



Neutral Citation Number: [2024] EWHC 361 (Admin)

Case No: CO/1677/2023

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

In the matter of an application pursuant to section 38 of the
Sanctions and Anti-Money Laundering Act 2018

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 20 February 2024

Before:

MRS JUSTICE COCKERILL DBE

Between:

ANZHELIKA KHAN

Applicant

- and -

THE SECRETARY OF STATE FOR
FOREIGN, COMMONWEALTH AND
DEVELOPMENT AFFAIRS

Respondent

Clare Montgomery KC and Tim James-Matthews (instructed by Enyo Law LLP) for the
Applicants

David Blundell KC, Catherine Brown and Femi Adekoya (instructed by the Government
Legal Department) for the Respondent

Hearing dates: 23 January 2024

APPROVED JUDGMENT

Mrs Justice Cockerill:

INTRODUCTION

1. Ms Anzhelika Khan (“Ms Khan”) is a Russian born British citizen. She has lived in the UK since 2013 and became a citizen in 2019. She applies to set aside a decision of the Secretary of State for Foreign, Commonwealth and Development Affairs (“the Secretary of State”) to take no action (ie. to maintain) Ms Khan’s sanctions designation under the Russia (Sanctions) (EU Exit) Regulations 2019 (“the 2019 Regulations”) following a review of the original designation decision. Ms Khan's claim is brought pursuant to s 38(2) of the Sanctions and Anti-Money Laundering Act 2018 (“SAMLA”).
2. In essence the circumstances of her designation and her challenge to that designation are as follows.
3. Ms Khan’s primary role in life is as mother and caregiver to her children, of whom there are four: ranging in age from a married daughter with her own family, down to a son who is not yet in his teens. Secondly Ms Khan is the manager of various properties which she owns and is an art collector of some note. It is common ground that she (i) is not, and has never been, involved in political affairs (in Russia or elsewhere); (ii) has never provided material support to the Putin regime; and (iii) wields no personal economic influence capable of affecting the foreign policy of the Government of Russia.
4. Ms Khan is, however, the wife of Mr German Khan (“Mr Khan”). Mr Khan was born in Kyiv, Ukraine. He has over the years amassed a very substantial fortune, estimated in open source reporting as about US\$7.55 billion. A substantial part of that fortune derives from investments and businesses in Russia, such as the Alfa Group and Alfa Bank - Russia’s largest privately owned bank. At the time of Ms Khan's designation he was said to be on the Supervisory Board of the Alfa Group Consortium and the Board of Directors of ABH Holdings S.A., owner of Alfa-Bank (Russia), and Chairman of the Supervisory Board of A1 Investment Holding S.A., a company described by the Alfa Bank website as a “*leading investment company in Russia – an expert in resolving complex business cases and corporate disputes*”.
5. As such Mr Khan has a proximity to the Russian government and Mr Putin. Mr Khan remained primarily resident in Russia when Ms Khan and their children relocated to the UK. Mr Khan was designated under the UK sanctions regime on 15 March 2022. That designation has never been challenged.
6. Over the years Mr Khan has given Ms Khan many very substantial gifts, including his shares in four properties and financial gifts totalling some hundreds of millions of pounds. In early March 2022 – just before he was sanctioned - he gave Ms Khan the single largest gift to date (“the March Gift”): one which represents a significant proportion of the amounts given over the years.
7. Ms Khan was designated on 20 April 2022. The basis for this designation is that there are reasonable grounds for believing that Ms Khan is a person who is “associated with” an involved person, i.e. Mr Khan (this falls within Regulation 6(2)(d), described further

below). Ms Khan is regarded as being associated with Mr Khan both because she is married to him and because she has obtained “*a financial benefit or other material benefit*” from him. Ms Khan was subject to an asset freeze and a transport sanction.

8. On 22 November 2022, Ms Khan requested a Ministerial review of her designation under s.23(1)(b) SAMLA. On 28 February 2023, following a Ministerial review, her application was refused and her designation maintained.
9. On 21 March 2023, Ms Khan’s designation was varied to impose a trust services sanction.
10. By these proceedings, Ms Khan challenges the decision to maintain her designation on three grounds. She contends that:
 - 1) The Secretary of State failed to consider whether her designation was likely to further the statutory purpose of the 2019 Regulations, thereby acting ultra vires the 2019 Regulations, and/or failed to have regard to a mandatory relevant consideration, and/or acted unreasonably;
 - 2) The designation constitutes a disproportionate interference with her rights under Article 8 and Article 1, Protocol 1 (“A1P1”) of the European Convention on Human Rights (“ECHR”); and
 - 3) Regulation 6(2)(d) of the 2019 Regulations is incompatible with Article 8 and A1P1 ECHR.

THE UK SANCTIONS REGIME

11. The UK Sanctions regime operates under the umbrella of SAMLA. The background to the sanctions regime is described in some detail in the judgments of the Court of Appeal in *Mints v PJSC National Bank Trust and another* [2023] EWCA Civ 1132 and Garnham J in *Shvidler v Secretary of State for Foreign, Commonwealth, and Development Affairs* [2023] EWHC 2121 (Admin). The account below concerns only those portions of the regime which are necessary for the understanding of the judgment; those wishing for further detail can find them in the earlier judgments.
12. Section 1 of SAMLA provides for the power to make sanctions regulations:

“1 Power to make sanctions regulations

(1) An appropriate Minister may make sanctions regulations where that Minister considers that it is appropriate to make the regulations—[...]

(c) for a purpose within subsection (2).

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

(b) be in the interests of national security,

(c) be in the interests of international peace and security, [...]"

13. Section 11(2) of SAMLA originally provided as follows:

"The regulations must contain provision which prohibits the Minister from designating a person by name except where the Minister—

(a) has reasonable grounds to suspect that that person is an involved person (see subsection (3)), and

(b) considers that the designation of that person is appropriate, having regard to—

(i) the purpose of the regulations as stated under section 1(3), and

(ii) the likely significant effects of the designation on that person (as they appear to the Minister to be on the basis of the information that the Minister has)."

14. This provision was amended by the Economic Crime (Transparency and Enforcement) Act 2022 ("the 2022 Act"). Section 58(3) of the 2022 Act amends s. 11(2)(b) of the SAMLA to remove the requirement that regulations made under the SAMLA must contain a provision prohibiting the designation of an individual unless the Minister considers, *inter alia*, "*that the designation of that person is appropriate*", having regard to (i) the purposes of the regulations; and (ii) the likely significant effects of the designation on that person.

15. Section 23 of SAMLA provides that:

"23 Right to request variation or revocation of designation

(1) At any time while a relevant designation has effect, the designated person may—

(a) request the Minister to vary the designation, or

(b) request the Minister to revoke the designation. [...]

(3) On a request under this section the Minister must decide whether to vary or revoke the designation or to take no action with respect to it (but see section 22(3))."

16. Section 38 of SAMLA provides that:

"38 Court review of decisions

(1) This section applies to—

(a) any decision under section 23(3) or 24(2) (decision, following a request to or review by an appropriate Minister, on whether a designation of a person made under a designation power should be varied or revoked); [...]

- (2) The appropriate person may apply to the High Court or, in Scotland, the Court of Session, for the decision to be set aside.
 - (3) “The appropriate person” means—
 - (a) in relation to a decision within subsection (1)(a), the person named by the designation or, where the designation is of persons of a specified description, any person of that description; [...]
 - (4) In determining whether the decision should be set aside, the court must apply the principles applicable on an application for judicial review.
 - (5) If the court decides that a decision should be set aside it may make any such order, or give any such relief, as could in the absence of this section be made or given in proceedings for judicial review of the decision; but this is subject to section 39(1) to (4). [...]
17. The 2019 Regulations were made pursuant to SAMLA. They implement a system of sanctions designation for purposes connected with the Russian actions in relation to (and later invasion of) Ukraine. The 2019 Regulations are made under the power conferred by s 1(1)(c), read together with ss. 2(b) and (c).
18. Regulation 4 of the 2019 Regulations establishes the purposes of those regulations:

“Purposes

4. The regulations contained in this instrument that are made under section 1 of the Act are for the purposes of encouraging Russia to cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine.”
19. Pausing here, that purpose reflects entirely the 11 April 2019 Report which was laid before Parliament and which is quoted at [52] of *Shvidler*. That makes clear that sanctions do not stand alone but form one element of a broad strategy – a point which was made thus in *Shvidler* at [137]: “*the effectiveness of any sanctions regime depends, not on the effect of a particular measure directed at a single individual, but on the cumulative effect of all the measures imposed under that regime, together with other types of diplomatic pressure*”.
20. The Report also makes clear that sanctions are looking towards the achievement of long-term goals. They are, as I observed in argument, a long game.
21. Regulation 5 empowers the Minister to designate persons under the 2019 Regulations. The criteria by which that power may be exercised are set out in Regulation 6:

“Designation criteria

6.— (1) The Secretary of State may not designate a person under regulation 5 (power to designate persons) unless the Secretary of State—

(a) has reasonable grounds to suspect that that person is an involved person, and

(b) considers that the designation of that person is appropriate, having regard to—

(i) the purposes stated in regulation 4 (purposes), and

(ii) the likely significant effects of the designation on that person (as they appear to the Secretary of State to be on the basis of the information that the Secretary of State has).

