrongly refused. If damages would not be an adequate remedy in either of these events, the Court considers whether the balance of convenience favours the grant of the relief sought or any other relief as an interim measure, pending the determination of the substantive issues in the claim. This is a question of the balance of justice, or the relative risk of injustice. As Lord Hoffmann put it in *National Commercial Bank Ltd v Olint Corporation Ltd* [2009] UKPC 15; [2009] 1 WLR 1405 [16-17]:

> "16. … The purpose of such an injunction is to improve the chances of the court being able to do justice after a determination of the merits at the trial. At the interlocutory stage, the court must therefore assess whether granting or withholding an injunction is more likely to produce a just result. …
>
> 17. … the court has to engage in trying to predict whether granting or withholding an injunction is more or less likely to cause irremediable prejudice (and to what extent) if it turns out that the injunction should not have been granted or withheld, as the case may be. The basic principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other."

29) The principal relevance of the public law context includes the point that, as Sir Clive Lewis said in his book *Judicial Remedies in Public Law* Para.8-24:

> "The adequacy of damages as a remedy will rarely determine whether or not it is appropriate to grant or refuse an interim injunction. For that reason, the courts will normally need to consider the wider balance of convenience and in doing so the courts must take the wider public interest into account."

30) Second, it is well-established that in the public law context the court will have regard to the principle that it is in the public interest that unless and until it is set aside, a decision of a public body should be respected: see, for example, *R v Ministry of Agriculture Fisheries and Foods ex parte Monsanto Plc* [1999] QB 1161, 1173-E.

31) Third, and following on from this, in *R (Governing Body of X) v Office for Standards in Education* [2020] EWCA Civ 594; [2020] EMLR 2022 Lindblom LJ (with whom Sir Geoffrey Vos C and Henderson J agreed) commented, at para.66:

> "' 66. There is support at first instance for the proposition that, in a public law claim, the court will generally be reluctant to grant interim relief in the absence of a 'strong prima facie case' to justify the granting of an interim injunction … This is not to say that the relevant case law at first instance supports the concept of a 'strong prima facie case' being deployed as a 'threshold' or 'gateway' test in such cases, but rather that the underlying strength of the substantive challenge is likely to be a significant factor in the balance of considerations weighing for or against the granting of an injunction."'

32) Importantly, in the context of the Claimant's application in the present case, in the *Rwanda* case the Court of Appeal agreed with Swift J that, in assessing the balance of convenience, the relevant period is the period between the hearing of the application for interim relief and the determination of the substantive claim. At para.93 Singh LJ said this:

> "93. The starting point for the judge's assessment was that the interim period would be relatively short, about six or seven weeks, until around the end of July. He was right to take that view. We do not accept the submission that the judge was obliged to take into account the possibility of appeals and further delay after the judgment of the High Court has been given after the substantive hearing. The hypothesis for the Appellants' case must be that they will succeed at the substantive hearing…"

33) It follows from this that the starting point for my assessment must be the question what difference the relief applied for by the Claimant would make if granted today as compared with the position as at the end of the hearing in July, a period of approximately six weeks?

34) I also take on board the Claimant's points that it may take two to three weeks to obtain a visa if his claim is successful. Arguably this is a neutral factor, given that there would be the same period of delay whilst a visa was obtained, whether relief was granted today or in the third week of July. However, I take the point that the timing of the delay may matter given the evidence that negotiations in relation to Formula 1 contracts intensify from July onwards.

<u>The Claimant's submissions in outline</u>

35) The draft order seeks the following relief:

"1. It is ordered that the Claimant be allowed:

a) To enter the UK to negotiate and conclude agreements with a race team or with sponsors not linked to the activities of his father, DM, or to persons designated in the UK;

b) To enter the UK to participate as a full or reserve driver in Formula 1 championships of the FIA, or in other racing championships, training sessions, tests or free sessions, also with a view to obtaining the renewal of his Super License;

c) To enter the UK to undergo medical examinations required by the FIA or his race team;

d) To enter the UK to participate in racing, sponsorship and promotion events at the request of his race team or sponsors;

e) To open a bank account in which a salary, bonuses, benefits from his race team and financial contributions from the sponsors accepted by his team can be paid to him;

f) To use the bank account and a credit card only to cover those costs that enable a professional driver to travel to, from and in the UK."

