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Case No: CO/1041/2023; AC-2023-LON-000215

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/10/2023

Before :

THE HONOURABLE MR JUSTICE SAINI

- -

Between :

THE KING **on the application of** **MIKHAIL FRIDMAN**	**Claimant**
- and -	
HM TREASURY	**Defendant**

- -
- -

Rachel Barnes KC, Nicholas Yeo and **Rachel Scott** (instructed by **Gherson Solicitors LLP**) for the **Claimant**
Malcolm Birdling, Aarushi Sahore and **Sophie Bird** (instructed by **Government Legal Department**) for the **Defendant**

Hearing dates: 17 October 2023

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Approved Judgment

This judgment was handed down in the Royal Courts of Justice at 11.00am on 26 October 2023 and by release to the National Archives.

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MR JUSTICE SAINI

Mr Justice Saini :

This judgment is in 9 main parts as follows:

I. Overview

1. The Claimant, Mikhail Fridman ("Mr Fridman") is a prominent businessman who moved to London in 2013. Mr Fridman is a dual Israeli and Russian citizen of Ukrainian heritage. He was granted indefinite leave to remain in January 2019, and has a family residence at Athlone House, Highgate, London ("Athlone House"). As at the date of the hearing before me, Mr Fridman had left the UK for Israel and had then travelled to Russia. However, he has informed the Court, through his Solicitors, that he intends to return to this country. As a result of the sanctions described in more detail below that return will not be possible because he is an "excluded person" within section 8B of the Immigration Act 1971.

2. On 15 March 2022, the Secretary of State for Foreign, Commonwealth and Development Affairs ("the Secretary of State") designated Mr Fridman, in accordance with Regulations 5 and 6 of the Russia (Sanctions) (EU Exit) Regulations 2019/855 (as amended) (the "Russia Regulations"). That designation was made on the basis that Mr Fridman was "associated" with Russian President Vladimir Putin and that he was a "pro-Kremlin Oligarch". On 19 September 2023, the Secretary of State removed that statement from his reasons for the designation of Mr Fridman. However, he remains designated. In summary, the amended published reasons state (amongst other matters) that Mr Fridman is and/or has been involved in obtaining a benefit from or supporting the Government of Russia by working as a director or equivalent of Alfa Group (and a number of other entities); and that Mr Fridman is and/or has been involved in obtaining a benefit from or supporting the Government of Russia by carrying on business in a sector of strategic significance to the Government of Russia, namely the Russian financial services sector.

3. The effect of a designation is to "freeze" a person's assets and economic resources. Use of such assets and economic resources can only be made if a licence is obtained from the

relevant authority. Mr Fridman's applications for licences have been granted on many occasions, and in substantial amounts (described in more detail below). This claim is concerned with the legality of decisions made on 22 December 2022 to refuse licences to make certain specified other payments.

4. The Interested Party, Athlone House Limited ("AHL"), a company incorporated under the laws of England and Wales, provides property and household management services for the maintenance and upkeep of Athlone House, and the running of Mr Fridman's private household. Athlone House is at the centre of these proceedings. Mr Fridman bought this property in 2016. Athlone House was built in 1855, with five acres of landscaped garden which are said to have been designed to emulate the palace at Versailles. When he acquired the site, it was derelict and he has restored both the house and gardens at substantial cost. The house is approximately 33,173 square feet in size and also holds Mr Fridman's substantial art collection, which is said to be of cultural significance, and is valued at £44 million.

5. Mr Fridman's executive assistant, Nigina Zairova ("Ms Zairova") is the sole director of AHL. On 2 March 2022 Ms Zairova acquired all of AHL's share capital. On 13 April 2022, Ms Zairova was also designated by the Secretary of State under the Russia Regulations, and subjected to an asset freeze. That designation was by reason of her association with Mr Fridman. AHL is not itself subject to any asset freeze or sanctions.

6. The designation of Mr Fridman under the Russia Regulations (as well as his designation by the EU on 28 February 2022 under Regulation (EU) 269/2014, as amended) is the subject of legal challenges brought by Mr Fridman. The present claim is not concerned with those challenges and I must proceed on the basis that he has been lawfully designated for the reasons given by the Secretary of State. I should however record that Mr Fridman has publicly expressed his opposition to the Russian invasion of Ukraine and condemned the war as a "terrible tragedy".

7. The Defendant ("OFSI"), part of His Majesty's Treasury ("HMT"), is responsible for administering the licensing regime under the Russia Regulations. OFSI was set up in 2016 and is a part of HMT. HMT is the competent authority for implementing financial sanctions in the UK. OFSI's role is to ensure that sanctions are understood, implemented and enforced in the UK, and it carries out a range of functions to fulfil this role. These include providing outreach and guidance to assist in the understanding of financial sanctions; having responsibility for making decisions on and issuing licences to financially sanctioned individuals and entities; and ensuring that suspected breaches of financial sanctions are identified and investigated. The Russian sanctions have led to a very substantial increase in OFSI's licensing workload. By the end of 2022/23 it will have received almost 1500 applications, a vast increase in applications compared to previous years.

8. Following his designation on 22 March 2022, Mr Fridman made a number of applications for, and requests for amendments to, licences under Regulation 64 of the Russia Regulations, to permit him to make payments to various entities. Many of the requests were granted by OFSI. Mr Fridman is now licensed to use funds in respect of the following: his and his dependants' basic needs, utility bills, insurance premiums, legal fees, accountancy fees, various services including construction and maintenance, and certain wages owed to his staff and payments owed to other third parties. For the purpose of licensing payments in relation to Mr Fridman's basic needs, routine holding and

maintenance of frozen funds and economic resources, legal fees and prior obligations under Schedule 5 of the Russia Regulations, OFSI has granted permissions in substantial sums (described in more detail below) for one-off payments in respect of arrears and continuing monthly payments, including towards the upkeep of Athlone House. The payments which are the subject of the present claim are on any view relatively modest when compared to these authorised sums which run into several millions.

9. Before Mr Fridman was designated by the Secretary of State he had entered into a contract ("the service contract") with AHL. The service contract is dated 2 March 2022 and appointed AHL as the "managing agent" over Athlone House. The service contract obliges Mr Fridman to pay to AHL the following costs: a monthly management fee of £30,000 (para 3.1); "such sums as are requested from time to time within three (3) business days of request, for the purpose of discharging liabilities relating to [Athlone House]" (para 3.2); and to "pay to the Company such sums as are requested from time to time within seven (7) business days of request, for the purpose of paying such professionals and contractors who are engaged or instructed by [AHL] in respect of [Athlone House]" (para 3.3).

10. As I describe in more detail below, OFSI refused on 22 December 2022 to grant licences for such payments to AHL, as well as a number of other payments. These refusals give rise to the claim before me. Mr Fridman challenges three specific refusals pursuant to section 38(2) of the Sanctions and Anti-Money Laundering Act 2018 ("SAMLA"):

    (1) OFSI's decision to refuse Mr Fridman's application for a licence in respect of a monthly management fee of £30,000 to be paid to AHL (the "Management Fee Application");

    (2) OFSI's decision to refuse Mr Fridman's application for a licence in respect of a monthly payment of £1,850.00 from AHL to Ideaworks Group Ltd ("Ideaworks") for internal phonelines, audio and TV equipment (the "Ideaworks Application"); and

    (3) OFSI's decision to refuse Mr Fridman's application for a licence in respect of payments to AHL for payment to staff for household-related services (the "Staff Costs Application").

11. OFSI's refusal to issue a licence is a "sanctions decision" within the meaning of s.38(1)(d) of SAMLA. As a person affected by that decision, Mr Fridman has applied to the High Court for the decision to be set aside under s.38(2) of SAMLA. The claim is brought under Part 8 of the Civil Procedure Rules (CPR), and is governed by Part 79 of the CPR. Mr Fridman set out his grounds for seeking orders setting aside the decision in a detailed Particulars of Claim served with his Claim Form issued on 21 March 2023.

12. On 13 October 2023, Mr Fridman applied to amend his Particulars of Claim to advance a number of new grounds. OFSI opposed certain of the amendments. I refused his application for permission to amend (the opposed aspects) at the start of the substantive hearing. My reasons are in Section IV below.

II. Legislative Framework

13. Financial sanctions targeted at named individuals and commercial entities are a relatively modern tool of governmental policy on the international plane. They put in place restrictions to achieve specific foreign policy or national security objectives. Such sanctions are generally intended to coerce a regime or designated person into changing their actions; to restrict resources needed to continue undesired behaviour; to signal broader political disapproval; and/or to protect assets that may have been misappropriated until such time as they can be repatriated. The Secretary of State for the Foreign, Commonwealth and Development Office has overall responsibility for the UK's international sanctions policy, including all international sanctions regimes and designations.

14. Following the UK's departure from the EU, sanctions were given effect in domestic law by SAMLA and regulations made pursuant to it. Section 1(1) of SAMLA confers on the Secretary of State the power to "make sanctions regulations" for the purposes prescribed in section 1(2). The measures put in place against Russia are the largest and most severe package of economic sanctions ever imposed in the UK.

15. The Russia Regulations were made on 10 April 2019 and laid on 11 April 2019. They came into force on 31 December 2020. The purposes of the Russia Regulations are set out in Regulation 4, namely, "encouraging Russia to cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine". In order to achieve the stated purposes, the Russia Regulations impose a number of prohibitions and requirements in respect of designated persons.