(2) In this regulation, an “involved person” means a person who—

(a) is or has been involved in—

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

(ii) obtaining a benefit from or supporting the Government of Russia,

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

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

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

(6) In paragraph (2)(d), being “associated with” a person includes—

(a) obtaining a financial benefit or other material benefit from that person;

(b) being an immediate family member of that person. [...]

22. Section 61(3) of the 2022 Act provides that any “pre-commencement regulations” (which, for present purposes, includes the 2019 Regulations) are “*deemed to have always had effect, as if the regulations do not include any provision required to be included by*”, *inter alia*, s 11(2)(b) of SAMLA. Therefore, Regulation 6 is, pursuant to s 61(3), to be read without Regulation 6(1)(b), mirroring the amendment to SAMLA.
23. Where an individual is designated for the purposes of Regulations 11 to 15 (asset-freeze etc.) (Regulation 5(1)(a)), they become subject to a range of measures restricting their ability to deal in ‘funds’ and “economic resources”. In particular:

- 1) It is a criminal offence for a person to deal with funds or economic resources owned, held or controlled by a designated person, if that person knows, or has reasonable cause to suspect, that they are so dealing: Regulation 11(1);
 - 2) It is a criminal offence for a person to make funds or economic resources available directly or indirectly to a designated person, if that person knows, or has reasonable cause to suspect, that they are making the funds or economic resources so available: Regulations 12(1) and 14(1);
 - 3) It is a criminal offence for a person to make funds or economic resources available to any other person for the benefit of a designated person, if that person knows, or has reasonable cause to suspect, that they are making the funds or economic resources so available: Regulations 13(1) and 15(1);
 - 4) It is a criminal 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 above, or to enable or facilitate the contravention of any such prohibition: Regulation 19(1).
24. It is apparent from this that the effects of being designated are capable of being very significant. The effect (in the context of another sanctions regime) was noted in *Ahmed v HM Treasury* [2010] 2 AC 534 [37-9].

THE AUTHORITIES

25. As noted above, by virtue of s 38(4), on an application for review the court is required to apply “*the principles applicable on an application for judicial review*”.
26. In testing decisions which impact on fundamental human rights (such as asylum and nationality claims as well as sanctions) in the past a number of principles have been emphasised:
 - 1) A review adopts administrative law concepts of lawfulness, reasonableness, and procedural fairness including: “*whether the decision-maker has acted in a way in which no reasonable decision-maker could have acted, or whether he has taken into account some irrelevant matter or has disregarded something to which he should have given weight, or has erred on a point of law*”: *R (Begum) v Special Immigration Appeals Commission* [2021] AC 765;
 - 2) Where a decision is taken which affects fundamental rights, an “anxious scrutiny” standard applies. While derided by Carnwath LJ as an uninformative expression, the important point is that the invocation of that standard “*underlin[es] the very special human context in which such cases are brought*” and requires “*decisions to show by their reasoning that every factor which might tell in favour [of the person affected] has been properly taken into account*”: *R (YH) v Secretary of State for the Home Department* [2010] 4 All ER 448, [24]; see also *Begum* [2023] HRLR 6 at [46-49] where it was elided with using a “*more powerful microscope*”.

- 3) When considering whether a measure is compatible with the Convention, the Court must “*determine that matter objectively on the basis of its own assessment*”: *R (AAA (Syria)) v Secretary of State for the Home Department* [2013] 1 WLR 4433 [38-41] (Lord Reed and Lord Lloyd-Jones); *Begum* at [69] (Lord Reed).
27. As to the review of sanctions decisions under SAMLA there is some guidance in the existing cases. In *R (Youssef) v Secretary of State for Foreign, Commonwealth and Development Affairs* [2022] 1 WLR 2454 [68-102] Garnham J explained that the review mechanism in s 38 of SAMLA is the means by which the State guarantees the minimum threshold of access to a court required to render the scheme compatible with Articles 6 and 8 of the Convention.
28. Thus far the main scope for challenge to sanctions decisions has been seen to be via such challenges. In *Youssef* (at [61]) Garnham J concluded that it is implicit in the statutory scheme that “*the [designated] person has no other resort to the courts*” outside a s 38(1) review. A number of such challenges have now been brought. They include *Dalston Projects Ltd v The Secretary of State for Transport* [2023] EWHC 1885 (Admin) and the recent case of *Graham William Phillips v Secretary of State for Foreign, Commonwealth and Development Affairs* [2024] EWHC 32 (Admin). *LLC Synesis v Secretary of State for Foreign, Commonwealth and Development Affairs* [2023] EWHC 541 (Admin) was also a challenge concerning SAMLA and the 2019 Regulations but focussing on the grounds for designation and the meaning of “reasonable grounds to suspect”.
29. The most pertinent case at the point of writing is the judgment of Garnham J in *Shvidler v Secretary of State for Foreign, Commonwealth, and Development Affairs* [2023] EWHC 2121 (Admin). The appeal in that case was heard the week before the hearing in this case. The *Shvidler* case is one which has numerous factual parallels with the present case, as well as some notable distinctions; all of which were explored in argument. It therefore repays careful consideration.
30. Mr Shvidler was, like Ms Khan, a UK citizen, though a dual national - having been granted refugee status in the US in 1989 before gaining UK citizenship in 2004. Like Ms Khan he is very wealthy. Like Ms Khan he has children, including those who were in 2022 at prominent English private schools. Like Ms Khan he was sanctioned not because of his own actions or loyalties but rather because of his associations. His key association was a friendship and business involvement with Mr Roman Abramovich. His children had to be withdrawn from schools when the fees could not be paid after designation. Ms Khan has faced issues over fees and been unable to send her youngest son to the private school the others were attending. Both report considerable difficulties in dealing with OFSI leading to difficulties in paying bills relevant to properties here, and leading to making staff redundant.
31. There are then distinctions between Mr Shvidler and Ms Khan.
- 1) Mr Abramovich is of course a more prominent oligarch than Mr Khan. However Mr Abramovich is an oligarch not resident in Russia and who has not been seen to associate with Mr Putin since the invasion – but rather the reverse.

- 2) Mr Shvidler had an argument (albeit unsuccessful), that aside from association he had not received any financial benefit from Mr Abramovich; Ms Khan has no such argument, in that she has plainly received benefits from Mr Khan.
 - 3) Ms Khan has no business interests which are relevant (though she is plainly a knowledgeable collector of art and manages properties) and her association is financial only in the domestic sense; whereas Mr Shvidler is a businessman with valuable interests prior to designation in a sector of strategic significance (as noted by the terms of his designation).
 - 4) Mr Shvidler had options which Ms Khan did not. As a US citizen he relocated his family there. Ms Khan has remained in the UK, where she has suffered, as the facts explain, numerous significant difficulties. The evidence suggests that the effect on her and her family has been more extreme than that on Mr Shvidler and his family.
32. The main argument in *Shvidler* was simply focussed on reasons for designation (not contentious here) and then on proportionality¹. On proportionality Garnham J considered the scope of the Court's review carefully.
33. At [79] he noted that it was common ground that although there are circumstances in which a statutory scheme will of itself ensure that its application to particular individuals will satisfy the requirements of Convention proportionality without the consideration of the circumstances of an individual case, the 2019 Regulations do not fall within such a situation.
34. At [81] he noted that “*the objective of the statutory scheme of ‘encouraging Russia to cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine’ is of the greatest importance and in principle justifies the limitation on the fundamental rights of those effected*”. At [83] he also concluded that the scheme overall is “*plainly proportionate to the objective in view*”. Neither of these points was contentious before me, though issues are taken as to aspects of the scheme.
35. From [87], Garnham J gave detailed consideration to the degree of deference due to the Secretary of State in reviewing the proportionality analysis, citing *R (Lord Carlile of Berriew) v Secretary of State for the Home Department* [2015] AC 945 at §§30, 34; and *R (Al Rawi) v Secretary of State for Foreign and Commonwealth Affairs* [2008] QB 29 at [149]. The issue which he highlighted and which I also highlighted in oral argument was the issue created by the fact that some elements of the proportionality analysis are ones on which deference or “special weight” should be afforded to the executive's judgment, whereas others are not.
36. Garnham J concluded:
- “[91] Undoubtedly, this is a case where close scrutiny is necessary in order to adjudicate on a complaint that Convention rights have been infringed. And it is the structured analysis articulated in *Bank Mellat* that must be applied. But the court does not assume the role of primary decision maker on issues that turn on the exercise of judgment or the determination of policy, limiting itself instead to

¹ There was a secondary argument that the discretion had been exercised in a discriminatory manner.

asking whether the decision was one properly open to the executive. It will recognize the constitutional competence of the Secretary of State and his officials on matters of foreign affairs, attaching particular weight to the judgments of a primary decision-maker with special institutional competence who has considered all the relevant material.