36) In outline Mr Keith's arguments were as follows.

37) He submitted that what the Claimant seeks by way of interim relief is a modest variation for a time limited period. The activities which he seeks to be permitted to carry on in the United Kingdom pending the substantive hearing in July are specific activities and they would only be permitted to be carried out for specific purposes. There would therefore merely be a modification to the sanctions regime rather than a wholesale lifting of that regime in so far as it applied to the Claimant. Moreover, submitted Mr Keith, that modification will come to an end should the Claimant's claim be unsuccessful in due course.

38) Secondly, Mr Keith argued that the Claimant was merely seeking an opportunity to see if he could salvage his racing career. This opportunity would be irremediably lost if he were not granted the relief sought whereas if it were granted this would not in any way prejudice the position of the Defendant. More generally, if the opportunity were not given, Mr Keith the position would be irretrievable as far as the Claimant's Formula 1 career is concerned.

39) Thirdly, Mr Keith gave significantly greater emphasis to the relief sought at paras.1(a) and 1(f) of the draft order. He stressed the evidence that the majority of Formula 1 teams are based in the United Kingdom; that the contractual negotiation cycle for the 2024 season has begun or will begin very shortly; and the evidence to the effect that the Claimant needs to attend meetings in the United Kingdom in person. For this purpose, submitted Mr Keith, the Claimant needed the relief set out at para.1(a) of the draft order. Mr Keith also submitted that he would need the ability to spend money whilst in this country, albeit the relief necessary in order to achieve that would not be as currently drafted in limbs (e) and (f) of para.1. It would need to be formulated if I were minded to grant relief.

40) Next, Mr Keith accepted that the relief sought in sub-paras 1(b) to (e) of the draft order did not describe activities which the Claimant was likely to undertake before the outcome of the substantive hearing. But, in answer to the questions from court, he confirmed that he nevertheless sought this relief. He explained that this was important in terms of confidence in the Claimant on the part of prospective hirers in Formula 1 teams, negotiators or others who were dealing with him. An order which merely gave him permission to come to the United Kingdom and an ability to spend money whilst here would not give sufficient comfort as to his prospects of ultimately serving as a Formula 1 driver in their team. On the contrary, such an order would potentially increase their misgivings.

41) Finally, Mr Keith submitted that there would be no prejudice to the Defendant's position if the relief sought were granted. There was no sense in which the public interest weighed against the grant of the Claimant's application. In relation to the concern on the part of the Defendant about the Claimant's perception or the perception of the public, domestically or abroad, in the event that the court were to grant such relief, Mr Keith's principal answer was that I should approach the matter on the basis that the Claimant and the public would reach an informed view about the making of any such order. They would recognise that this was a decision of the court. They would therefore appreciate that the order in no sense undermined or called into question the sanctions regime. No harm to that regime, or undermining of it, would therefore be occasioned.

Discussion and conclusions

42) As far as the merits of the challenge under section 38 of the 2018 Act are concerned, Mr Keith submitted that this is the first such challenge to come before the courts and that the Claim raises novel and important issues of principle. He also submitted that the Defendant has not come close to demonstrating that the Claim is unarguable or has no real prospects of success. However, he did not submit that at this stage he has established a strong *prima facie* case, and in my view rightly so, given that the Defendant places a number of highly respectable arguments in his way. In summary these arguments are as follows.

43) By way of preliminary, Mr Pobjoy observed, accurately in my view, that the thrust of the points made by Mr Keith in his oral submissions had been focused on the Urgent Procedure implemented in March 2022 whereas the matter had been fully considered by the Secretary of State in May 2022 under the Standard Procedure and, said Mr Pobjoy, fully reconsidered in February/March 2023 pursuant to the Claimant's application under section 23 of the 2018 Act.