16. Regulations 5 and 6 give the Secretary of State the power to designate persons by name for the purposes of Regulations 11-15 and Regulation 20, if the person meets the designation criteria in Regulation 6. Regulations 11-15 of the Russia Regulations permit the imposition of a range of financial prohibitions on designated persons. They impose prohibitions on:

    (1) Dealing with funds or economic resources owned, held or controlled by a designated person (Regulation 11);

    (2) Making funds available directly or indirectly to a designated person (Regulation 12);

    (3) Making funds available for the benefit of a designated person (Regulation 13);

    (4) Making economic resources available directly or indirectly to a designated person (Regulation 14); and

    (5) Making economic resources available for the benefit of a designated person (Regulation 15).

17. Regulations 11-15 extend the financial prohibitions on designated persons to persons owned or controlled directly or indirectly (within the meaning of Regulation 7) by the designated person:

(1) Regulation 11(7) provides that "For the purposes of paragraph (1) funds or economic resources are to be treated as owned, held or controlled by a designated person if they are owned, held or controlled by a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person."

(2) Regulation 12(4) provides that "the reference in paragraph (1) to making funds available indirectly to a designated person includes, in particular, a reference to making them available to a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person."

(3) Regulation 14(4) provides that "the reference in paragraph (1) to making economic resources available indirectly to a designated person includes, in particular, a reference to making them available to a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person."

18. Regulation 7 provides the definition of "owned or controlled directly or indirectly". It states that:

> "(1) A person who is not an individual ("C") is "owned or controlled directly or indirectly" by another person ("P") if either of the following two conditions is met (or both are met).
>
> (2) The first condition is that P—
>
> (a) holds directly or indirectly more than 50% of the shares in C,
>
> (b) holds directly or indirectly more than 50% of the voting rights in C, or
>
> (c) holds the right directly or indirectly to appoint or remove a majority of the board of directors of C.
>
> (3) Schedule 1 contains provision applying for the purpose of interpreting paragraph (2).
>
> (4) The second condition is that it is reasonable, having regard to all the circumstances, to expect that P would (if P chose to) be able, in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of C are conducted in accordance with P's wishes."

19. Regulation 19 makes it an offence for a person to "intentionally participate in activities knowing that the object or effect of them is (whether directly or indirectly)" to circumvent any of the prohibitions in Regulations 11-18C or to enable or facilitate the contravention of any such prohibition.

20. The prohibitions set out above are subject to limited exemptions by way of exceptions and licences set out in Part 7. Regulation 64 provides as follows:

> "**64.— Treasury licences**
>
> (1) The prohibitions in regulations 11 to 15 (asset-freeze etc.) … do not apply to anything done under the authority of a licence issued by the Treasury under this paragraph.
>
> …
>
> (2) The Treasury may issue a licence which authorises acts by a particular person only—
>
> (a) in the case of acts which would otherwise be prohibited by regulations 11 to 15, where the Treasury consider that it is appropriate to issue the licence for a purpose set out in Part 1 of Schedule 5…"

21. Accordingly, HMT is only permitted to grant a specific licence in circumstances where the licence application satisfies one of the purposes set out in Part 1 of Schedule 5 of the Russia Regulations. There is an issue of law before me as to whether HMT also has an overriding or residual discretion under Regulation 64(2)(a) which permits it to refuse a licence which satisfies such a purpose. I address that issue below at [57]. In evidence, OFSI says that it does not necessarily allow designated persons to continue the lifestyle they enjoyed prior to being designated, since that will often be contrary to the purposes of the sanctions regime. It says that, where the effect of granting a licence would be to undermine the policy objectives of the sanctions regime, OFSI may exercise its residual discretion to refuse licensing the activity.

22. Part 1 of Schedule 5 serves the purpose of identifying the permissible purposes for which a licence may be granted. Insofar as material to this claim, these purposes include the following:

    (1) Basic needs (Sch. 5, para. 2) (the "Basic Needs Derogation"). This permits the licensing of activities to "enable the basic needs of a designated person or … any dependent family member of such a person, to be met". The regulations define this to include matters such as food, medical needs, insurance, tax, utilities and rent.

    (2) Maintenance of frozen funds and economic resources (Sch. 5, para. 4) (the "Routine Holding and Maintenance Derogation"). This permits the licensing of payments in respect of "reasonable fees" or "reasonable service charges" arising from the routine holding or maintenance of frozen funds or economic resources.

    (3) Prior obligations (Sch. 5, para. 8) (the "Prior Obligations Derogation"). This permits the issue of licences to enable the use of a designated person's frozen funds or economic resources for the "satisfaction of an obligation" of the designated person if "the obligation arose before the date on which the person became a designated person" and "no payments are made to another designated person, whether directly or indirectly".

III. OFSI processes and published guidance

23. In order to obtain a licence, applicants must first submit a licence application form to OFSI. The form is available to download on gov.uk. A completed application must provide evidence to support the application and demonstrate that all criteria of the relevant licensing ground are met. OFSI's evidence is that applicants are generally required to provide full information regarding the parties taking part in the transactions, the complete payment route and the purpose and value of the business. An application is only considered complete once OFSI has all the information that it needs to complete its assessment. OFSI also publishes a range of guidance and blog posts to help applicants navigate the licence application process. These resources outline OFSI's approach to licensing and compliance, licensing grounds and licensing timeframes. I need to set out some material parts of the OFSI guidance in a little more detail because it is relevant to the Grounds and both parties took me to various sections during oral submissions.

24. OFSI has issued the following public guidance which applies to applications for licences under the Russia Regulations:

    (1) *"Introduction to Licensing" blog post*, published online on 19 April 2021.

    (2) *"Reasonableness in Licensing" blog post*, published online on 30 June 2021.

    (3) *"UK Financial Sanctions: General guidance for financial sanctions under the Sanctions and Anti-Money Laundering Act 2018"* (the *"General Guidance"),* published in August 2022 and updated on 31 January 2023.

    (4) *"Russia Guidance"*, published in March 2023.

25. OFSI's *Reasonableness in Licensing* blog post explains that when applying for a licence under paragraph 4 of Schedule 5, applicants must provide evidence that a payment is reasonable, and that *"OFSI requires a significant level of evidence when scrutinising the reasonableness threshold";* and that *"the onus is on you to provide evidence and arguments as to why a payment is reasonable".* As explained in the *General Guidance,* Chapter 6, applicants should fully read OFSI's guidance and check the relevant up-to-date legislation themselves before applying for a licence and provide evidence accordingly. It says that this is because OFSI cannot be expected to know whether or not all information has been provided and, as it is not an investigative body, does not have the resources to "investigate" whether or not, and where, any relevant information may be missing. That all seems to me to be perfectly sensible and a matter of commonsense.

26. The *Reasonableness in Licensing* blog post further sets out the steps an applicant should consider taking in order to demonstrate that a payment is reasonable under the Routine Holding and Maintenance Derogation:

> "1. Providing evidence when submitting your licence application. Appropriate evidence will vary based on what you are applying for.
>
> 2. Explain why the proposed activity is necessary. You may wish to explain what the outcome would be should you not receive a licence.

> 3. Where appropriate, consider obtaining quotes from more than one supplier to ensure that the fees can be demonstrated as reasonable and that you are receiving value for money.
>
> 4. If a quote is unable to be obtained, provide an evidence-based estimate. If you are a property management company looking to obtain a licence for a commercial building, you may wish to use quotes from similar-sized commercial buildings as evidence for reasonableness.
>
> 5. Provide a breakdown of the proposed payment/work. If you are requesting a licence to pay £100,000 for a change of windows, provide a breakdown of the payment – this could include the exact number of windows you are looking to change, cost of personnel and/or material etc.
>
> 6. If you are applying for a licence extension, you will be required to undergo the reasonableness assessment again. This may include reviewing your licence to ensure it is being used."

OFSI internal guidance

27. OFSI also provides certain internal guidance to assist decision makers in processing licence applications. This includes *The Basic Needs Framework* (May 2022) and *The Licensing Caseworker Guide* (September 2022). I will set out the material provisions of these documents below. They were the subject of part of the application to amend the Particulars of Claim, which I refused at the start of the hearing.

28. *The Basic Needs Framework* was introduced following the UK's designation of what it calls several high-profile "Russian oligarchs", under the Russia Regulations. It outlines OFSI's approach to licensing requests made on behalf of "sanctioned oligarchs" under the Basic Needs Derogation. It was introduced as internal guidance to ensure OFSI takes a consistent approach to licensing requests from individuals who are designated under the Russian sanctions regime. It recommends licensing a capped monthly allowance equivalent to the London median wage for the designated person, and dependants (where applicable) and to consider separate allowances for other expenditure requests.

29. *The Basic Needs Framework* includes the following text:

> "Framework for the "basic needs" licensing arrangements for oligarch designated persons ("DPs") under the Russian sanctions regime … Urgent. OFSI has received a large number of licence applications from recently designated Russian oligarchs including applications with respect to their basic needs. Whilst some requests are excessive, we recognise that licences will be required to authorise payments for basic needs (e.g. food needs). We therefore require a response on the proposed framework in order to assess these applications on a consistent basis and issue licences as soon as possible. This submission covers the basic needs of sanctioned oligarchs and how OFSI will approach licensing such requests. Over the next few weeks, we

> recommend OFSI rejecting requests that would in essence allow oligarchs or affluent DPs to continue the luxurious lifestyle they enjoyed prior to sanctions and which do not fall within the ambit of basic needs. Instead, we recommend OFSI license core basic needs through a capped allowance, whilst separately licensing on a case-by-case basis high-expenditure applications."