[92] Applying that approach, the Court must consider closely the particular question that falls for decision so as to gauge the extent to which it should defer to the expertise of the Secretary of State and the extent to which it can itself form a judgment. In my view, the question as to how far the evidence relied upon by the Secretary of State supports the contention that the Claimant's designation could contribute to achieving that objective (Limb 2 of *Bank Mellat*) is not entirely a question of United Kingdom foreign policy on which the Court is unqualified to form a view, nor is it a subject on which the Court should necessarily be slow to interfere on grounds of institutional competence. The Secretary of State is the primary decision-maker under the statute but the Court is well placed to judge the reasonableness of his analysis. The other limbs of *Bank Mellat* require a similar approach.”

37. Garnham J also concluded at [96] that in considering proportionality, the Court is not limited to assessing the decision-maker’s process, thinking or assessment at the time the relevant decision was made.
38. Dealing with rational connection Garnham J concluded at [116] that:

“Furthermore, in my judgment, the likelihood of one oligarch influencing the behaviour of another is one of those areas of decision making where the Secretary of State is better able to assess the evidence than is the court. In this regard the discussion of the role of oligarchs in the Russian political economy in Mr Abramovich’s SDF is instructive.... I accept that the identification of levers of pressure by which to influence the Government of Russia’s decision- making, and the weight to be attached to different potential courses of action, is a matter of foreign policy in respect of which the Secretary of State has institutional expertise and is entitled to considerable respect.”
39. He rejected a suggestion that any useful disincentive there might be is provided by the designation rules themselves, independently of the individual designation. Concluding that “*the practical example of the effect of sanctions on the Claimant may well discourage others from involving themselves in businesses supportive of the Russian state.*” Considering this and other factors he concluded that there was a rational connection.
40. As for less intrusive measures he concluded at [131] that this as an area where the Courts have to defer to the judgment of the Secretary of State and that that response was not self-evidently irrational or outside the range of reasonable responses.

41. Proceeding to the fair balance element Garnham J recognised the severe effects of designation on Mr Shvidler and his family but stated:

“In my view, it cannot properly be said that the Secretary of State has failed to strike a fair balance between the rights of Mr Shvidler and his family and the interests of the community.”

THE FACTS

42. Ms Khan was born on 23 June 1971 in Almaty, then part of the USSR, now part of Kazakhstan. She studied at university in Kazakhstan moving to Moscow in 1991.
43. Ms Khan met Mr Khan in August 1992. They married in December 1994 and have four children together, with the three youngest being British citizens ordinarily resident in the UK. Two of the children remain dependents.
44. Ms Khan moved from Russia to the UK in 2013 and has lived in London since then. She became a British citizen on 29 October 2019 and spends most of her time in the UK. She previously travelled to Moscow around twice per year, for one week at a time.
45. Ms Khan stopped working when her first child was born in 1995 and has not been employed since. She describes herself as having primary responsibility for the care and supervision of the couple’s children, management of the family home in London, and managing her other properties. She is also a noted art collector, with a collection which demonstrates her expertise. She has limited economic and business activities in Russia.
46. Ms Khan describes herself as financially autonomous. Having said that, the reality is that the main source of her wealth is through personal gifts from Mr Khan throughout their marriage. As noted in the introduction Mr Khan has given her many significant gifts – valuable properties here and abroad, and cash gifts totalling some hundreds of millions of pounds over the years. Some of these were to cover the running of the household and properties. Some were to cover specific items, such as purchases of valuable artworks. The largest and most recent gift was the March Gift, shortly before Mr Khan was designated and subject to an asset freeze - and with the risk of that event being the motive force. Some of these gifts were made unprompted by Mr Khan, others at Ms Khan’s request.
47. Ms Khan states that she and Mr Khan “lead independent lives”. She explained that they do not possess joint bank accounts, nor do they access or otherwise use each other’s bank accounts. They spend a significant amount of time apart and have different social circles. Ms Khan says that they have been apart far more than most married couples to the extent that they have led largely separate lives for some years; but they remain together, enjoy spending time together and plainly have much affection for each other. Ms Khan has gone to considerable trouble since her designation to fly to Russia to visit her husband when he was unwell and in hospital. They agree that they and the children are one family.

Circumstances of designation

48. On 10 February 2022, Russia invaded Ukraine.

49. It is ironic given the nature of this claim that the Khan family had many friends and acquaintances in Ukraine and had funded an orphanage in Irpin. After the Russian invasion and before her own designation Ms Khan and her adult daughter both welcomed Ukrainian refugees into their houses.
50. As already noted, Mr Khan was designated in March 2022.
51. The circumstances of Ms Khan's designation were as follows:
- 1) At 17:29 on 20 April 2022, the “Sanctions Taskforce” submitted a decision memorandum to a Minister of State in the Foreign, Commonwealth and Development Office (“FCDO”) proposing the designation of seven individuals pursuant to the 2019 Regulations, including Ms Khan;
 - 2) At 18:11 on 20 April 2022, 42 minutes later, the Assistant Private Secretary to the Minister responded to state that the Minister “*reviewed and agreed with the recommendation to designate all the listed individuals*”;
 - 3) At 08:20 on 21 April 2022, the Sanctions Taskforce emailed the relevant decision-maker, a FCDO official acting as the Secretary of State under the Carltona principle, the Sanctions Designation Form (“the 2022 SDF”) and the Sanctions Designation Form Evidence Pack (“SDFE”). These documents are 13 and 43 pages respectively. The SDF provides further information as to the basis of Ms Khan’s designation, with the SDFE containing supporting evidence;
 - 4) At 08:23 on 21 April 2022, three minutes later, the relevant decision-making FCDO official stated that they had “*reviewed the attached spreadsheet, Sanctions Designation Forms and Sanctions Designation Forms (Evidence)*” and “*decided that the designations satisfy the applicable legal tests*”.
52. On 21 April 2022, Ms Khan was designated by the Secretary of State. The Statement of Reasons explains that:
- “There are reasonable grounds to suspect that Anzhelika KHAN is associated with German Borisovich KHAN. Anzhelika KHAN is the wife of German Borisovich KHAN.
- German Borisovich KHAN, hereafter KHAN, is a prominent Russian businessman. KHAN is obtaining a benefit from and/or supporting the Government of Russia through his positions on the Supervisory Board of the Alfa Group Consortium and the Board of Directors of ABH Holdings S.A., owner of Russia’s largest privately owned bank ‘Alfa-Bank (Russia)’, and Chairman of the Supervisory Board of A1 Investment Holding S. A., entities which are carrying on business in sectors of strategic significance to the Government of Russia. KHAN is also a close associate of Vladimir Putin who has been involved in destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine.”
53. The SDF is the main decision-making document to which I was referred. It is in table format divided into sections. It explains the proposed subject for designation and the reasons for designation proposed to be given. It sets out which of the sanctions

measures are proposed for that person. It has a section dealing with designation criteria and the evidence supporting the case that the criteria are engaged. There is then a section dealing specifically with “ECHR compatibility/proportionality” which requires the person filling out the form to consider whether the designation proposed is compatible with Convention rights – particularly by reference to family life/private life and property rights.