44) Turning briefly to Mr Pobjoy's arguments in relation to the specific grounds of challenge:

a) As far as Ground 1 is concerned the Defendant's case is that the making of regulations permitting designation on the basis of association is required by section 11(3) of the 2018 Act and, in any event, the fact that the Claimant is associated with his father for the purposes of the 2019 Regulations is clear, given the terms of Regulation 6(6) and 6(7).

b) As to Ground 2, the Defendant says that a full public sector equality duty assessment was conducted in relation to the 2019 Regulations and the relevant amendments to them, albeit the Claimant contends that they were flawed in various respects. As far as the suggestion that there should have been public sector equality duty assessments for each individual decision under the 2019 Regulations is concerned, this is highly debatable as a general proposition and, indeed is disputed by the Defendant. In any event, the Defendant contends that the Claimant was beyond the territorial reach of the Equality Act 2010 given that he was not in the United Kingdoms at any of the material times. In this connection, the Defendant relies on *Turani & Anor v Secretary of State for the Home Department* [2021] 1 WLR 5793 in which arguments to this effect were successfully deployed by the Defendant, albeit Mr Pobjoy recognises that an appeal to the Supreme Court in *Turani* was heard earlier this year and judgment is awaited. In addition to this, Mr Pobjoy showed me documents which he said confirmed, and I do not doubt it, that for the purposes of the application under section 23 made by the Claimant and considered in February/March 2023, detailed submissions were made on his behalf as to the Equality Act implications of his designation. Thus, submits Mr Pobjoy, there is no real prospect of the Claimant succeeding in an argument that the court should grant him relief on the basis that section 149 was not complied with in relation to the decisions in his individual case.

c) As to Ground 3, the Defendant contends that sanctioning the Claimant was in accordance with the aims of the 2018 Act and the 2019 Regulations. Given that the Defendant was satisfied that the criteria under the 2019 Regulations were made out, the contrary proposition, submits the Mr Pobjoy, is surprising. As to whether the Defendant's exercise of discretion in the Claimant's case was rational, the Defendant submits that it was because part of the aims of the legislation, which I will touch upon further in due course, is to deter and to incentivise Russian citizens and those who associate with them, to take actions which will discourage Russia in pursuing its actions in the Ukraine.

d) As for Ground 4, the Defendant says that the Claimant's case is flatly contrary to the *Carltona* principle and that the Claimant is not assisted by the decision in *R v Adams* [2021] WLR 2077 on which he relies.

e) In relation to Grounds 5 and 6, the Defendant says that the European Convention on Human Rights is not engaged in this case, given that the Claimant is Russian citizen who was not resident or even present here at the material times and who, it is said, has no material connections with the United Kingdom. The decisions to designate, therefore, was not an exercise of extra-territorial jurisdiction in relation to him. Nor do the relevant decisions fall within any of the exceptions to this principle. The Claimant, submits the Defendant,

therefore is not a "victim" for the purposes of the Human Rights Act 1998 and cannot therefore bring a claim under that Act.

f) In respect of Ground 5, the Defendant also argues in the alternative that any interference with the Claimant's rights under Articles 8 and Article 1 of the First Protocol was proportionate. In this regard reliance is placed on the fact that the decisions were taken within the sphere of foreign relations i.e. a sphere in which the courts will typically accord the Defendant a wide margin of appreciation.

g) In relation to Ground 6, the Defendant also argues that the decision was not taken on grounds of nationality. It was taken on the basis of the criteria in the 2019 Regulations, and the Defendant's assessment that the Claimant's designation would further the objects of the legislation. The Claimant's case is therefore one of indirect discrimination at best, and the decisions in relation to him were objectively justified.

45) Mr Pobjoy therefore said that, had this been a conventional claim for judicial review, the Defendant's position would have been that there are "knock out points" in respect of each of the Claimant's six grounds and that permission should therefore be refused.

46) In the circumstances of this particular application, I am not in a position to reach a firm view that none of the Claimant's grounds is seriously arguable. I will therefore proceed on the assumption that at least one of the grounds of challenge raises a seriously triable issue, but I do not approach the balance of convenience on the basis that the Claimant's case is sufficiently compelling to be a material factor in support of his argument that the relief which he seeks should be granted. It is not.

47) It was not suggested on either side that damages would be an adequate remedy in the event that I granted or refused the application for interim relief, and that decision proved to be inconsistent with the outcome at the substantive hearing in July.