30. *The Basic Needs Framework* also contains guidance in respect of different types of basic needs and the recommended approach to each. In relation to security and non-security staff it states:

> "Security
>
> 36. The licence applications received thus far have typically requested granting approval for significant security expenses (mainly staff). These would typically not be considered a basic need, however many oligarchs have legitimate fears for their safety. In this scenario, OFSI consider that the security would amount to a basic need. Rejecting reasonable and evidenced requests with respect to security could carry legal and reputational risk. Furthermore, it could result in the designated oligarchs being less likely to oppose the Russian regime if they feel their safety is compromised. Contingent on oligarchs providing evidence of the need for security, we recommend licensing their requests, subject to these being aligned with historic spending. Furthermore, where existing contracts are in place, OFSI will continue to consider such requests with respect to the prior obligations licensing ground.
>
> Staff (non-security)
>
> 37. The licence applications received thus far have typically requested OFSI license payments to the large number of staff that oligarchs employ, such as cooks, cleaners, assistants. OFSI do not think this fits within the basic needs derogation. We also believe granting these requests would be against the policy aims and lead to significant presentational risks. However, where existing contracts are in place and appropriate evidence is provided, OFSI will consider licensing such requests under the prior obligations derogation and in line with existing policy on this."

31. *The Licensing Caseworker Guide* includes the following practical guidance in respect of initial consideration of applications:

> "5. Completeness. An initial glance at the application form can provide an indication as to whether the applicant has provided enough information to begin processing the case. But, as you go through the case, you may identify further information that is missing. If the applicant has failed to identify whether a DP is involved or give the legal basis for the transaction, you will

> need to get this from them before proceeding further. You will always need to ask the applicant more questions on the specifics of their application later, but details like DP involvement, the legal basis and the payment route are basic pieces of information you need in order to get started."

32. The *Licensing Caseworker Guide* further explains:

> "2. Identify and consider the legal basis. Once you have read the application, you should have a good sense of what the DP/Applicant wishes to do and why they need a licence from OFSI. As one of the key aspects of the licence application, the legal basis merits particular scrutiny by the caseworker. There are 2 main things to check when considering the legal basis for each application:
>
> • The derogation: The Applicant must identify a legal basis, with specific reference to the appropriate derogation in the legislation
>
> • The argument: Merely stating "basic needs" is not enough – the Applicant must provide a robust argument as to why the derogation applies and, where possible, evidence to support this…
>
> ...
> Follow up questions... In almost all cases, you will need to ask the Applicant for more information before you can prepare a submission. It may help to write these as you go along so you don't forget them."

IV. The Amendment Application

33. I will begin with some relevant dates. The Claim Form (with Particulars of Claim) was issued on 22 March 2023. Evidence was served with that pleading. OFSI's Grounds of Resistance was served on 19 May 2023, and OFSI's evidence was served on 19 May 2023. A number of further witness statements and expert evidence (addressed below) were then served on behalf of Mr Fridman; and this hearing was fixed during the summer to be heard on 17 October 2023. Mr Fridman's skeleton argument was served on 26 September 2023 and OFSI's skeleton on 9 October 2023. The two controversial matters raised in the amendments (see below) were relied upon for the first time in Mr Fridman's skeleton and OFSI objected to those unpleaded matters being raised in its skeleton argument. I will call these matters the "Human Rights Act Amendment" and the "Unpublished Policy Amendment".

34. In response to OFSI's objections that an unpleaded case was being pursued, Mr Fridman's Solicitors issued an Application Notice on Friday 13 October 2023, one working day before the substantive hearing, seeking permission to amend the pleading to advance these two new arguments. It was agreed on behalf of Mr Fridman that this was a very late application. No good reason was advanced before me as to why these amendments came so late. OFSI objects to the amendment, relying on the well-known principles governing amendments under CPR 17.1. It relies on lateness, the necessity for

an adjournment (if the amendments were to be permitted) and on the argument that they have no realistic prospect of success. I heard oral submissions for some time at the start of the substantive hearing. I refused the application to amend for reasons which I said I would give in my judgment on the claim. I now set out those reasons.

35. The Claim Form and Particulars of Claim served under CPR 79.6 are a "statement of case" and permission is required to amend the grounds on which Mr Fridman seeks to set aside the decision. There was no dispute as to the principles I must apply. See CPR 17.1 and the notes at paras. [17.3.5]-[17.3.8] of the White Book (2023) Vol 1. I underline that in CPR Part 79 proceedings these principles apply with just as much force as in a private law civil dispute. I have a discretion to be exercised having regard to the Overriding Objective, namely that cases are dealt with justly and at proportionate cost. A proposed amendment will not be permitted if it does not disclose a claim or ground of review *with a real prospect of success*, regardless of the stage proceedings have reached. However, simply showing such a prospect of success does not entitle a party to pursue an amendment. In both private law and public law cases such as the present, the courts are required to have a much greater appreciation of the effects of amendments on the court and other parties than was previously the case. In particular, an amendment may cause prejudice to another party that cannot be precisely quantified (and therefore payment of costs may not be adequate), but which is nonetheless real. The necessity of an adjournment of a hearing to enable responsive evidence to address an amendment that may be allowed, is a powerful factor against granting permission to amend. I bear in mind that the early listing of this case will have led to other important cases in the very busy Administrative Court list being given later listings. If the case is adjourned it will not only effectively waste the time allocated for the hearing but will also take up yet further time in a future listing. I turn to each of the draft amendments.

The Human Rights Act Amendment

36. The draft amendment is in the following terms:

> "122. In respect of each ground: given the integral importance of the licensing regime to ensure that the interferences with the fundamental rights (including article 8 and article 1 of protocol 1 ("A1P1") ECHR) of designated persons that accompany the application of draconian asset freezing sanctions are proportionate, unlawful, irrational, unfair or unreasonable licensing decisions will result in disproportionate interferences with those rights (see above paras. 20-22, 39 (and fn.1), 101, 104-105, 108-109). This has occurred in the Claimant's case".

37. My starting point is that the Russia Regulations, which comprise what OFSI accepts is a "draconian" regime for freezing assets together with a licensing system to mitigate harsh effects, amount overall to a lawful and proportionate statutory interference with a designated person's Article 8 and Article 1, Protocol 1 Rights. I will call these "the Relevant Rights". The system itself is HRA compliant at the macro level in that it imposes a justifiable interference with private/personal life and justified control of property rights, each in the public interest. However, it is open to a designated person to argue that a specific designation decision or specific licensing decision (made within an overall lawful and HRA compliant regime) amounts, in their own particular circumstances, to a breach of their Relevant Rights. The case of Shvidler v Secretary of

State [2023] EWHC 2121 (Admin) is an example of such a challenge to a designation decision: see [4] of the judgment.

38. In the present case, it was accepted by Leading Counsel on behalf of Mr Fridman that in no part of the original Particulars of Claim had any allegation been pleaded of a breach of the Relevant Rights. The challenges were pleaded in purely conventional public law terms. It was argued on behalf of Mr Fridman that OFSI's objection is purely a "technical pleading point" because in every case where there is an infringement of public law in a licensing decision that also amounts to a violation of Relevant Rights. For reasons set out below, I do not accept that submission. But in any event, I refuse the amendment application on case management grounds because it is far too late and, if permitted, fairness to OFSI would require an adjournment to allow it to serve responsive evidence. OFSI had made it clear as long ago as 22 June 2023 that it would not respond to post-decision evidence. Any allegation of breach of the Relevant Rights is fact-specific, and OFSI would need to deal with each complaint separately and explain how, given the substantial other licences already granted, the particular refusals did not amount to unjustified infringement of Mr Fridman's rights. On the evidence before me, Mr Fridman has historically been given licences running into many millions with ongoing monthly licence payments. The Court would need to examine whether declining specific *additional* payments amounted to an unjustified infringement of the Relevant Rights. In this regard it is significant that on the agreed evidence before me the total future monthly, quarterly and annual payments, calculated on an annual basis, licensed for Routine Holding & Maintenance, Basic Needs and Prior Obligations of Mr Fridman is in the region of £760,000.00. The total sum of licences granted in respect of arrears/one off payments in the past is about £1.38m and €29,000.00.

39. I also consider this amendment has no reasonable prospect of success. As I said at the hearing, I have difficulty with the legal theory underlying the amendment. Unpacking the plea, in substance it asserts that every form of public law error rendering a licensing decision unlawful will, without more, also amount to an infringement of the Relevant Rights. That cannot be right. So, a licensing decision might be based on a misdirection in law or irrelevant considerations or even be irrational (each of which would make it unlawful in traditional public law terms) but that does not mean the Relevant Rights have been violated. Such a decision remains "in accordance with law" as that term is understood in Strasbourg case law, which requires certainty, accessibility and a sufficient legal basis in domestic law. And if it is said that it is a disproportionate interference with the Relevant Rights, a claimant must (independently of the public law error) prove with evidence that the result of the decision and, for example, not being permitted to make a certain payment, has in fact had a disproportionate impact. But in this case no case has ever been pleaded (nor is there any evidential basis for pleading) that the Relevant Rights have been violated by any of the decisions under challenge. That is not surprising. It would be a hopeless plea with no prospect of success given the lifestyle which Mr Fridman continued to enjoy in the UK (until he left) as a result of the licences (authorising use of substantial sums) which OFSI has granted.