54. On 20 May 2022, the FCDO provided W Legal, the firm of solicitors acting on Ms Khan’s behalf at that time, with a copy of the SDF and SDFE in relation to her designation.
55. On 6 July 2022, W Legal informed the FCDO that Enyo Law was instructed in connection with any request for a ministerial review or challenge to the designation. On 18 July 2022, the FCDO consented to W Legal’s request to share the SDF and SDFE with Enyo Law.
56. On 22 November 2022, Ms Khan requested the revocation of her designation by way of Ministerial review under s.23(1)(b) SAMLA.
57. According to Mr David Reed, the Director of the Sanctions Directorate in the FCDO, an administrative review was initiated sometime after receipt of Ms Khan’s request. This involved officials from the FCDO’s Sanctions Directorate, Eastern Europe and Central Asia Directorate, and Legal Directorate, who reviewed the evidence provided by Ms Khan and the FCDO’s evidence. An Administrative Review Form (“ARF”) was prepared, which sets out the details of the application, the grounds on which Ms Khan requested revocation of her designation, the FCDO’s responses to her arguments, and officials’ recommendations on the FCDO response to the request.
58. On 10 January 2023, having failed to receive a response to her request, Ms Khan sent a Letter Before Claim to the FCDO alleging an unlawful failure to determine her review request “*as soon as reasonably practicable*”.
59. On 24 January 2023, the Government Legal Department responded to Ms Khan’s Letter Before Claim, indicating that a response would be received to her delisting request by 29 February 2023.
60. The circumstances surrounding the decision to maintain were as follows:
 - 1) On 21 February 2023, a “case closing meeting” was held involving the relevant FCDO officials, where it was agreed that Ms Khan’s designation would be maintained. The SDF and SDFE were updated to reflect the additional evidence and to address the arguments made by Ms Khan;
 - 2) On 23 February 2023, a submission was sent to a Minister in the FCDO recommending that the designation be varied;
 - 3) On 27 February 2023, the Minister endorsed the recommendations;
 - 4) On 28 February 2023, a further submission was sent to the Minister clarifying the application of transport sanctions to Ms Khan, which the Minister also endorsed;

- 5) At 14:02 on 28 February 2023, the case was presented to a FCDO official for final decision on behalf of the Secretary of State. The relevant email attached Ms Khan's Sanctions Review Request Form, the ARF, the updated SDF ("the 2023 SDF"), and the updated SDFE. The updated SDF reflects a consideration in particular of the personal effects on Ms Khan and her family;
- 6) At 14:25 on 28 February 2023, 23 minutes later, the official took the final decision maintaining Ms Khan's designation.
61. On 28 February 2023, the outcome of the Ministerial review was communicated to Enyo Law.
62. On 16 March 2023 there was a report that Mr Khan had attended a meeting at the Kremlin hosted by Mr Putin. In that meeting Mr Khan and other attendees (many of them designated by the UK sanctions regime) were urged to invest assets in Russia's economy to mitigate the effect of Western sanctions.
63. On 21 March 2023, Ms Khan's designation was varied to impose a trust services sanction, and Ms Khan was notified of this change by the FCDO on 23 March 2023.
64. On 9 May 2023, Ms Khan issued a claim in this Court requesting a review of her designation under s.38(2) SAML A.

Consequences of designation

65. It is not disputed by the Secretary of State that Ms Khan's designation has caused significant difficulty and disruption to Ms Khan's life and that of her children.
66. In particular, Ms Khan and some of her children have suffered and currently do suffer serious physical and/or mental health issues necessitating medical treatment. Some of the issues affecting her children are a consequence of her designation. Ms Khan's designation has also resulted in the cancellation of private health insurance and delays in receiving medical care. Ms Khan has, since her designation, received medical care from the NHS. She has also successfully applied for Office of Financial Sanctions Implementation ("OFSI") licences to pay for a child's private medical care.
67. Ms Khan's youngest child's schooling has also been affected. His application to study at a well known private senior school was paused. While OFSI initially granted licences to pay for his existing private school fees, it decided that no further payments would be licensed after July 2023, with the result that he had to move schools and into the state system.
68. Aside from these key issues there has been a portfolio of other negative effects. Points highlighted in argument included the distress of having to make long-standing staff redundant, and points in time when, despite the ability to seek licences from OFSI, Ms Khan has been left with so little money that she has been unable to do the grocery shopping to feed her family. There can be no doubt at all that the effects on Ms Khan and her children have been significant and grave.

THE ISSUES AND SUBMISSIONS

Ms Khan's Arguments

69. Unsurprisingly Ms Khan advances similar proportionality arguments to those advanced by Mr Shvidler. However she also runs three different arguments. The first is her first ground: that the Secretary of State failed to consider whether her individual designation (as opposed to designations in general) would (or as Ms Montgomery KC put it, was likely to) further the statutory purpose of encouraging Russia to cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine.
70. Ms Khan submits that this failure meant that the Secretary of State failed to comply with the *Padfield* principle that his statutory discretion must be exercised so as to promote the policy and objects of the statute by which the discretion is conferred. It also follows that the Secretary of State failed to have regard to a mandatory consideration. On Ms Khan's view, taking her personal circumstances into account renders the decision to designate her unreasonable.
71. The second additional argument is one taken at the first stage of the proportionality argument. Ms Khan argues that the Secretary of State's discretion to designate involved persons under the 2019 Regulations is so broad and lacking in guidance as to not constitute a lawful discretion at all. Once the Secretary of State "*has reasonable grounds to suspect that [a] person is an involved person*", whether a given person will be designated is entirely unforeseeable and possibly arbitrary. She submits that the safeguards contained in ss. 23 and 38 SAML A are inadequate.
72. The third additional argument is that that Regulation 6(2)(d) is itself incapable of being operated in a manner compatible with Article 8 and A1P1 ECHR due to its excessively broad scope and inherent arbitrariness. The term "associated with" is used in the widest possible sense. In particular, designation on the grounds of being an "immediate family member" is incapable of logical operation because it has no rational connection to the statutory purpose and a person cannot do anything to change their status as an immediate family member. There is no indication in the statute or otherwise as to which immediate family members are to be or likely to be designated. This argument evidently has substantial overlap with the points made above about the broad discretion under the 2019 Regulations.
73. When it comes to the proportionality argument. Ms Khan's case is that her position is different to that of Mr Shvidler with the consequence that the interference with her rights under Article 8 and A1P1 ECHR as a result of her designation is disproportionate:
- 1) It is said that, given Ms Khan's personal circumstances, in particular her lack of influence on the Russian government, there is no rational connection between her designation and furthering the statutory purpose. The methods by which the Secretary of State suggests she might indirectly put pressure on the Russian government are unproved and implausible;
 - 2) In the round, Ms Khan submits that the Secretary of State failed to consider the severe consequences of designation for her and her family which, if properly taken

into account on the “fair balance” test, necessarily leads to the conclusion that her designation is disproportionate. This is because the public interest in her designation is particularly weak, the interests of her children have been significantly harmed, and the purported mitigation of adverse consequences through the OFSI licensing regime is more apparent than real.

The Secretary of State’s Arguments

74. Mr Blundell KC pointed out that Parliament has endorsed a policy of rendering liable to sanction those who are associated with involved persons, and that it is clear that targeting associates of involved persons is part of the UK’s sanctions strategy designed to apply pressure to the Russian government.
75. Insofar as the inadequacy of the OFSI licensing regime was relied upon to demonstrate the severe adverse consequences of Ms Khan’s designation upon her and her family, the Secretary of State argued that in exercising his discretion to designate, he was entitled to assume that the regime was working properly. As provided by Regulation 64 of the 2019 Regulations, the licensing regime falls under the purview of the Treasury. As such, any challenge to that regime should, it is said, properly be brought against the Treasury and not in these proceedings.
76. The Secretary of State argued that both the 2022 and 2023 SDFs show that the Secretary of State specifically considered whether the statutory purpose would be furthered by designating Ms Khan and concluded that it did. Since this is a paradigm matter of foreign policy, the Secretary of State’s judgment is entitled to great respect and the court should be very slow to interfere.
77. On proportionality, the Secretary of State contended that given the accepted connection there is plainly a rational connection between sanctioning Ms Khan and furthering the statutory objective, particularly through Ms Khan exercising influence over Mr Khan, who in turn could put pressure on Mr Putin. As to fair balance given the importance of the objective and the availability of mitigations in the form of OFI licences and court challenge there was no real scope to conclude the balance was not fair.
78. On the prescribed by law aspect and the third ground, both of which took aim at the Regulations he pointed out the high hurdle facing any challenge to policy and that there is no challenge to the lawfulness of SAMLA itself. In circumstances where the 2019 Regulations closely mirror the wording in SAMLA (including the term “associated with”) it was submitted that a policy challenge was doomed to fail.
79. In considering the various grounds of challenge, I will take first the arguments which fall outside the "standard" proportionality challenge.

GROUND 1: FAILURE TO CONSIDER MS KHAN’S INDIVIDUAL POSITION

80. Ground 1 contends that the Secretary of State failed to consider whether the individual designation of Ms Khan was likely to further the statutory purpose of (*inter alia*) dissuading the Government of Russia from destabilising Ukraine and in so doing, the Secretary of State: (i) acted in a manner which was *ultra vires* the 2019 Regulations (on

the basis of the *Padfield* principle) and/or (ii) failed to have regard to a mandatory relevant consideration; and/or (iii) acted unreasonably.