48) As to the balance of convenience it is, in my view, important to focus on what is at issue in this application. If the Claim does not succeed, it will remain the case that the Claimant is designated. His inability to enter the United Kingdom will be a fundamental difficulty in terms of his prospects of securing a Formula 1 contract and the damage to his career consequent upon him being out of action for two or more seasons will be sustained in any event.

49) For similar reasons, unless and until his Claim succeeds it is, in my judgment, highly likely that his designation will hamper his ability to negotiate a contract, even if he is granted the interim relief which he seeks. Put bluntly, any discussions would be conducted in the knowledge of the risk that his Claim will not succeed. This is likely to make potential hirers wary of entering into any commitments in relation to him unless and until it is clear that he will be able to fulfil any commitments which he makes.

50) The grant of interim relief is unlikely to alter this fact, unless on the basis that it creates a mistaken impression that it means that his Claim will succeed in due course or is likely to do so. It may or may not succeed. In this connection, it did appear from Mr Keith's pursuit of relief which would permit the Claimant to do things which he will not be doing anyway in the next six to nine weeks that the Claimant was hoping to use any order in his favour to paint an overly optimistic picture. Whether or not it would have this effect is, in my view, highly debatable, at least so far as the particular negotiators in a Formula 1 team are concerned, given that they are likely to be carefully advised and to scrutinise the position in this litigation closely in coming to any decisions.

51) There is also the point that whatever this court decides in relation to interim relief and the substantive application under section 38, the Claimant is sanctioned by Canada. In his witness statement Mr Collins says that an inability to enter a country where one of the Grand Prix is held will place the Claimant at a huge disadvantage in relation to his recruitment prospects. Although the evidence is that steps have been taken in Canada to challenge his sanctions there, as at today's hearing there is no evidence that a decision to suspend the sanctions against the Claimant in Canada is likely in the next six to nine weeks, if at all. Any negotiations for a seat in a Formula 1 team for 2024 would therefore also be conducted with an awareness of this on the part of the negotiating parties.

52) I take the point which Mr Keith made, in his usual powerful fashion, that this was not thought to be an issue as far as the President of the EU General Court was concerned and nor can it, or should it, be decisive that the Claimant is sanctioned elsewhere. If it were, then the Claimant would be placed in an impossible position, given that he would need to litigate in three different jurisdictions, and to win all three applications at the same time. Therefore, I see the force of Mr Keith's argument and accept that this point cannot be regarded as decisive. However, I do give it some weight as part of the realities of the situation in which the Claimant finds himself.

53) On the Claimant's own evidence, the prospects of getting a seat for the 2024 season do not appear strong in any event, given that he has been out of action for two seasons, given that 2021 was his only Formula 1 season, and given that he is seeking to operate in a highly competitive field and the number of places available is small. His pleaded case is that the application of sanctions to him effectively ended his Formula 1 career and the application before me has been described using words such as seeking to "resurrect" or "salvage" his career.

54) The key question in terms of what goes into the balance in favour of granting relief is as to how much the Claimant’s slim prospects of securing a contract would be improved if the relief sought were granted, rather than, for example, a choice between the certainty of a contract for the 2024 season if relief is granted, and the certainty that he will not be awarded one if relief is refused. Mr Keith submitted that I was not entitled to take this distinction into account in the balance in deciding what is just and convenient in the present case. I disagree. I accept Mr Keith's point that whether one is considering the mere hope of a contract or the certainty of a contract, he is entitled to submit that the opportunity to pursue it in the next six to nine weeks will be irremediably lost if relief is refused. However, it does seem to me that there is a material difference in terms of the damage likely to be suffered by the Claimant in the present case as compared with a case in which, for example, an existing contract would be terminated or the certainty of a contract would be prevented by the refusal of relief.

55) In terms of what the Claimant seeks to be permitted to do on an interim basis, it is also important to note that he is permitted to do all of the things set out in the draft order anywhere in the European Union, and indeed anywhere else in the world save for the United Kingdom and Canada. The question is as to how much difference it would make for him to be permitted, on an interim basis, to do these things in the United Kingdom specifically. According to Mr Collins' evidence, in 2023 Formula 1 Grand Prix events took place in six EU countries and 14 other countries, including three such events in the United States of America.