40. I consider that the purpose of this amendment was not in reality to add any point of substance to the case. Rather, it appears to be aimed at getting around the prohibition on post-decision evidence by relying on the *Belfast City Council* case (see [66] below).

The Unpublished Policy Amendment

41. Mr Fridman's draft amendment to Ground 3(1) is in the following terms:

> "173. *Sixthly,* OFSI's exercise of what it termed its 'residual discretion' under Reg. 64(2) in refusing to license payment of the staff costs after 22 December 2022 (disclosed only in the summary grounds of resistance to this claim) was undertaken unlawfully, by reference to an unpublished policy of preventing DPs from enjoying their 'pre-designation lifestyle'.
>
> 174. The disclosed documents, the 'Basic Needs Framework' (May 2022) and the 'Licensing Caseworker Guide' (September 2022), and the internal licensing submission in relation to the Claimant's application are described in paras …above.
>
> 175. OFSI's reliance on this private policy in support of its decision to refuse ongoing staff payments was unlawful, for two reasons.
>
> 176. *First,* it offends against the well-established public law principle that policies relied upon by public bodies in their decision-making should be disclosed. It is well-established as a basic principle of administrative law that a policy used by a public body in its decision-making processes should be transparently disclosed or accessible. See [citation of cases including *R (Lumba) v SSHD* [2011] UKSC 12 [2012] 1 AC 245 at [34]]… More generally, it is also well-established that the obligation of good administration requires public bodies to deal straightforwardly and consistently with the public, and to act transparently: [citation of cases]…"
>
> 177. *Secondly,* even on its own terms, its application by OFSI to the circumstances of the Claimant's case was irrational. It took into account irrelevant considerations, and by doing so, unduly fettered its own discretion. In particular: (1) The services performed by the staff do not support the Claimant's "lifestyle"; rather they are necessary for the proper maintenance of Athlone House. OFSI's assessment to the contrary (CW-1, pages 169-170) set an irrationally high standard to define 'maintenance' (apparently equating to services which "if not performed, could result in serious damage to the property and risk to life/environment"; and has in any event been shown by the Claimant's additional evidence to have comprehensively misunderstood the maintenance needs (and attendant risks of neglect) arising in relation to a property such as Athlone House; (2) OFSI mis-applied its own policy as regards the need to curtail the "lifestyle" of "oligarchs". That policy, according to OFSI's own documents, is designed for use in connection with applications made by reference to the basic needs derogation; (3) The application of OFSI's private policy in the Claimant's case irrationally elided the prior obligation and basic needs grounds

> and by so doing, took into account irrelevant factors. OFSI required "clear evidence that to refuse licensing this activity would infringe the basic needs of the DP (i.e. right to shelter)" (CW-1, page 170), even in cases where the prior obligation derogation was met; and (4) The Claimant is not an "oligarch", he is not associated with President Putin, he is not "pro-Kremlin", he is not "directly or indirectly supporting the Russian war effort" and so OFSI's application of a policy that he "should be held to account" for such actions (cf. CW-1 page 168) is misconceived."

42. Mr Fridman also seeks permission to amend the prayer to seek an "…order requiring the Defendant to publish guidance on the policy it applies in the exercise of its 'residual discretion' to refuse a licence application".

43. OFSI says that it would need an adjournment to respond to this amendment, and that in any event it has no reasonable prospect of success. As to the first point, it was not argued on behalf of Mr Fridman that OFSI should not have the opportunity to respond with evidence, if so advised. It was also not disputed that this would require an adjournment. As with the Human Rights Act Amendment, in my judgment it would be contrary to the Overriding Objective to adjourn these proceedings at this stage. That is a sufficient case management basis to refuse permission. However, I also consider the amended case has no reasonable prospect of success. I will summarise my reasons.

44. A policy should be published if it informs discretionary decisions in respect of which the potential object of those decisions has the right to make representations, and where the individual would not otherwise be able to make relevant and targeted representations. However, a public authority is entitled to supplement its published guidance with internal guidance which is not inconsistent with the published policy. My provisional view was that it is not unlawful to adopt internal guidance which provides the factors to be considered by caseworkers in making fact-sensitive decisions, without prescribing any particular outcome. It is usually the *prescriptive* nature of a policy which requires it to be published. The vice in such a case is that the affected person cannot make relevant submissions on the criteria established by the policy.

45. Thus, in R (Lumba) v SSHD [2011] 1 AC 245 (SC), the issue was that the Secretary of State purported to make decisions about the detention of foreign national prisoners based on a published policy but in fact applied a "quite different unpublished policy". The published policy provided a presumption in favour of release, while the unpublished policy was a "near blanket ban" against release: Lumba at [5]. In this case, there is no prescriptive covert policy that undermines any published policy. It is a rather different scenario where there is internal guidance relating to a particular situation. The *Basic Needs Framework* was introduced in response to a large number of urgent applications in respect of the Russian sanctions regime, and in order to introduce a coherent and consistent approach to licensing in that context. The framework is a context-specific elaboration of the obvious goals of the sanctions regime, and is in my judgment consistent with OFSI's published guidance. It is also wholly consistent with what Mr Fridman's Solicitors were told by OFSI (see further below). As to the *Licensing Caseworker Guide*, as is clear from the extracts I have set out above, this is not guidance in the form of criteria to be applied. It is a simple guide for caseworkers as to what they must look for in an application and what further questions they might need to ask. Overall, the complaints

about both the *Basic Needs Framework* and the *Licensed Caseworker Guide* are far from the Lumba-type of case.

46. I would add that insofar as Mr Fridman would have wished to complain under this amendment that there was some secrecy about OFSI's approach in this internal guidance to licensing "lifestyle" choices under the Basic Needs Derogation, that complaint has no merit. He had the ability to make submissions directed at the considerations which OFSI said it would apply. That is because OFSI's approach on "lifestyle" was conveyed in terms to Mr Fridman's solicitors as early as 1 June 2022, when they were informed:

> "To explain how we arrived at the terms of the draft licence, it may be helpful to provide some background on the basic needs derogation. As our guidance makes clear, expenditure to meet basic needs of an individual should be expenses that are necessary to ensure that designated persons or their financially dependent family members are not imperilled. Basic needs licences do not necessarily enable a designated person to continue the lifestyle or business activities they had before they were designated."

47. I refuse the application for permission to amend both on case management and prospects of success grounds. However, I do consider Mr Fridman is entitled to complain (on his existing pleaded case at Particulars of Claim [161]-[168])) about the way the internal guidance was applied on the facts at the date of the decision of 22 December 2022. An amendment is not required to address that and he is entitled to refer to what OFSI says in its evidence as part of his complaint that the decision based on the guidance was irrational (I deal with these complaints at [101] below). I will address the oral and written case made on behalf of Mr Fridman, and OFSI's response on the irrationality submissions, when I consider Ground 3 below.

48. Finally, whether or not the law requires publication, I would suggest that OFSI considers making public its internal guidance as a matter of good administrative practice. OFSI could do this but at the same time underline, as it already does, that it is for an applicant to make good his application for a licence and to supply all supporting evidence.

V. Discretion, standard of review and post-decision evidence

49. Before I turn to the grounds of review, I need to address a number of basic matters in dispute between the parties. They are: (1) the scope, if any, of HMT's discretion when licensing and the approach of this Court to review; and (2) the admission of post-decision evidence, including expert evidence. In order to put these points in context, I will first summarise the procedural history.

50. On 19 April 2023, Swift J gave directions in accordance with the procedures established by CPR 79. OFSI accordingly filed its statement of case in response on 19 May 2023, and the supporting Witness Statement of OFSI's Deputy Director, Mr Chris Watts ("Mr Watts") with that pleading. Contrary to any procedure envisaged by those directions, Mr Fridman has made successive rounds of applications to adduce new factual and expert evidence, such that he now seeks to rely on eight additional witness statements and/or expert reports. That process, which I describe below, has to some extent got out of control. The material before the Court amounts to a "Core" Bundle of 400 pages and a

"Supplementary Bundle" of about 2,500 pages. Why has this happened in a case which is ultimately concerned in substance with the rationality of decisions to refuse to allow 3 licences for relatively modest payments? It is because Mr Fridman considers the Court's function is to act as a form of primary decision-maker as to whether he should get those licences. That is wrong. It involves a misunderstanding of the Court's role on an application under SAMLA. I will first summarise the various applications for additional evidence before the Court.

First Application dated 16 June 2023

51. On 16 June 2023, Mr Fridman made an application to rely on further evidence. The factual evidence consisted of:

    (1) Mr Gherson's first witness statement ("Gherson 1") which corrected certain minor errors in Watts 1 and provided further argumentation on each of the Applications; and

    (2) Mr Gherson's second witness statement ("Gherson 2") which explained the difficulties experienced by Mr Fridman in obtaining relevant expert evidence.

52. Mr Fridman also sought to rely on the following expert evidence:

    (1) The Expert Report of Ms Wendy Warren ("Warren 1") dated 16 June 2023. Ms Warren is a technical surveyor, who visited Athlone House on 9 June 2023. Her opinions concern the level of work and number of staff required to service the house as well as the details of the Ideaworks system.

    (2) The Expert Report of Ms Michelle Belsham ("Belsham 1") dated 16 June 2023. Ms Belsham is an Operations Director at CT Services Group Ltd, with experience cleaning "high end" properties and offices. Ms Belsham visited Athlone House on 12 June 2023.