81. It is common ground that in taking a designation decision, the Secretary of State was required to comply with the so-called “*Padfield* principle”: that a statutory discretion must be exercised so as to promote the policy and objects of the statute by which the discretion is conferred: *Padfield v Minister of Agriculture, Fisheries & Food* [1968] AC 997, 1030 (Lord Reid).
82. It is also common ground that in taking a designation decision, the Secretary of State was required to have regard to all mandatory relevant considerations. Those include: (1) matters expressly or impliedly prescribed by statute as a mandatory relevant consideration; (2) matters which are a mandatory relevant consideration by reason that they are “so obviously material” to the decision at issue (see, e.g., *R (Friends of the Earth Ltd) v Heathrow Airport Limited* [2021] 2 All ER 967 at [119] (Lord Hodge and Lord Sales); and (3) matters the relevance of which is within the evaluative judgment of the decision-maker, but where (on the facts of a given case) it was irrational / unreasonable for the decision-maker to fail to have regard to them.
83. The question is how these principles interrelate with Regulation 5 of the 2019 Regulations, which confers a discretion for the Secretary of State to designate an individual, where the designation criteria are satisfied and the purpose for which that statutory discretion is exercised is that set out in Regulation 4 of the 2019 Regulation: “*encouraging Russia to cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine*”.
84. Pausing here, there is an apparent threshold difficulty for Ms Khan's argument which was at times couched in terms of it being “*incumbent on the Secretary of State to consider whether it was appropriate*” to designate Ms Khan. That is because when one looks at the wording of the Regulation, as outlined above it has actually explicitly moved away from a requirement of a consideration of “appropriateness”. The amendment effected by s 61(3) of the 2022 Act removed the requirement that the Secretary of State must consider designation to be “appropriate”. The problem for Ms Khan is that viewed through this prism it becomes clear that the nature of the argument is effectively to say that there needs to be (aside from and in addition to a proportionality assessment) an unspecified individualised consideration of whether to designate a particular person, by reference to something different to proportionality and which it is most natural to designate appropriateness. This does not shut off the possibility of her argument being correct – but it highlights the difficulty of definition which lies within it.
85. The other manifestation of the argument was by reference to the “likelihood” wording which was used in the decision². In essence it was said that if the Secretary of State had considered Ms Khan's case in any individualised way in terms of what sanctioning her was likely to contribute to the overall aim, no reasonable Secretary of State could have concluded that it was appropriate to sanction Ms Khan.
86. So (even ignoring the question of proportionality) the Secretary of State is said to have erred by not considering in a detailed fashion such questions as the likely efficacy of

² “The designation of Anzhelika KHAN is likely to contribute to achieving the purposes of the sanctions regime ...”

any designation in circumstances where:

- 1) Ms Khan has never engaged in any conduct which has the effect of destabilising Ukraine, or of undermining or threatening the territorial integrity, sovereignty, or independence of Ukraine;
 - 2) Ms Khan is not in a position, whether directly or indirectly, to influence the policy of the Government of Russia, nor to influence the conflict in Ukraine. Ms Khan is not an individual who wields political power or influence. In short, applying “pressure” to Ms Khan cannot rationally be expected to result in consequent “pressure” being brought to bear upon the Government of Russia;
 - 3) Ms Khan has limited personal connections to Russia, and only limited economic and business activities in Russia. Ms Khan is a British citizen, who spends the overwhelming majority of her time in the United Kingdom;
 - 4) Ms Khan is only capable of being sanctioned because of her association with Mr Khan, against whom the sanctions case is said to be itself weak and based on a rather speculative case as to influence;
 - 5) A case for applying “pressure” via Ms Khan via Mr Khan upon the Government of Russia, is defective where Ms Khan and Mr Khan lead relatively independent lives. Ms Khan can hardly be expected to exert influence over the political and business decision-making of her husband;
 - 6) There is no basis to suggest that designation of Ms Khan would be likely to financially impact upon Mr Khan.
87. In short, it is said that applying “pressure” to Ms Khan cannot rationally be expected to result in consequent “pressure” being brought to bear upon the Government of Russia. It is said to be simply inconceivable that the designation of Ms Khan, an individual wholly remote from Russian politics, the Russian government, and Russian foreign policy (and the conflict in Ukraine), sends any message whatsoever to the Government of Russia and/or the international community or incentivises the Government of Russia to change its behaviour. It is suggested that the absence of nuanced consideration of such matters is evident from the timeline of the decision-making, as such a careful analysis could not have been performed in the time during which the decision was being actively considered.
88. In essence I conclude that this approach is incorrect. This is an argument which involves recasting the exercise mandated by the statute in the light of *Padfield*.
89. True it is that in light of the *Padfield* principle, the discretion conferred upon the Secretary of State by Regulation 5 of the 2019 Regulations may only be exercised where to do so furthers the purposes of “*encouraging Russia to cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine*”; and consequently it is a mandatory relevant consideration for the Secretary of State to consider whether the exercise of the Regulation 5 discretion furthers the purposes of “*encouraging Russia to cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine*”.

90. But furthering the purpose of “*encouraging Russia to cease actions destabilising ...*” is not by any means the same as “*advancing or being likely to advance those particular purposes*” (the characterisation which Ms Khan seeks to put on it). It is a fact-sensitive exercise and to that extent individual, but it is not a granular evaluation of likelihood requiring nuanced evaluation of the kinds of facts sought to be brought into play here.
91. The function of the Regulations is to provide a framework for the statutory purpose. With that purpose in mind designation criteria are identified. Once someone falls within the designation criteria there is a proper basis for designating them, and the *Padfield* criterion is *prima facie* satisfied. That is of course not quite the end of the matter. It is effectively subject to that primary indication of purpose-serving being negated by other material. So a person may fall within the association criteria, but they may still be inapt to achieve the purpose. Designation of a family member after a well-established family row which means they have not spoken for 20 years would probably not be a designation in line with statutory objectives.
92. But in this case it is accepted that the Secretary of State has reasonable grounds to believe that Ms Khan is an “involved person” and that she therefore satisfies the designation criteria in the 2019 Regulations. There is no evidence which makes her inapt to serve the purpose. *Padfield* does not say anything about individualised consideration, it speaks only to purpose. As indicated above, the purpose and the means whereby that purpose is to be achieved (including by designation of associated individuals) has been set out by statute.
93. The essence of the question sought to be raised is one which is about the relationship between the individual and the aim. So for example Ms Khan says that the first point to be considered is whether the Secretary of State did conduct any individual consideration as to whether the designation of Ms Khan would, or “*was likely to*”, advance the purposes set out in Regulation 4 of the 2019 Regulations, viz. “*encouraging Russia to cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine*”? Ms Khan says he did not and that on the basis of the contemporaneous materials (as opposed to Mr Reed’s later explanations, which were contended not to be admissible for the purposes of this question) the question was approached generically. But this effectively assumes an answer to the main question – that the link between the individual and the likelihood needs to be a close one requiring (as Ms Khan submits) a nuanced inquiry which goes beyond the aims of message sending, incentivizing etc.
94. The argument can only work if the statutory test is not considered. Here it is perfectly clear that the statutory purpose question was asked by reference to the statutory criteria: in the first decision one sees a stage by stage consideration of Ms Khan’s position, Mr Khan’s position and the relation between the two which leads to a (uncontentious) conclusion that Ms Khan meets the definition of an “involved person”. There is then, in the ECHR section of the form, a consideration of the contribution to the statutory purpose. Reasons are given.
95. Those reasons cannot be said to be irrational or even unsound. It is perfectly comprehensible that Ms Khan’s designation links to, and is capable of serving the statutory purpose in the ways identified, namely by:

- 1) Sending a signal to Ms Khan and via her to the Government of Russia and the international community (and thus logically to others in her position (i.e. persons who are associated with involved persons)) that the UK does not accept acts which destabilise the Ukraine or undermine or threaten the territorial integrity, sovereignty and independence of Ukraine;
 - 2) Incentivising (indirectly) via undermining the operation of the entities carrying on business in a sector of strategic significance to the Government of Russia which Mr Khan owns and those in which he holds positions, the Government of Russia to change its behaviour, and to cease those such acts in connection with Ukraine;
 - 3) Signalling the UK's support for the full implementation of Russia's international obligations and commitments, that there are negative consequences to associating oneself with (and to that extent legitimising the conduct of) persons involved in obtaining a benefit or supporting the Government of Russia;
 - 4) Constraining Mr Khan's ability to act - for example in relation to transporting assets.
96. Stated thus and without the logical corollaries which only find real expression in Mr Reed's evidence, they may not be the strongest reasons in the world but it cannot be said (given the connection to Mr Khan made earlier in the document, the plain fact of involvement within the meaning of the regulations and the fact that Mr Khan's designation has never been challenged) that they do not show the necessary consideration being made to whether the *prima facie* position indicated by the satisfaction of the statutory criteria aligns with the facts. The same can be seen in the updated decision and the Administrative Review which closely consider whether Ms Khan's assets demonstrate a continuing association with Mr Khan so as to make sure that the designation criteria are properly engaged and aligned with reality.
97. Ms Khan engages in some detail with the distance between herself and the Putin regime. But even taken at face value those points only go so far:
- 1) Ms Khan is the wife of Mr Khan and she accepts that she is plainly "associated with" him under the 2019 Regulations.
 - 2) Ms Khan accepts that she is the recipient of "significant gifts" from Mr Khan accepting for example that in early March 2022, shortly before Mr Khan was sanctioned, he gave Ms Khan the hugely valuable March Gift;
 - 3) Mr Khan is at least to some extent an associate of President Putin;
 - 4) Mr Khan is also in significant positions within entities which are carrying on business in sectors of strategic significance to the Government of Russia;
 - 5) Mr Khan was designated on 15 March 2022. That designation has never been challenged. While he may not be the closest of Putin associates, there is no basis to suggest that the case for the designation of Mr Khan is weak.
98. The argument put thus is about whether sanctioning Ms Khan, individually, can move the dial on the effectiveness of sanctions. But that argument is one which effectively

runs contrary to the entire scheme of the sanctions regime which relies on indirect/levers of pressure, not individual efficacy. As Garnham J put it in *Shvidler*:

“effectiveness of any sanctions regime depends, not on the effect of a particular measures at a single individual, but on the cumulative effect of all the measures imposed under that regime, together with other types of diplomatic pressure”

A similar point was made by Sir Ross Cranston in *Dalston Projects* at [86], concluding, as I do, that the Secretary of State need not demonstrate the efficacy of each individual designation.

99. The argument therefore really goes back to a view of “likely” which is not justified on the authorities. The *Padfield* principle is satisfied. Beyond that there still is a framework for the consideration of the individual's position. It is the proportionality test. There is no preliminary or more rigorous requirement.
100. On that basis the argument as to timing (the speed of the decision) also falls to the ground – the decision documents are prepared to summarise the criteria and proportionality evidence; as such they can be reviewed perfectly properly in the timeline which is evident in this case.
101. I note also that Ms Khan's first argument also has a practical problem: as is apparent from the foregoing points of detail it is an argument which elides into the rational connection and fair balance elements of the proportionality assessment. It is indeed hard to see how any such requirement can be kept distinct from it. That reinforces the conclusion which I have already reached that this argument cannot succeed.
102. Accordingly Ground 1 is dismissed.

GROUND 2(A): EXCESSIVE BREADTH/UNFORESEEABILITY

103. Ground 2 overall is that the designation of Ms Khan constitutes a disproportionate interference with her rights, pursuant to Article 8 and A1-P1, ECHR. As noted above, part of this is a conventional proportionality argument similar to that in *Shvidler*. But there is the additional aspect – Ground 2(a). That contends that Ms Khan’s designation is not “*subject to ... conditions provided for by law*”. This argument is that the 2019 Regulations do not meet the minimum threshold of lawfulness required by Article 8 and/or A1-P1.
104. The argument is that:
 - 1) The number of persons who may become “involved persons”, and thereby liable to designation, is potentially vast when one considers not merely those directly or actively involved in destabilizing the Ukraine or obtaining a benefit from or providing support to the Government of Russia, but also those “associated with” such people;
 - 2) Following the passage of the 2022 Act, there is now no explicit statutory control upon the exercise of the Secretary of State’s discretion. That is, Regulation 5 simply

states that the Secretary of State “may” designate a person who satisfies the criteria in Regulation 6;

- 3) The test is therefore “hopelessly broad”, the application of the test is insufficiently foreseeable and the application is in effect dependent on the will of the Secretary of State with no safeguards against capricious and arbitrary abuse;
 - 4) As such it lacks the necessary quality of law which requires that it should be accessible to the person concerned and foreseeable as to its effects: *Catt v United Kingdom* (2019) 69 EHRR 7 at [94]; *R (Bridges) v Chief Constable of South Wales Police* [2020] EWCA 9 [2015] AC 1065 at §(1) and (2);
 - 5) It falls foul of the dictum of Lord Sumption in *In re Gallagher* [2020] AC 185 at [17] that the measure is “*not in accordance with the law*” where it “*confer[s] a discretion so broad that its scope is in practice dependent on the will of those who apply it, rather than on the law itself*” or “*is couched in terms so vague or so general as to produce substantially the same effect in practice*”.
105. Before considering this argument in more detail it is worth pausing to note that if this argument is correct, it involves a conclusion not that the particular consideration in this case by the Secretary of State was defective, but that Regulation 6 does not satisfy the test of legality. That would mean that every single designation under the 2019 Regulations has been unlawful. It would very likely have implications for SAMLA, since its structure mirrors the criteria in s. 11 SAMLA.
106. That is a very wide-ranging argument and one which requires thorough consideration, because as Lord Sumption noted in *In re Gallagher* at [14] there would be “*far-reaching consequences*” if the respondent’s similar challenge were correct: “*it means that the legislation is incompatible with article 8, however legitimate its purpose, and however necessary or proportionate it may be to deal with the problem in this particular way. That conclusion would plainly have significant implications for the protective functions of the state*”.
107. I have no difficulty in concluding that this argument is misconceived.
108. The answer here is quite straightforward. The starting point is *Bridges*, which requires:
- “(1) The measure in question (a) must have ‘some basis in domestic law’ and (b) must be ‘compatible with the rule of law’, which means that it should comply with the twin requirements of ‘accessibility’ and ‘foreseeability’.
 - (2) The legal basis must be ‘accessible’ to the person concerned, meaning that it must be published and comprehensible, and it must be possible to discover what its provisions are. The measure must also be ‘foreseeable’ meaning that it must be possible for a person to foresee its consequences for them and it should not ‘confer a discretion so broad that its scope is in practice dependent on the will of those who apply it, rather than on the law itself’.
 - (3) Related to (2), the law must ‘afford adequate legal protection against arbitrariness and accordingly indicate with sufficient clarity

the scope of discretion conferred on the competent authorities and the manner of its exercise’.

(4) Where the impugned measure is a discretionary power, (a) what is not required is ‘an over-rigid regime which does not contain the flexibility which is needed to avoid an unjustified interference with a fundamental right’ and (b) what is required is that ‘safeguards should be present in order to guard against overbroad discretion resulting in arbitrary, and thus disproportionate, interference with Convention rights’.

(5) The rules governing the scope and application of measures need not be statutory, provided that they operate within a framework of law and that there are effective means of enforcing them.

(6) The requirement for reasonable predictability does not mean that the law has to codify answers to every possible issue.”

109. Accessibility is not in question. The issue is whether the breadth of what is set out, combined with the criteria for its application, make it fall foul of the foreseeability criterion. That essentially invokes the dictum from *In Re Gallagher* at [17] that a measure must not confer a discretion so broad that its scope is in practice dependent on the will of those who apply it, rather than the law itself.
110. This is not such a provision. The provisions are, as noted, clearly accessible. There is a clear legal framework within which the regulation operates. There are designation criteria (as already noted, mirroring the structure of the criteria in s. 11 of SAMLA – which is not being challenged). The reasons for any designation have to be published. There is a scheme of exceptions.
111. There is no need, as a matter of law, for rigidly defined criteria or to codify every question. From domestic and EU authority it is clear that adequacy is the touchstone. As it was put in *Catt v United Kingdom* 69 EHRR 7, paragraph 94, quoted at (4) in *Bridges*: “it must afford adequate legal protection against arbitrariness and accordingly indicate with sufficient clarity the scope and discretion conferred on the competent authorities and the manner of its exercise.”
112. The wording is not merely accessible; it is clear; that too makes the test foreseeable. And while the precise application is not capable of being exactly predicted – as Ms Khan submits, none of the similarly situated wives of men analogously placed to Mr Khan can be sure whether they will in fact be designated - they do know whether they are apt to be designated by reading the criteria. Indeed the fact that Ms Khan is not arguing that she is not an involved person speaks for the clarity, foreseeability and accessibility of the criteria. That itself means that the exercise is not open to being simply the will of the individual – the defined hurdles must be surmounted.
113. Further any lack of certainty derives not from the test, but from one of the safeguards against its application – indeed the very safeguard which Ms Khan invokes in her first argument and the remainder of the second argument. The exercise of the discretion is then subject to the common law – this covers both the stage of assessing whether the criteria are met and then assessing whether, if ECHR principles apply, the decision is proportionate. The exercise of discretion (conducted in accordance with well

established rules of statutory construction and proportionality principles) provides a first safeguard against arbitrary or inappropriate invocation of the criteria and takes the situation well clear of the operation being “*entirely dependent on the will of the executive*”. There is no need for specificity as to how the discretion will be operated where the common law safeguards are operated.