56) As far as timing is concerned, the question is as to the difference it would make were the Claimant permitted to do the things identified in the draft order around six weeks earlier than would otherwise be the case if his Claim succeeded. How much difference would that make to his prospects of securing a seat in a Formula 1 team for the 2024 season? As to this, the evidence of Mr Collins is that negotiations usually start in May/June each year. They intensify by around July to August and the leading teams have identified next season's drivers by September in most cases. The smaller teams tend to continue the process from autumn through

to December. This broadly reflects the Claimant's own experience of starting negotiations with Formula 1 teams in the summer of 2020, as he describes it in his witness statement, and signing a contract in December 2020. The season then starts in March and lasts to around November each year. The Claimant does not suggest that he might get a seat for the 2023 season. His target is therefore the 2024 season.

57) Turning to the specifics of the draft order, in relation to para.1(a) the justification advanced by the Claimant is that he needs to meet the Formula 1 teams personally. Seven out of ten current Formula One teams are based in the United Kingdom and he therefore needs to be able to enter the United Kingdom for the purposes specified. In his first witness statement he says that no negotiations are possible unless he is able to enter the European Union and the United Kingdom. He says that he has a chance of being able to resurrect his career but only if he can also enter the United Kingdom given that many of the Formula 1 team suppliers trainers and promoters are here.

58) Mr Collins says that serious negotiations almost always take place where the Formula 1 teams are based and rarely ever at racetracks. He also says it is vital that a Formula 1 driver is able to visit his team's base to build personal relationships with the team's engineering staff before the beginning of the season. He expresses the opinion that:

> "33.a it will be practically impossible for him to be able to negotiate a place on a F1 team for 2024 unless he is free to travel to and from the UK, not just for the British F1 race, but for negotiations, briefings, engineering, design ergonomics specific to the driver, training and attending the team's base. In my view whilst Mr Mazepin remains sanctioned in the UK, it is very unlikely he will be recruited to any team;"

59) Mr Collins goes on to conclude at para.34:

> "34. Accordingly, in my view, Mr Mazepin has a small window of opportunity to get back to F1 for the 2024 season and he needs to have commenced that process by the end of June 2023."

60) But Mr Collins does not give any specific evidence of a need to attend personally at the present point in the negotiation cycle, nor at any time before the third week in July of this year. Nor does he give any specific evidence as to the feasibility of any attendance by the Claimant being by video link, at least in the early stages of the negotiations. Like the Claimant's first witness statement, Mr Collins' witness statement is directed more at the general and longer term implications for the claimant if he remains sanctioned in the United Kingdom.

61) In his second witness statement the Claimant gives evidence which appears to be based on conversations with his agent. He does not name the agent, purportedly for reasons of confidentiality, and he says this:

> "5. Furthermore, following suspensions of the EU sanctions against me, my F1 agent (whose name I must keep confidential) started informally talking to representatives of various F1 teams during Grand Prix rounds and other F1 related events concerning my potential recruitment. As I understand from my agent, the teams know that I am subject to certain sanctions, but they heard about suspension of the EU sanctions in particular. The teams my agent has talked to all make very practical observations about the

> sanctions: once I address the issue of my sanctions travel ban, I can come myself to talk to them and demonstrate my current performance before they could consider putting me on the list of candidates for the next season.
>
> 6. As Peter Collins indicated in paragraph 13 of his witness statement dated 16 April 2023 and as I indicated in paragraph 49(a) of my First Witness Statement, the competition for places in F1 is very fierce. It is also obvious that with the 2-year pause in my F1 career I already find myself in a more difficult competitive position as compared to existing F1 drivers or to the successful F2 drivers. In such circumstance, as I understand from my previous experience and from my conversations with my agent and several other people from the F1 circle (like Peter Collins) in order for me to have serious discussions with any of the teams I need to do the following things.
>
> 7. First, I need to arrange for personal meetings, with F1 team managers, during which I would need to convince them of my strong desire to return to F1 and perform at the best possible level. During these meetings I will be asked to demonstrate my current performance and the steps I am taking to improve it (see more details in paragraph 8 below). In this regard, neither video calls, nor requests for meetings outside the UK could serve the purposes because, as explained in paragraph 5 above, in order to be included in the list of the next season candidates for consideration, I need to demonstrate that the sanctions do not limit my opportunities for training and participation in competitions, including through my physical presence in the UK. Even at the opening stages of discussions, it is not customary for teams to meet via video calling, and I stress again, that because of my more difficult competitive position and based on my agent's experience, I cannot expect teams to make any special arrangements to meet with me. Doing this would only emphasise the travel restrictions I currently face."