    (3) The Expert Report of Mr Mohindra Nimba ("Nimba 1") which was served on 23 June 2023. Mr Nimba is a chartered surveyor who was asked to comment on the reasonableness of the requests in the various Applications. Mr Nimba visited the property on 19 June 2023.

53. OFSI did not object to the factual evidence being adduced, reserving its position as to relevance, but in any event sought to respond to it as far as relevant in a Second Witness Statement of Mr Watts ("Watts 2"). As forcefully submitted by Counsel for OFSI, its overarching position as to this evidence is that it is not relevant because the claim must be determined by reference to the evidence before OFSI at the time of its decisions, not through the drip-feeding of further evidence as and when it becomes available to Mr Fridman through the litigation. For reasons concerning the role of the Court in a review of the present type (see [65] below), I consider this approach to be plainly correct. It is particularly important in the present context where:

    (1) Under the licensing application regime, the burden is on the applicant to provide all the relevant information at the time of their application.

(2) Some of the evidence on which Mr Fridman now seeks to rely would have been reasonably available to him at the time of his application; and

(3) At no stage of the application process did Mr Fridman make clear that he needed more time to gather relevant evidence (but rather, as I read the correspondence, pressed for urgent decisions to be issued and indeed threatened JR proceedings on various occasions).

54. While the factual evidence was admitted by consent, the expert evidence was admitted *de bene esse* on the basis that OFSI could address the Court on its relevance and admissibility in submissions.

Second Application dated 26 September 2023

55. More recently on 26 September 2023, Mr Fridman filed a further application to rely on a third witness statement of Mr Gherson ("Gherson 3") addressing the topic of Mr Fridman's need for a driver for the purposes of his safety and security. Gherson 3 also exhibited further factual evidence, in the form of a Reuters news report dated 14 September 2023 and the FCDO's updated designation for Mr Fridman.

56. Regrettably, however, that was not all. Gherson 3 in turn exhibited two further expert reports:

(1) The Expert Report of Professor Robert Service ("Service 1"). Prof. Service is a Professor of Russian History who gives his opinions on security threats to Mr Fridman.

(2) The Expert Report of Mr Jasper de Quincey Adams ("Adams 1"). Mr Adams is a retired military official who was provided with Professor Service's report and who similarly gives his opinions on Mr Fridman's security.

57. Again, OFSI did not object to the factual evidence being adduced (subject to relevance) and similarly agreed to the expert evidence being admitted *de bene esse*.

Discretion and the Court's approach to review under SAMLA

58. The lawfulness of a decision falls to be assessed by reference to the particular statutory regime. In this case, licensing applications involve assessments which have to give effect to sanctions policy objectives on a case-by-case basis. OFSI, as a part of HMT, has the institutional competence to determine licence applications according to the criteria in the Russia Regulations. This decision-making concerns fact-sensitive determinations based on an evaluation of the evidence provided by each applicant.

59. When an applicant applies for a licence, OFSI must first consider whether one of the derogations is satisfied as a threshold question. That will require an assessment by OFSI based on what an applicant has submitted. OFSI will need to decide whether the request falls within one of the statutory "purposes". However, I accept the submission made by Counsel for OFSI that even if that threshold is satisfied, HMT has a further embedded discretion to refuse the licence. That follows from the statutory language in Regulation 64(2): the Russia Regulations provide that HMT "may" issue a licence when "appropriate" for one of the specified purposes. This requires the exercise of classic

discretionary judgement. As explained in Mints v PJSC National Bank Trust [2023] EWCA Civ 1132 at [219]: "Regulation 64 enables the Treasury and thus OFSI to grant a licence on one of these grounds, but does not require it to do so". See also, by analogy, R (Great Yarmouth Port Company) v Marine Management Organisation & Anor [2014] EWHC 833 (Admin) [39]-[40]: "The statutory language is that the MMO "may" make an order, and in the ordinary way that means that the MMO has a discretionary power, not a duty"); and R (Hargrave) v Stroud DC [2003] 1 P & CR 1 (CA): "the word "may" gives the authority a discretion, even in a case where the condition precedent is fulfilled, not to embark on the statutory process". Parliament has used language which does not compel ("must" or "shall" grant a licence). Ultimately, I did not understand Leading Counsel for Mr Fridman to contest the proposition that there exists such a residual discretion. The discretion may however be narrower or wider, depending on which "purpose" is in issue. So, if a payment is requested for something which OFSI has assessed is a true "basic need" of a designated person, it may be difficult for the discretion to be rationally exercised to refuse a licence. By contrast, some of the purposes allow OFSI to enable payment of what are defined as a "Prior Obligation" or an "extraordinary expense". OFSI may assess that an obligation or expense has been established, but OFSI might lawfully exercise its discretion not to grant a licence.

60. This discretion is however not at large. Under established public law principles, it must be exercised consistently with the purposes of the primary legislation and the Russia Regulations. Accordingly, the exercise of such a residual discretion is subject to traditional rationality review, by reference to the overall purpose of the statutory regime. I accept the submission made on behalf of OFSI that where the effect of granting a licence would be to undermine the policy objectives of the sanctions regime, OFSI may exercise its discretion to refuse a licence.

61. As I have identified above, a substantial and wide-ranging volume of post-decision evidence has been put before the Court on behalf of Mr Fridman. On his behalf it is argued that the entire body of evidence as at the date of the hearing must be considered by the Court when determining the rationality of OFSI's decision making. I do not accept that submission. Under s. 38(4) of SAMLA, the Court is required to apply the principles of judicial review to an application to set aside a decision. This means that the rationality of OFSI's decisions fall to be assessed by reference to the material that was before the decision-maker at the time of decision.

62. In support of the submission that post-decision evidence can be taken into account, Leading Counsel for Mr Fridman, in her well-structured and focussed submissions, relied strongly upon the approach adopted in SSHD v GG [2016] EWHC 1193 (Admin). In that case the Court was considering the lawfulness of a control order imposed a decade prior to the hearing (and subsequently discharged some five years before the hearing) under the repealed Prevention of Terrorism Act 2005. The admission of post-decision evidence appears to have followed concessions or agreement of the parties. With respect, I do not consider the concession was correct in law or that it reflects the conventional judicial review position. The case is an outlier and it is not surprising that no other case was cited in support of the proposition that post-decision evidence is relevant in a public law rationality challenge. As I said during oral argument, I have some difficulties with the judge having admitted (by consent) the post-decision evidence in GG but then also to have observed (in the same paragraph) that he was applying a Wednesbury test to the SSHD's decision: see [20]. I do not follow how that test can be applied if the Court is to

take into account material which the SSHD never had before it, and never addressed. The way in which Wednesbury is classically applied is to subject the reasons given by a decision-maker to a rationality test. One asks, does the decision under challenge follow on a rational basis from the reasons given by the decision-maker? Those reasons however cannot be the product of a consideration of evidence never before that decision-maker.

63. I prefer the direct authority as to the correct approach in this specific statutory context (i.e. s.38 of SAMLA). I refer to the recent judgment in LLC Synesis v FCDO [2023] EWHC 541 (Admin) where Jay J explained:

> "73. … When it comes to the statutory threshold, the decision-maker must consider all the material or information known to him or ought to have been within his knowledge following reasonable inquiry…
>
> 81. It follows, in my judgment, that this Court cannot stand in the shoes of the Defendant when conducting this review exercise under section 38 of SAMLA. Instead, the Court's role is to examine whether the Defendant's decision was either based on no evidence or was irrational."

64. I was not persuaded by the argument on behalf of Mr Fridman that the post-decision and expert evidence can be relied on by reference to the scheme of Part 79, which makes specific provision for service of and adducing evidence (cf. CPR rr.79.6(3)(b), 79.12, 79.22). Those provisions do not alter basic judicial review principles which the primary legislation directs the Court to apply. Evidence is of course normally served in judicial review proceedings but that is in order to identify for the Court the target decision, the process which led to it, and the material before the decision-maker. The claimant does that to establish a public law error of the classic type. That may be misdirection in law, procedural unfairness or irrationality of the target decision. But all of these challenges seek to attack a target decision or the process culminating in the target decision. As a starting point, any claimant or defendant should be able to identify how the evidence before the court either undermines or supports a target decision. That would normally include material submitted by a claimant and documents internal to a defendant such as policies and submissions. However, by definition, something which was never before the defendant or considered by the defendant, cannot meet that basic requirement. See also *The Administrative Court Guide* (2023) at para. 23.3.2. I put to one side for a moment the Tameside duty (addressed below at [67]), but on any view a large proportion of the new evidence can on no sensible view be said to be relevant to that duty.

65. As I have noted above, proceedings under section 38 of SAMLA are to be conducted in accordance with judicial review principles, and should not be used as a vehicle to pursue a "rolling" application for a licence, with iterative updates and new information as the proceedings move towards a hearing. The relief sought under section 38(4) of SAMLA is to *set aside* the previous decision on judicial review grounds. It is therefore not an avenue for this Court to stand in the shoes of the decision-maker and decide the applications for different payments itself. *The Administrative Court Guide* (2023) at para. 7.11.4, cautions against "rolling" reviews with reference to case law. Aside from the procedural difficulties, the Court does not have the expertise in licensing decisions which OFSI possesses and will not have the benefit of being able to consider the application and all the evidence in the round.

66. I accept that post-decision evidence may be admitted in cases where the Court is required, as part of a pleaded case, to undertake an objective assessment of proportionality: Belfast City Council v Miss Behavin' Ltd [2007] 1 WLR 1420, 1433 at [87]-[89]. No such issue arises in this case on the pleadings I have allowed to go forward.