114. Indeed the very structure of the documentation evidencing the decision-making shows both that (i) the criteria are considered and applied by reference to evidence and (ii) the designation is not proceeded with without a consideration specifically of proportionality – again by reference to evidence.
115. Further there is a secondary set of safeguards – contrary to the submissions for Ms Khan. In *Youssef* at [91] Garnham J considered whether ss. 25 and 38 of SAMLA provided an effective remedy against arbitrariness. He concluded at [89] that they “*comfortably reach the necessary standard*”.
116. There are therefore both common law and legislative safeguards against capricious, arbitrary and abusive use of the power to designate. That is a conclusion which aligns entirely with the decision of Johnson J in *Phillips v Secretary of State for Foreign and Commonwealth Affairs* [2024] EWHC 32 which also considered this question of whether these Regulations failed the “prescribed by law” test. He concluded at [144] that “*there are strong safeguards against arbitrariness*”, taking the points already noted - and in addition highlighting the facts that the 2019 Regulations were subject to the affirmative procedure, and, for the first 3 years of their operation, the Secretary of State was required to provide annual reports to Parliament on their operation under section 30 of SAMLA.
117. This part of the argument must, therefore, fail also.

GROUND 3: REGULATION 6(2)(D)

118. I will take next the third ground, which like Ground 2(a) is a challenge to the Regulations. Here, however, it is an explicit full challenge to the Regulations insofar as they contain a basis for designation by reference to association. It is fair to say that the submissions advanced dwelt fairly lightly on this ground.
119. The argument is that Regulation 6(2)(d), by which an individual who is merely “associated with” a designated person is liable to designation, is incompatible with Article 8 and A1-P1, ECHR. By association (again) it is also a challenge to s. 11 of SAMLA which has effectively the same wording. Very possibly also, given the derivation of SAMLA (see *Mints* at [10] noting its purpose to restate UN and EU sanctions regimes following Brexit), it obliquely also challenges such wider sanctions regimes.
120. Ms Khan submits that the breadth of the “associated with” wording which in practical terms, renders every immediate family member of an “involved person” liable to designation whether or not: (i) the individual has any involvement whatsoever in the financial or political affairs of the “involved person”; (ii) the individual has ever obtained any financial or material benefit from the “involved person”; or (iii) the individual has ever had any role in undermining or threatening the territorial integrity,

is offensive as being “[in]capable of being operated in a manner which is compatible with Convention rights”, citing *Christian Institute v Lord Advocate* [2016] UKSC 51 and *In re Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2023] AC 505 at [19].

121. It is said that there is no rational connection between the means adopted and the objective sought and fails to strike a proportionate balance between public interest and the right to respect for private life and/or to peaceful enjoyment of one’s possessions.
122. In one sense the argument can be short circuited by reference to SAMLA. S.11(3) provides that regulations made under s.1 of SAMLA must provide that an “involved person” means a person who “(a) is or has been involved in an activity specified in the regulations, (b) is owned or controlled directly or indirectly by a person who is or has been so involved, (c) is acting on behalf of or at the direction of a person who is or has been so involved, or (d) is a member of, or associated with, a person who is or has been involved”. Unless there is a challenge to SAMLA there can be no logical basis for concluding that the Regulation offends.
123. But even if there were such a challenge it cannot surmount the admittedly high hurdle of being “incapable of being operated in a manner which is compatible with Convention rights”. As was made clear in *Christian Institute*, [88]:

“This court has explained that an ab ante challenge to the validity of legislation on the basis of a lack of proportionality faces a high hurdle: if a legislative provision is capable of being operated in a manner which is compatible with Convention rights in that it will not give rise to an unjustified interference with article 8 rights in all or most cases, the legislation itself will not be incompatible with Convention.”

The *Christian Institute* approach was approved and applied, and a challenge to it dismissed, by the Supreme Court in *In re Abortion Services (Safe Access Zones) (Northern Ireland) Bill*, per Lord Reed at [19].

124. It cannot begin to be suggested that this provision will give rise to an unjustified interference with Article 8 rights in all or most cases. This is plainly (and avowedly) a case about the effect on a particular person – by reference to her being said to be much less apt to be sanctioned than most subjects.
125. It follows therefore that what remains of the challenge is the core proportionality challenge.

GROUND 2(B): PROPORTIONALITY (RATIONAL CONNECTION)

126. This brings the argument to the more conventional proportionality analysis, the first part of which is the question of rational connection. Ms Khan submits that it is clear that her designation pursuant to the 2019 Regulations constitutes a disproportionate interference with her rights pursuant to Article 8 and/or A1-P1, ECHR, pointing to the various different ways in which Ms Khan's rights are impacted – in particular the financial and reputational impacts.

127. Here the question is whether the measure under consideration is capable of achieving or contributing to the aim in question. Because the interplay of the individual and the measure involves asking questions about the connection of the two, the argument is essentially similar to that already conducted in relation to Ground 1 – but here there is no limitation as regards Mr Reed’s evidence, for the reasons given at [95-97] of the *Shvidler* case.
128. This evidence therefore adds to the analysis already performed in relation to Ground 1 the evidence of Mr Reed, which specifically adds the (fairly obvious) question of effect on Mr Khan:
- 1) Disincentivising Ms Khan from continuing to obtain a financial or other material benefit from her husband;
 - 2) Encouraging Ms Khan to put pressure on her husband to use influence that he may have with President Putin and senior decision makers within Russia to change its behaviour towards Ukraine and to incentivise him to distance himself from President Putin;
 - 3) Reducing the risk that Mr Khan could mitigate the impact of his designation by moving assets into Ms Khan’s name; and
 - 4) Incentivising others to disassociate themselves in future with individuals who carry on business in sectors of strategic significance to the Government of Russia.
129. That essentially makes it impossible for Ms Khan’s arguments to prevail on this basis, because one then enters into the territory described in *Shvidler* (at [116]), the “*identification of levers of pressure by which to influence the Government of Russia’s decision-making, and the weight to be attached to different potential courses of action, is a matter of foreign policy in respect of which the Secretary of State has institutional expertise and is entitled to considerable respect*”.
130. In addition it is perfectly possible to see exactly how the levers of pressure strategy is engaged by the “associated with” criterion – potentially at multiple levels. It may stand in the way of sanction evasion, it may freeze assets derived from benefits from the Russian regime – and very obviously affection may incentivise influence or advocacy beyond that which the primary target might adopt on their own behalf.
131. Thus, even if there were doubts about the basis expressed in the decision documents, which does not explicitly invoke the effect on Mr Khan and his influence on Mr Putin, this “levers” argument based on the fuller evidence provides a more than rational connection. The objectives of Ms Khan’s designation identified in Mr Reed’s evidence reflects the Secretary of State’s expert assessment of the available mechanisms by which to influence the Government of Russia’s decision-making in relation to Ukraine, which approach underpins the structure of the sanctions regime and the inclusion of persons “associated with”.
132. This aligns with the decision in *Shvidler* where Garnham J concluded that rational connection existed based *inter alia* on the associations between (i) Mr Shvidler and Mr Abramovich and (ii) Mr Abramovich and Mr Putin [112]. Yet Mr Abramovich was (as

was argued for Mr Shvidler) not in Russia and was distancing himself from Mr Putin, and Mr Shvidler was one of many business associates of Mr Abramovich.

133. In terms of levers one might well conclude that a more direct and profoundly incentivized connection exists where (i) Mr Khan is in Russia and is overtly called on by Mr Putin and (ii) Ms Khan is the mother and custodian of Mr Khan's children (including his minor children) and Ms Khan and Mr Khan, while living separately, remain close – as is evidenced by Ms Khan's considerable efforts to pay a visit to Mr Khan in hospital.
134. At [115] in *Shvidler* Garnham J rejected the attack on friendship as a basis for connection thus:

“As a matter of common experience, an individual may more readily act when it is at the request, or in the interests, of his friends and colleagues than when it is only in his own interests. In any event, the availability of a more direct means of putting pressure on Mr Abramovich does not undermine the value of additional pressure provided by the Claimant.”

The position here is *a fortiori*: if an individual may more readily act in the interests of friends and colleagues, how much more readily will he act in the interests of sparing trouble to his own young children?

135. The argument adopted essentially goes to the overall strategy – the application of pressure points. As indicated in the s.2(4) report in relation to the 2019 Regulations, sanctions decisions are not taken in isolation but instead form part of a mosaic of policy levers used to pursue the UK Government's foreign policy objectives. Designations under the 2019 Regulations are “*are one element of a broader strategy to achieve the UK's foreign policy goals to change the Russian Government's policy towards Ukraine*”. Once this is taken into account the argument as to rational connection cannot survive.