62) However, the Claimant also says, at para.8, that "there is generally no exact protocol for the negotiations process". Para.8 states:

> 8. Second, as I indicated in paragraph 55 of my First Witness Statement, I need to start training, including at the Italian base of Formula Medicine and at one of the F1 or Formula E teams' bases as soon as possible in order to further return myself into shape and to be able to demonstrate my actual level of performance to the negotiating teams before we could agree my actual recruitment with any of the teams. Taking into account that (a) there is generally no exact protocol for the negotiation process; and (b) my case is very peculiar because during the pat and the current seasons I have been forced to be completely away from all F1 activities, it is hard to predict when exactly teams with which I could start negotiations would ask me to demonstrate my performance and whether they would be ready to give me any

> additional time to get up to speed. In such circumstances I can only do my best to move as quickly as possible with accessing the relevant training."

63) I agree with Mr Pobjoy's submission that these aspects of the evidence relied on in support of the application are not particularly compelling in so far as they seek to suggest that there cannot be discussions or negotiations with UK based Formula 1 teams in the next six or so weeks, unless the Claimant is permitted to enter the United Kingdom. In his second witness statement the Claimant himself says that his agent has begun informal talks despite the present situation, as I have noted.

64) In so far as prospective UK Formula 1 teams want to meet with the Claimant in person, he will be able to do so in any countries other than the United Kingdom and Canada. In this connection, I note that the Claimant's own evidence is that he wishes to attend the British Grand Prix in July this year to meet with Formula 1 teams in person, albeit for informal talks with representatives of those teams. There are also Grand Prix events in Austria between 30 June and 2 July; in Hungary between 21 and 23 July; and in Belgium between 28 and 30 July. The Claimant will be able to arrange in person meetings at these events at the very least in so far as representatives of Formula 1 teams wish to meet with him in person.

65) I am also sceptical in a post-Covid pandemic world about the suggestion that at least in the initial stages it would not be viable for the Claimant to attend by video-link in so far as others at the meetings are in the United Kingdom. In this connection I note that the negotiations which led to the Haas contract took place in 2020 when meetings by video-link were commonplace. I would be very surprised if the Formula 1 sector was alone in failing to adopt this way of doing business, and I regard it as significant that no specific evidence has been presented by the claimant on this point. He and Mr Collins assert that it is necessary for him to attend meetings in person, but the issue of attending by video-link is not addressed directly other than to say that it is not customary. There is no specific evidence of meetings in this form being suggested, but refused. What there is is fairly generalised assertions about a general need to meet in person.

66) In any event, even if I am wrong about the need for in person meetings at this stage, if the Claimant's section 38 application succeeds he will be able to attend in person from the end of July through to the end of the negotiation cycle in December this year.

67) Turning to the other paragraphs of the draft order, as I noted in relation to sub-paras(b) through to (e) Mr Keith accepted that the activities described in these sub-paragraphs were not ones in which the Claimant was at all likely to be engaged in the next six to nine weeks. To a considerable extent, that dispose of the point. Mr Keith's concession accurately reflects the evidence before the court as to the stage which any negotiations might conceivably reach by the third week in July, and therefore the need for the various activities to take place, those activities being, for example, taking part in training sessions, undergoing medical examinations, undergoing sponsorship and promotion events, and being paid bonuses and other benefits from Formula 1 teams and financial sponsors. In addition to that, the evidence does not explain why the Claimant would not be able to undertake those activities in countries other than the United Kingdom over the next six to nine weeks. Indeed positive evidence is given by the Claimant in his witness statement that in some respects those activities are being undertaken by him in other countries, including Italy.