The Tameside duty and procedural fairness

67. In support of his applications to adduce the post-decision evidence including expert evidence, Mr Fridman argues that the evidence could have been reasonably available to OFSI if inquiries had been made. That submission misunderstands the ambit of the "Tameside" duty (Secretary of State for Education and Science v Tameside MB [1977] AC 1014 at 1065B). A public authority is not obliged to conduct investigations to identify all potentially relevant material, and a Court "should not intervene merely because it considers that further inquiries would have been sensible or desirable. It should intervene only if no reasonable authority could have been satisfied on the basis of the inquiries made that it possessed the information necessary for its decision": R (Balajigari) v Secretary of State for the Home Department [2019] 1 WLR 4647 (CA) at [70]. See also *De Smith's Judicial Review* (9th Edition) at paras. [6-040]-[6.042] which provides an excellent and pithy summary of the material principles governing the Tameside duty.

68. A new argument was made in oral submissions by Leading Counsel for Mr Fridman, which retreated somewhat from the application of the Tameside duty but relied upon the proposition that procedural fairness (objectively assessed) required OFSI to liaise with Mr Fridman's solicitors in a form of iterative process, identifying potential gaps in evidence and other bases upon which his applications for licences might be made. I reject that submission. Not only was it not pleaded but it is not consistent with the regulatory regime or OFSI's public guidance. No principle of common law fairness requires a public body in the position of OFSI to effectively become some form of adviser to applicants.

69. In considering the scope of any duty of inquiry or the common law requirement of procedural fairness in this case one has to focus upon the context in which the application process established by OFSI operates: see *De Smith* at para. [9-052]. The ultimate onus is clearly on any applicant to satisfy the relevant criteria. For example, the *General Guidance* statement that "*You must provide evidence to support an application and demonstrate that all criteria of the relevant licensing ground (where applicable) have been met. Incomplete applications will not be considered*" is a lawful and correct direction in the context of the Russian sanctions regime. OFSI is not required by any principle of English and Welsh public law (or anything in the scheme of the Russian Regulations) to fill holes in applications, to identify for applicants whether they might add some evidence, including expert evidence, or that they might put an application on another basis. Indeed, in the present case, where Mr Fridman has been represented throughout by expert legal advisers who, as the correspondence amply demonstrates, have put his case for licences comprehensively and robustly, the suggestion that Mr Fridman might need guidance from OFSI is unrealistic and rings rather hollow.

Expert evidence

70. The expert evidence is also post-decision material. CPR 35 is not disapplied by CPR 79. Under CPR Part 35, expert evidence should be restricted to that which is "reasonably required to resolve the proceedings" (CPR 35.1). This is particularly important in proceedings in the Administrative Court applying judicial review principles. In such

matters, permission ought to be sought well in advance of the hearing and indeed at the earliest possible opportunity, usually when the claim is filed: R (Law Society) v Lord Chancellor [2019] 1 WLR 1649 at [36] and [44]. The Administrative Court has repeatedly warned of the importance of procedural rigour in public law cases, including in respect of late applications to adduce expert evidence.

71. I do not consider there to be justification for the lateness of the applications. But in any event, in my judgment the evidence is not required to resolve the particular issues in dispute before me. The Court is in substance deciding whether OFSI acted rationally or deciding points of law including construction. The expert evidence does not help me on such matters. I refuse permission to adduce any of the expert evidence. The discussion in *The Administrative Court Guide* (2023) at para. 23.2.2 and the cases there cited illustrates why it will be rare for such evidence to be admitted in judicial review cases. I have however read and considered this evidence and, where appropriate, briefly addressed whether it assists Mr Fridman. I turn to the grounds.

VI. Ground 1: The Management Fee Application

72. This ground has two sub-limbs. It concerns Mr Fridman's request for a licence for the payment of a "monthly management fee" of £30,000 to AHL under the service contract between Mr Fridman and AHL dated 2 March 2022, and whether this falls within the Prior Obligation Derogation. The application stated that:

> "AHL will need to use this management fee to meet its core operating costs. This includes payments (to non-designated third parties) which AHL will need to make to enable AHL to provide the services to the DP that you have licensed in order to meet the DP's basic needs and to maintain his economic resources. We understand that these costs include employers' liability insurance and professional services."

OFSI's understanding was that the monthly management fee would be retained by AHL rather than paid to third parties for services provided. I understand that such third party payments have been separately licensed. This monthly management fee is akin to an overhead fee for AHL directly and that characterisation was not disputed on behalf of Mr Fridman.

Ground 1(1): Sch. 5, para. 8(b) of the Russia Regulations

73. The arguments under this limb raise a short point of construction. There is no issue that the fee is a Prior Obligation. However, OFSI submits that payment of the management fee cannot be licensed under the Prior Obligations Derogation because it would amount to making an indirect payment to another designated person. It argues that this falls foul of the restriction in Sch. 5, para. 8, of the Russia Regulations:

> "To enable, by the use of a designated person's frozen funds or economic resources, the satisfaction of an obligation of that person (whether arising under a contract, other agreement or otherwise), provided that—

(a) the obligation arose before the date on which the person became a designated person, and

(b) no payments are made to another designated person, whether directly or indirectly."

74. A number of reasons were persuasively advanced by Junior Counsel on behalf of Mr Fridman as to why this was wrong. Reliance was also placed on well-known authorities in relation to construction of statutes, and principles underlining the separate legal personality of a company. I will not set out all the submissions but will seek to summarise the overall argument. It was said that OFSI misdirected itself as to the proper scope of its discretion under para. 8. That is because the prohibition on making funds available to a designated person (Reg. 12(4), further defined in Reg. 7) is widely drafted to prohibit making funds directly or indirectly available to a designated person (DP), but also prohibits making funds available to a corporation which is "*owned or controlled directly or indirectly by a [DP]*". It was argued that the power to license in Schedule 5 is not subject to any equivalent such provision. The provision in Reg. 12(4) expressly applies only to the prohibition in Reg. 12(1). It was argued that this accords with the overall drafting of the Russia Regulations which has a careful scheme, determining the scope of each deeming and interpretation section. The language of Reg. 12 "*The reference in paragraph 12(1)…*" cannot be made to read "*the reference in paragraph 12(1) and that in paragraph 8 of schedule 5…*". Nor is there any necessary implication. On the contrary, it was submitted that interpreting the prohibitions expansively and the limitations on the scope of the licensing regime narrowly accords with the statutory purpose of the separate parts of the Regulations.

75. I do not accept this submission. In my judgment OFSI directed itself correctly in law and came to a lawful conclusion. OFSI dealt with its position at length in its pleadings and skeleton, but I prefer to approach the question in a more basic way, as follows. A licence cannot be granted under the Prior Obligations Derogation if the payment will be made "directly" or "indirectly" to another designated person. It is common ground that the Management Fee would not be paid "directly" to Ms Zairova, who is a designated person. She is however the owner of 100% of the shares in AHL, the intended recipient. The question is whether, within the scheme of the Russia Regulations (as opposed to general company law), OFSI could lawfully conclude that the payment would, if permitted, be paid to her "indirectly". That requires an assessment, given that there is no specific or directly applicable provision directing OFSI how to identify what counts as an "indirect" payment for the purposes of para. 8 of Schedule 5. When one considers the scheme as a whole, as described below, OFSI's conclusion that there would be an "indirect" payment was correct. This is for four reasons.

76. First, a common thread which runs through the Russia Regulations is that restrictions on designated persons are extended to persons who are owned or controlled "directly or indirectly" by the designated person. For example, Regulation 11(7) provides that "*funds or economic resources are to be treated as owned, held or controlled by a designated person if they are owned, held or controlled by a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person*". Similar expansions are established by Regulation 12(4) and 14(4). The phrase "directly or indirectly" is an important one in the Regulations. The concept of being owned or controlled "directly or indirectly" is defined in Regulation 7 of the Russia Regulations

2019 as set out above. This provision must be interpreted in the context of the Regulations as a whole. The formulation "*[making payments to] another designated person, whether directly or indirectly*" in para. 8(b) of Schedule 5 should be construed consistently with like phrases defined elsewhere in the Russia Regulations, i.e. by reference to Regulation 7 and Regulation 12(4) (which provides that "*making funds available to a designated person includes making them available to an entity owned or controlled, directly or indirectly (within the meaning of Regulation 7), by a designated person*").

77. Second, the meaning of "directly or indirectly" must be understood by reference to the purpose of the sanctions regime. The purpose of the sanctions regime established by the 2019 Regulations is to encourage Russia to cease its actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine. One of the ways in which the Russia Regulations achieve this purpose is by providing for the freezing of assets and funds of designated persons and thereby preventing those assets and funds being made available to them. In order to do this effectively, the Russia Regulations extend the prohibitions in relation to the assets and funds of a designated person to entities "*owned or controlled directly or indirectly*" by designated persons. If the Russia Regulations did not make such provision, designated persons could circumvent the effect of the sanctions by accessing funds through entities under their control. The purpose of the licensing regime in Schedule 5 is to mitigate the harsher effects of the sanctions regime, on designated person themselves (through for example the Basic Needs Derogation) and on non-designated third parties. In particular, the Prior Obligations Derogation is intended to mitigate the impact of the sanctions regime on non-designated third parties, by ensuring that such third parties to whom designated persons owed prior obligations can be paid. Designated persons, on the other hand, are not the intended beneficiaries of the Prior Obligations Derogation. Para. 8(b) ensures that designated persons do not rely on this derogation to unfreeze and move assets between themselves on the basis of prior obligations, and thus through collusion move funds out of the UK's jurisdiction. The purpose of the restriction would be undermined if, as on Mr Fridman's construction, payments were permitted to be made to an entity owned or controlled by a designated person.