GROUND 2(C) PROPORTIONALITY (FAIR BALANCE)

136. There remains therefore only the final element of fair balance. Here the nature of the question is one about the balance between “*the rights of the individual and the interests of the community*” (per Leggatt LJ in *R(SC) v SSWP* [2019] EWCA Civ 615 [2019] 1 WLR 5687 at [84]). This core of the exercise is emphasised in other authorities such as *AXA General Insurance v Lord Advocate* [2012] 1 AC 868 at [36], *R (International Transport Roth GmbH) v SSHD* [2003] QB 728 at [52].
137. This part of the argument therefore brings into close focus the impact on Ms Khan and her family which she contends are precisely the kind of “drastic”, “oppressive”, “devastating” impacts described by the Supreme Court in *Ahmed v HM Treasury* [2010] 2 AC 534.
138. However, while the points made are plainly ones close to the heart of Ms Khan, and entirely apt to engage considerable sympathy, once the designation criteria are met, and the importance of the objective of designation is accepted, this is a very hard point for her to meet.

139. In addition, this final part of the *Bank Mellat* analysis takes place against a background where there is no real challenge on the “less intrusive measures” element of the test. That is essentially because any less intrusive measures have to be equally effective, and the Secretary of State (to whom in this context considerable deference is due) is clear that no less intrusive measures would be equally effective. This is entirely comprehensible against the backdrop of the objective being sought to be achieved and the kind of strategy in operation.
140. Against the policy background, the overall aim and envisaged mechanics of the sanctions regime (levers of influence) and the importance of efficacy *vis a vis* Mr Khan it cannot be said that the Secretary of State was wrong to conclude that no less intrusive measures would suffice and that less intrusive measures would compromise the objective which lies at the heart of the sanctions regime.
141. One then is in the position where there is on one side of the balance what I am bound to conclude is a very heavy weight indeed. That seeks to achieve an aim of very great importance, benefitting many people. It is a weight which cannot be made less by use of less intrusive measures. That weight then has to be balanced against the very considerable negative impacts on Ms Khan, who is subject to designation - and also her family, including her dependent children, who are not designated but are nonetheless impacted as if they were.
142. These impacts have been set out in some detail in the evidence before me and in the submissions which I have heard. Ms Montgomery KC carefully explained how Ms Khan herself was not in robust health at the time of the designation or since, and how she has been deeply affected by the significant changes made to her life by the designation. Particular emphasis was put on the position of the children – particularly the youngest – aged just ten at the time of designation. One of the older children has a long standing mental health issue for which continuity of care was significant, but lost. The youngest child, aside from having to change school, has suffered a considerable downturn in mental health, expressing suicidal ideas prompted by the loss of so much of the secure routine which is so important in childhood. Ms Montgomery KC put it thus: “*the evidence is clear and should have been clear that their serious mental health condition was entirely associated with the sanctions regime which has resulted in them being deprived of the only environment which they knew and were comfortable.*”
143. In relation to the children the position here is distinct from that in the *Shvidler* case; in both minor children had to confront the serious issue of loss of their accustomed school. Mr Shvidler’s children were able to relocate to the US with him and attend private schools there – albeit apparently at the cost of losing their mother’s presence. Ms Khan’s children retain her loving presence, but at least one has been forced to change from private to State school in the UK.
144. It is fair to say that the original decision document indicates that there was no firm knowledge of the existence of children, though their existence was assumed (“*we recognise that Anzhelika Khan may have dependents upon whom this designation may have an impact*”).
145. As for the second SDF, that came at a time when the decisionmaker did know of the children and the initial effects on them. It clearly deals with that aspect of the evidence. However it does not delve deep into those effects or appear to place particular weight

on them. The decision recites the names and dates of birth of the children and refers specifically to payment for healthcare, travel, security, activities and basic needs. It then considers how those needs intersect with the licensing system and the use of that system by Ms Khan to pay for travel, security staff and sports activities as well as basic needs and education. The conclusion reached was that “*we consider that the impact of designation upon Ms Khan and her children can be mitigated to a sufficient degree to render the designation proportionate given the importance of the objectives being pursued.*”

146. The answer which came to Ms Khan's arguments from the Secretary of State focussed heavily on those ameliorations. It was submitted that, as the second decision made clear, the licensing system was available to and used by the Khan family. But, it was emphasised, it is no part of sanctions licensing system to remove all impact; to the contrary without impact there is no effect. It was submitted that there are mitigations and overall the decision was, in the context of the overall regime, not just proportionate but plainly proportionate overall.
147. Ms Khan would strongly dispute the licence regime as an amelioration, with Ms Montgomery KC describing that statement as “*an assault upon the English language*” in the light of the lived reality of dealing with the OFSI process and its sometimes Kafkaesque manifestations. She took me through a lengthy and tortuous set of exchanges where weeks of chasers were needed before a licence was issued to enable Ms Khan to visit her sick mother and her hospitalised husband. She submits that by February 2023 – the time of the review decision – it should have been crystal clear that OFSI was not a mechanism which provided any comfort at all.
148. Ultimately while it is impossible not to have sympathy for both the emotional toll and the serious day to day difficulties which life as a designated person (or the child of a designated person) involves, I do conclude – even giving full weight to the personal cost to this family which I have had made very clear to me - that the decision taken does not fall foul of the fair balance test.
149. As I indicated at the outset of this section this is a balancing exercise between two very different considerations. On one side of the balance a considerable respect needs to be given to the Secretary of State's assessment; and what is being said is that the purpose is of the highest importance, indicating a very heavy weight. As was said in argument, it is a highest foreign policy imperative and therefore is about as heavy a weight as it can be. One can entirely understand that submission bearing in mind that the ultimate, avowedly indirect target for the communication made by the imposition of sanctions, is not Ms Khan or even Mr Khan – it goes wider to all those who might help or influence Mr Putin and to Mr Putin himself. On the other side are the personal, individual and emotive effects; the individual, concrete and real misery and suffering of an identified small family.
150. One point which I raised in argument as a concern is how two such different things can be weighed one against the other. In such situations it can seem that judgment of proportionality strays so far from empirical measurement that it becomes quite difficult to comprehend.
151. That is however the exercise which must be done, and two points help to point the way. The first is that it is not correct, as was submitted for Ms Khan, that what is required is

to “make a judgment about the level of human misery which may be regarded as being permissibly outweighed by the benefits of Ms Khan's sanctioning”. Understandably the argument for Ms Khan focusses too closely on the domestic and individual perspective. The balance does not focus on benefits of Ms Khan's sanctioning, but (Ms Khan's sanctioning being *ex hypothesi* within the rules and in furtherance of the requisite purpose) on the benefits of the sanctions regime of which her designation is an indivisible part. It is that wider perspective which results in the heavy weight on the side which favours the Secretary of State's decision.

152. The second is to consider whether the balancing exercise would, on the Secretary of State's approach, always result in an answer in favour of sanctions. If that were the case it would suggest that the Secretary of State's argument undermines the proportionality safeguard to vanishing point and must be at fault. But posed in this way one can readily see that the answer is no, and that the mitigations (such as they are) are genuinely critical to the argument. Suppose, for example, sanctions deprived a designated person of assets without any exceptions and also of access to healthcare – if designation meant “un-personing” the subject. The result would be to inflict on the subject not just very considerable trouble, distress and inconvenience but logically starvation, physical suffering and ultimately death. This is a balance which one cannot imagine could be found to be fair.
153. It is thus that one can perceive the real meaning of the ameliorations. The Khan family have been able to access healthcare, just as other citizens of this country can; and they have derived benefit from that access. The children continue to receive education. While there is no doubt from the correspondence I have seen and from more general information that OFSI, perhaps more burdened than was originally anticipated, does not operate at high speed or without asking awkward questions, it is there, and it does, on the evidence, provide assistance. Ms Khan and her family had, at the time the evidence was finalised, been granted no fewer than 18 specific licences. These have included licenses for private healthcare, six licenses for return flights to overseas destinations (generally to see Mr Khan), private school fees, staff salaries and redundancy pay to former staff members.
154. Further, while it is true that the position will not feel temporary to Ms Khan (and that will be even more true for her children, for whom this period is a greater proportion of their conscious life) the sanctions are designed as temporary both in intent and in operation (i.e. there is an asset freeze not an asset seize and use). It is contemplated that they will cease.
155. In the circumstances I conclude that the Secretary of State has not failed to strike a fair balance between the rights of Ms Khan and her family and the interests of the community.
156. It also follows that the second ground of challenge (proportionality) must be rejected. In the light of the earlier conclusions this means that the entire challenge fails.