68) As for the suggestion that the court should grant relief in relation to sub-paras(b) to (e) notwithstanding the lack of immediate practical effect in terms of what the Claimant himself will or will not be doing, Mr Keith's position that he would then be able to show a court order to negotiators with a view to encouraging them to think that they could have confidence in his

ability to fulfil any commitments which he made, has a double-edged quality and is ultimately unattractive. It involves, in effect, the Claimant seeking to paint a much more optimistic and ultimately inaccurate picture of his position vis-à-vis other negotiators. It is double-edged for reasons which I will come back to in relation to the question of the public interest.

69) In relation to the question of relief being granted to enable the Claimant to spend and receive money in this jurisdiction, that relief is not currently drafted. It is, of course, parasitic on my being will to grant relief under limb 1(a). I accept Mr Pobjoy's concerns about the suggestion that I would grant relief in the context of financial sanctions having been imposed on the Claimant in circumstances where the statutory provisions allow for licences to be applied for, and where the specifics of that relief have not currently been drafted. Obviously the financial aspects of the sanctions regime are designed to prevent avoidance measures and there would be a significant risk of such measures, at least in principle, were I simply to agree to unspecified relief in that regard.

70) I appreciate that I should step back and look at the whole picture in relation to the points which I have made about the Claimant's position, and I have done so. I appreciate that the Claimant's broad point is that he wishes to showcase what he has to offer to the fullest extent possible and as soon as possible. Naturally, he wishes to minimise the complications in doing so. I also accept that if interim relief is refused, the fact that the Claimant is not able to do the things specified in the draft order in the next six to nine weeks will place him at a disadvantage relative to the position in which he would have been if he were not sanctioned during that period, and will further diminish his prospects of securing a seat for the 2024 season. However, in my view, the Claimant's evidence that it will have a highly material effect on his prospects is not particularly compelling in this regard for the reasons I have given.

71) Turning, secondly, to the Claimant's reliance on the fact that the President of the EU General Court was prepared to grant interim relief, Mr Keith very properly made clear that he did not rely on that decision for its precedential value. Ultimately, in my view, this point tells against the application which is before me because the fact that the Claimant has access to the EU mitigates the fact that he is sanctioned in the United Kingdom.

72) But an important point is that the President of the EU General Court granted interim relief in the context of proceedings which were anticipated to take a great deal longer than the proceedings in the Administrative Court in this country. Proceedings were initiated on 9 December 2022, as I have said. Nearly three months had elapsed by the time the application for interim relief was decided. There was and is no suggestion that those proceedings were or are likely to conclude in the near future. The President of the General Court appeared to accept that, without the interim relief, the Claimant would necessarily be prevented from competing in the 2024 Formula 1 season. This is not the position in the proceedings in the United Kingdom given that the substantive hearing is in the third week in July, and given also that interim relief has been granted in respect of the European Union. This may well also account for the fact that the categories of activity permitted by the EU Court are broad and somewhat general. As the evidence in this application has shown, it is not easy for the Claimant to point to specific evidence of what would or may happen over the next six to nine weeks which would make a highly material difference if such relief were not granted for that period; whereas it may be easier to justify such relief for a significantly longer period given the effect that sanctions would otherwise have on the Claimant's prospects.

73) On the other side of the balance, I accept Mr Pobjoy's submission that weight should be given to the public interest in the designation of the Claimant being effective until the contrary is determined by the court. In imposing sanctions on the Claimant, the Defendant was exercising a significant public function in relation to an important aspect of foreign relations, a context in

which "the law accords to the Executive an especially broad margin of discretion": see *R (Al Rawi & Anor) v Secretary of State for Foreign and Commonwealth Affairs* [2008] QB 298 [148].

74) Mr Pobjoy emphasised that, firstly, sanctions are a key aspect of the non-violent means adopted by the United Kingdom to address the situation in Ukraine. There is, therefore, a high degree of public interest in those means being as effective as possible.