78. Third, the concept of separate corporate personality, described as 'hornbook law' in the skeleton argument for Mr Fridman, does not assist in resolution of the question. In my judgment, the Russia Regulations create a bespoke system and disapply that principle in the context of this sanctions regime. Indeed, the prohibitions in Chapter 1 of Part 3 of the Russia Regulations clearly acknowledge, and are premised upon, the elision of legal personalities of companies and directors or shareholders who "own or control" the companies. As both the Court of Appeal (at [65]) and the High Court ([2023] EWHC 118 (Comm) at [216]) noted in Mints v PJSC National Bank Trust (above), "*ownership and control*" are "*key concepts*" within the UK sanctions regime. The regime expressly recognises the practical reality that without extending the prohibitions to companies which designated persons own or control, the regime would become largely ineffective.

79. Fourth, it would contravene the purposive and contextual construction of the provision if the explicit definition of the phrase "*directly or indirectly*" in the Russia Regulations was disregarded in favour of a definition of the phrase deriving from English company law, when there is no indication that this was Parliament's intent. The sanctions regime deliberately overrides the corporate veil to further important Parliamentary objectives.

80. Ground 1(1) fails.

Ground 1(2): Other alternative applicable derogations

81. Under the second limb of this ground, Mr Fridman contends that OFSI should have made further inquiries as to whether other derogations applied, namely the Routine Holding and Maintenance Derogation and the Basic Needs Derogation. I reject this submission. Mr Fridman was well aware of the evidential burden on him to prove that the monthly management fee was within the scope of a relevant derogation. He has been, at all times, represented by solicitors expert in this field, who submitted the licence applications, including extensive supporting documentation, and at all times corresponded with OFSI on his behalf. For instance, as set out in Mr Watts' evidence, Mr Fridman was required to submit relevant evidence of reasonableness in accordance with the guidance, for example through comparative quotes. At the time of the application, Mr Fridman simply asserted that the payments were reasonable, but his explanation and evidence for this has expanded since the decision was made.

82. Mr Fridman seeks to rely on fresh "expert" evidence in respect of this ground. I have already refused this application but will address the matter briefly. In particular, Mr Fridman relies upon the Expert Report of Mr Nimba. That report is based on Mr Nimba's visit to Athlone House on 19 June 2023, several months after the applications were determined. Mr Fridman relies on this evidence to seek to make good his application on the alternative footing that it is a reasonable fee under the Routine Holding and Maintenance Derogation. There are a number of problems with this. First, the evidence post-dates the date of the decision and therefore is of no relevance to these proceedings based on the correct approach under s. 38 of SAMLA. Secondly, Mr Nimba's evidence cannot be described as expert evidence necessary for the resolution of these proceedings. The question of "reasonableness" under Sch. 5, para. 4 of the Russia Regulations is not one that requires expert evidence to be resolved. *A fortiori*, the Court's assessment of whether OFSI's decision as to reasonableness was rational does not require expert evidence.

83. It was argued on behalf of Mr Fridman that (in respect of the Basic Needs Derogation), that it is "self-evident" that AHL's survival depends upon the fee. On the evidence before me (and that before OFSI) that contention cannot be made good. In my judgment, the existence of overheads does not necessarily mean that they are a basic need of a company. It is not self-evident why AHL – of which Ms Zairova is the sole director and shareholder and whose assets are frozen – should require that level of fee to cover its unspecified "overheads".

84. Ground 1(2) fails.

VII. Ground 2: The Ideaworks Application

85. This ground also has two limbs. It is said that this payment should have been licensed under the Basic Needs Derogation and/or the Prior Obligation Derogation.

Ground 2(1): The Basic Needs Derogation

86. Mr Fridman argues that the payment of the monthly Ideaworks fee of £1,850 is part of his "basic needs" and therefore licensable under the Basic Needs Derogation. He says that the payment is a utility payment, because Athlone House is a "unique property with unique needs for communication, IT, lighting, heating and security". On 14 June 2022,

OFSI informed Mr Fridman that he could submit further information to justify the Ideaworks fee as a basic need. The solicitors for Mr Fridman responded that "*Ideaworks are responsible for maintaining all communication, TV and audio equipment at Athlone House by virtue of a service agreement. This includes the maintenance of internal phonelines that allow security to keep in touch with the residents of Athlone House and to inform them of any potential emergencies or visitors. Payment of this service is therefore necessary for the maintenance of the property and the security of its occupants which amount to the basic needs of [Mr Fridman] and his dependent family members…*".

87. Although the application stated that the Ideaworks fee was, in part, related to security, Mr Fridman already has the benefit of a licence for several payments relating to security. As explained in Mr Watts' evidence, this includes: (i) a licence for the ongoing monthly payment of £1,974.43 for CCTV maintenance (licensed on 22 December 2022); and (ii) a licence for the ongoing monthly payment of £24,083, plus any legally required employer NICs and pension contributions, in relation to 7 security staff.

88. OFSI refused to license the monthly Ideaworks fee on the basis that: (i) the applicants did not provide information regarding which of the charges are for entertainment and which are for security; and (ii) the services provided by Ideaworks constituted a small part of Mr Fridman's security, with alternative methods of communication available which he could use and pay for out of the basic needs allowance.

89. In my judgment, on the basis of the information supplied to OFSI, and the fact that Mr Fridman already had existing security arrangements including 7 security staff, the Ideaworks decision was plainly lawful and rational. I was not persuaded by Mr Fridman's arguments, which I address below:

    (1) It was argued that any and all "utility payments" amount to basic needs. Read in context, the sanctions regime carves out narrow exceptions for "basic needs" and refers to "utilities" by way of illustration in that context. Security arrangements are not generally described as "utilities" and, in any event, para. 2(2) does not require the licensing of anything that can be classified as a "utility" without regard to the overarching limit of a "basic need". In each case, the fee must be explained and justified by reference to the concept of a "basic need", bearing in mind the overall punitive effect of the sanctions regime.

    (2) A complaint is made that the *General Guidance*, which states that a basic need is expenditure which is "*necessary to ensure that designated persons or financially dependent family members are not imperilled*", is an impermissible gloss on the statutory test. These are not perhaps the best words to use, but they are an accurate general description of what a "basic need" may be within the context of the Basic Needs Derogation.

    (3) It is said that the fact that OFSI previously authorised a one-off payment to Ideaworks to clear certain arrears renders OFSI's conclusion on the Ideaworks Application arbitrary. I understand that the payment, authorised by the letter dated 22 December 2022, was for services previously provided (i.e. as a Prior Obligation). I will return to this point at [93] in relation to Ground 2(2) below.

    (4) I reject the argument that OFSI was required to make further enquiries of Mr Fridman as to the necessity of the services provided by Ideaworks. As explained

above, the Tameside duty is to make reasonable and proportionate inquiries; and what is reasonable and proportionate must be considered in the particular context of the licensing regime, which, for pragmatic reasons, places the onus on the applicant to provide evidence of necessity and reasonableness. OFSI informed Mr Fridman that he could clarify the basis for the Ideaworks payments on 14 June 2022 and, based on the information Mr Fridman provided, found that the payments could not be considered a basic need. It was rationally entitled both to reach that conclusion and to conclude that it had sufficient information before it to do so. Even applying an objective procedural fairness standard, and having been taken by Counsel for OFSI through the correspondence, I do not consider OFSI acted in a procedurally unfair way.

90. For completeness, I will address the expert evidence of Ms Warren. Even though it is not admissible, I note that Ms Warren's evidence does not address OFSI's reasons as to why the Ideaworks services were not considered necessary for Mr Fridman's security, or consider the position by reference to the material which was before OFSI at the time of its decision. Instead, the key point which Ms Warren seeks to provide an opinion on is that the Ideaworks system is required to operate the lighting and heating in the property. This is a short factual point which (if correct) could and should have been made by Mr Fridman in the course of his application. Indeed, it is striking that this point was never made in any previous submission by Mr Fridman (which, instead, emphasised the "security" elements of the Ideaworks system). I remain puzzled as to why an expert report is required to demonstrate that the lights cannot be switched on in Athlone House without the Ideaworks system.

91. Ground 2(1) fails.

Ground 2(2): prior obligation

92. By Ground 2(2) Mr Fridman contends that it was unlawful and irrational for OFSI to refuse the Ideaworks Application as a Prior Obligation for the same reasons as contained in Ground 1 above. I will not repeat my reasons for rejecting that submission. Payments under this sanctions regime may not be made to entities where their sole director and 100% shareholder is a designated person. Ground 2(2) fails.

VIII. Ground 3: The Staff Costs Application

93. This licence application concerns authorisation in respect of wages payable to various non-security staff members. The application relied on the Routine Holding and Maintenance Derogation and it was said that paying the non-security staff (such as an estate director, six housekeeping assistants, driver and two handymen) was necessary for the maintenance of Athlone House (the "driver" aspect is no longer pursued because Mr Fridman has left the UK). The application was refused in the letter of 22 December 2022.