75) Secondly, he submitted that the objectives sought to be achieved by designating the Claimant would be undermined, including the deterrent or persuasive effect of those sanctions. This was so even if there were only a temporary modification of the application of sanctions to the Claimant, given that his perception and the perception of others would at least potentially be that it is possible to apply to the court on an interim basis to have the effect of that regime watered down in any particular case in order to fulfil the interests of the person sanctioned.

76) Thirdly, Mr Pobjoy expressed concerns about the wider public perception of the order sought by the Claimant being granted, the risk being that the public would perceive that the UK sanctions regime is not as robust as it is represented to be.

77) Finally, in outline, Mr Pobjoy expressed concerns about the risk of circumvention of the regime if the Claimant were able to come to the United Kingdom and/or given an unspecified right to receive and spend money in the United Kingdom, the concern being that the Claimant might then be available in order to move funds into or out of the United Kingdom and, in particular, funds from his father.

78) The evidence is that the Defendant has taken the view that the Claimant's designation will contribute to the objective of encouraging the Government of Russia to cease or limit its activities in the Ukraine by encouraging the Claimant to put pressure on his father to speak out against the Russian invasion of Ukraine and/or to cease carrying on business in sectors of strategic significance to the Government of Russia; by sending a signal to the Claimant and others who associate with involved persons, and to that extent give them legitimacy, that there are consequences to such association; by providing a disincentive to the Claimant to receive financial or other material benefits from his father; by reducing the risk that the Claimant's father could mitigate the impact of his own designation by moving assets into the Claimant's name; by providing an incentive to others to disassociate themselves from individuals who carry on business in sectors of strategic significance to the Government of Russia; and by encouraging the Claimant to speak out and to oppose more robustly Russia's invasion of Ukraine.

79) I accept Mr Pobjoy's submission that these objectives will be undermined to a significant degree in the case of the Claimant by the grant of the interim relief which he seeks, even if that interim relief is for the short period between now and the hearing in the third week of July. It appears that part of the purpose of the application is so that the Claimant will be able to pursue his interests in Formula 1 racing and be able to encourage others to take the view that his prospects of doing so after the hearing are strong.

80) As far as the wider objectives of the sanctions regime are concerned, I also accept Mr Pobjoy's submission that they would be materially undermined by the grant of the relief sought. The effect that such relief would have on the public perception, at home and abroad, of the robustness of that regime would be detrimental, and this in turn would be likely to undermine its deterrent and incentivising effect. The Claimant is a relatively prominent public figure and a racing driver. It will undoubtedly be noticed if, for example, he attends the British Grand Prix or meetings with Formula 1 teams here, despite being a designated person. He also seeks

permission to participate in sponsorship and promotional events which will necessarily raise his profile, although of course Mr Keith accepted that the likelihood of his participating in such events over the next six to nine weeks was highly unlikely.

81) I also accept Mr Pobjoy's submission that the perception may arise, at least in some sections of the public, that there are always ways round the UK sanctions regime and/or that that regime is not particularly tough. In my judgment, it is no answer for Mr Keith to say that the public will appreciate that it was the court that decided, as it were, to water down the UK sanctions regime. The court, of course, makes its decisions in the context of the legislation setting out the UK sanctions regime. The fact that the court, if it considered it was able to do so, took the view that it could modify that regime and indeed relax it significantly would, in my judgment, be seen, even by an informed observer, as indicating scope for the watering down of the sanctions regime, albeit through the courts.

82) As far as the risk of circumvention is concerned, that risk obviously arises in the circumstances of the application which is made to me. As I have pointed out, that application proposes in general terms that the Claimant should be permitted to receive and spend monies. Even if a draft of the relief which is sought had been presented, and that draft were clearly and specifically written, the risk of circumvention would, in all likelihood, remain. I emphasize that this is not a comment on the Claimant and his father in particular. I have not been shown any evidence which suggests that they would necessarily take that opportunity, but the court is being asked to make an order which creates that opportunity, and therefore one which is contrary to the objectives which are sought to be achieved by the sanctions regime.

83) Stepping back and balancing the competing considerations, then, I am quite satisfied that the balance comes down firmly against granting the relief sought by the Claimant, and that it is not just and convenient to do so. I therefore dismiss the application.

CERTIFICATE

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This transcript has been approved by the Judge.