Ground 3(1) – refusal of staff costs as a prior obligation

94. This does not arise. OFSI does not dispute that payments required under contracts entered into *prior* to designation are Prior Obligations, such that the Prior Obligations Derogation can in principle cover the payment of accrued wages for non-security staff. In the letter of 22 December 2022, OFSI stated:

> "OFSI will not license the ongoing payments to employ the DP's non security staff (e.g. housekeeping assistants, handymen, private chef) including the DP's driver. However, OFSI in recognising the impact on rendered services by non-designated persons, has agreed to permit the payment for service arrears up to and including the point of decision [22 December 2022], as well as any necessary NICs, redundancy payments and pension contributions. OFSI will not license further work past this point".

95. Accordingly, the issue now between the parties is OFSI's refusal to permit ongoing payments under this derogation. That is addressed in respect of Ground 3(2) under which Mr Fridman argues that this refusal was irrational and unlawful.

Ground 3(2) – OFSI's reliance on residual discretion to refuse to license staff costs and wages under the Prior Obligations Derogation after 22 December 2022

97. OFSI says that it has refused to license ongoing payments on the basis that HMT has "residual discretion to refuse to grant a licence, even if the conditions for the grant of a licence are met". It refers to the use of the words "may" and "appropriate" in Regulation. 64(2) and argues that HMT "is not obliged to grant a licence just because an applicant can show that the payment would fall within one of the purposes in Part 1 of Schedule 5". OFSI's case is that it was open to it to license the payments of wage arrears to staff under the Prior Obligations Derogation until 22 December 2022, but to conclude that after that point, it would not be appropriate to continue to license wage payments.

98. The argument originally made on Mr Fridman's behalf was that Regulation 64(2) does not (and could not, consistently with public law principles) confer an open-ended discretion on HMT to issue or refuse a licence. As originally put in writing it was submitted by Mr Fridman that the word "may" must be read in conjunction with the word "only", their combined utility being to emphasise the mandatory nature of the "appropriate… for a [Schedule 5, Part 1] purpose" test which follows. It was also said that OFSI's contention (relying on the "appropriate" test) that it would "not necessarily [be] the case that payment of wages under employment contracts [would] be continually licensed under the prior obligations derogation", raises the spectre of a set of criteria by which such determinations fall to be made. It is said that no such criteria are disclosed in the *General Guidance*.

99. I have already determined (see [59] above), that HMT enjoys a residual discretion to refuse a licence even if a threshold condition is satisfied. I understand that was ultimately not in dispute. I accordingly turn to the way in which the discretion was exercised and whether that discloses any public law error of the type pleaded on behalf of Mr Fridman. As part of its duty of candour, OFSI referred to the internal licensing submission ("the Submission") seeking approval for the decisions recorded in the 22 December 2022 letter. That submission sets out how OFSI considered its residual discretion should be exercised in relation to the Staff Costs Application, in light of the purposes of the Russian sanctions regime and OFSI's internal *Basic Needs Framework*. As explained above, I consider it is open to Mr Fridman to argue on his existing pleaded case that the way in which the discretion was exercised was unlawful (including by reference to claimed irrationality in the Submission).

100. Both parties referred in some detail to the Submission in their arguments, and I will set out the material parts:

> "OFSI have considered the request for staff within the context of the policy aims of the Russian Sanctions Regime. As stated in our Guidance, the aim of the regime is to encourage Russia to cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty, or independence of Ukraine. The Russian Sanctions Effectiveness Review which sought to outline the Foreign Secretary's objectives in December 2022 further stated that "Designated Persons [should be] held to account for their actions directly or indirectly supporting the Russian war effort, and those actions are disrupted". This is also reflected specifically in the EST-approved Basic Needs Framework where it was stated that granting requests for non-security staff would be against the policy aims of the regime.
>
> As such, OFSI has considered each activity as to both whether it meets the grounds of the relevant derogation, and whether it is in line with the above policy statement. If in some cases, a derogation is seen to have been met (e.g. prior obligation) OFSI may still exercise its residual discretion to refuse licensing that activity where such a transaction would undermine the intent of the sanctions regime (above).
>
> …
>
> This position of holding DPs to account was reflected in the EST-approved Basic Needs Framework in May 2022 where it was stated that:
>
> "Staff (non-security). The licence applications received thus far have typically requested OFSI license payments to the large number of staff that oligarchs employ, such as cooks, cleaners, assistants. OFSI do not think this fits within the basic needs derogation. We also believe granting these requests would be against the policy aims… and lead to significant presentational risks. However, where existing contracts are in place and appropriate evidence is provided, OFSI will consider licensing such requests under the prior obligations derogation and in line with existing policy on this."
>
> OFSI therefore believes that, in line with the above statements, noting that while we may license staff payments, OFSI's position is that it should reject requests that would allow DPs to continue the lifestyle they enjoyed prior to sanctions through paying for staff such as drivers, housekeepers and personal chefs. Instead, we recommend OFSI license personal staff salaries only when there is a compelling reason e.g., to prevent imperilment, maintain the fundamental integrity of a frozen asset or recognising prior obligations (up to a certain period) to permit

> winding-down those obligations, whilst reminding DPs that they can use their basic needs allowance to hire staff they personally deem necessary. Furthermore, where appropriate, OFSI may license the activity up to and until the licensing decision, recognising the impact of designation on the staff themselves (who are not designated)."

101. The Submission then went through each requested payment to the various staff members, and considered whether each could be licensed under other derogations, in light of the principles quoted above. It concluded:

> "OFSI recommends not licensing any further payments to these staff, including their discretionary bonuses. OFSI however accepts that some of these staff, who themselves are not designated, may have incurred economic loss as a result of providing their services to [DP] after his [DP's] designation (even though this may be considered a breach of the UK Regulations). In recognising that these staff may be paid for the services already incurred, OFSI recommends licensing payment for these staff up to and including the point of decision (noting that OFSI does not license retrospectively), as well as any necessary contractual notice period, redundancy payments, and pension contributions, NICs, and other tax payments. OFSI believes that this will allow the DPs to "wind-down" their contracts and exit them in a managed way, ensuring that (a) both non-DPs receive funds owed, (b) Mikhail Fridman and his dependents can have a managed handover of knowledge and expertise from the staff and (c) OFSI's licensing remains in line with the intention of the sanctions regime. This is consistent with the licensing decision in Licence INT/2022/2297993 where OFSI permitted arrears and redundancy payments for personal staff."

102. In my judgment, OFSI acted rationally and within the bounds of its residual discretion in deciding that it would not be appropriate to permit ongoing payments for future services while authorising historic and incurred expenses. In my judgment, OFSI was reasonably entitled to conclude that it would be appropriate to enable Mr Fridman to make payments in respect of accrued rights to wages for work already rendered, while not permitting any further payments, except for redundancy payments, NICs and pension contributions, to be made to staff members for future work. This approach enabled the orderly winding down of the staff contracts. There was no contradiction or arbitrariness in allowing past payments but declining authority for future ongoing staff expenses. I also consider that the approach to "lifestyle" disclosed in the Submission and internal guidance to be a lawful policy basis on which OFSI can exercise the residual discretion.

103. On behalf of Mr Fridman it was argued that if the use of an undisclosed *Basic Needs Framework* was lawful then it has been unlawfully applied. It was submitted that OFSI was wrong to find that the services performed by the staff supported Mr Fridman's "lifestyle". Leading Counsel for Mr Fridman argued, on the contrary, the services are necessary for the proper maintenance of Athlone House. That is however a matter of factual assessment. On the evidence before me, the application which OFSI rejected

requested a licence for payments to numerous staff, including an estate director or manager, 6 housekeeping assistants, 2 handymen and one individual providing ad hoc services. It was rationally open to OFSI to find that those payments were not necessary to meet a "basic need" or for routine maintenance of Athlone House, but rather to enable Mr Fridman to continue enjoying the lifestyle he had prior to being designated.

104. The evidence which Mr Fridman now relies on to establish that the services were reasonably necessary for the maintenance of Athlone House could have been, but was not, placed before OFSI at the time of the decision.

105. Mr Fridman also argues that OFSI has wrongly imposed the Basic Needs Derogation onto the other derogations by refusing to permit ongoing payments. I do not accept this submission. The issue for the Court on this aspect of Ground 3 is the ambit of the residual discretion in respect of the Prior Obligations Derogation. It was in my judgment appropriate for that discretion to be exercised in a way that is compatible with the purpose of the other derogations (and the statutory scheme as a whole). It does not amount to an inappropriate elision of the different grounds for derogation.

106. Finally, on behalf of Mr Fridman it was argued that the *Basic Needs Framework* is directed at curbing the lifestyles of those who are "pro-Kremlin", while Mr Fridman is not, or is no longer, such a person. This amounts to a collateral challenge to the designation decision itself (the lawfulness of which is not the subject of the instant case), and this cannot inform *ex-post facto* OFSI's assessment under the *Basic Needs Framework*. Further at the time the decision under challenge was made he was stated to be pro-Kremlin.

107. In respect of Ground 3, Mr Fridman relies on the expert evidence of Professor Service and Mr Adams. For the reasons given above, neither of their reports provide evidence which is required for the determination of these claims, and I have refused to admit the reports under CPR 35. Even if that evidence were admitted, it does not change the analysis as to the proper application of the residual discretion. To give just one example, OFSI was entitled to form a view as to the level of security that had already been licensed (e.g. 7 security staff) in its assessment of what amounted to a "basic need".

108. Ground 3 fails.

IX. Conclusion

109. The claim is dismissed.