Neutral Citation Number: [2026] EWCA Civ 139

Case No: CA-2025-000321

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES COMMERCIAL COURT (KBD)
THE HON. MR JUSTICE BRYAN
[2025] EWHC 300 (Comm)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/02/2026

Before:

LORD JUSTICE LEWISON
LORD JUSTICE PHILLIPS
and
SIR LAUNCELOT HENDERSON

- -

Between:

MIKHAIL FRIDMAN	**Appellant**
- and -	
(1) AGROFIRMA ONIKS LLC	**Respondents**
(2) AGRO UG V LLC	

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- -

Nicholas Craig KC and Anne Jeavons (instructed by **Gherson Solcitors LLP**) for the **Appellant**
George Hayman KC and Duncan McCombe (instructed by **Lewis Silkin LLP**) for the **Respondents**

Hearing date: 10/02/2026

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Approved Judgment

This judgment was handed down remotely at 11.00am on 19/02/2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Lewison:

Introduction

1. The issue on this appeal is whether Mr Mikhail Fridman has been validly served with a claim form at Athlone House in Hampstead, despite the fact that in March 2022 he was sanctioned under the Russia (Sanctions) (EU Exit) Regulations 2019, since when he has been an "excluded person" within section 8B of the Immigration Act 1971 and consequently is not entitled to enter the United Kingdom. Bryan J held that he had been validly served. His judgment is at [2025] EWHC 300 (Comm). On 3 June 2025 Males LJ gave Mr Fridman limited permission to appeal.

The facts

2. I can take the facts from the judge's judgment.

3. Mr Fridman is an immensely wealthy "Russian oligarch", with dual Russian and Israeli nationality. In 2013 Mr Fridman moved to London and, in 2016, he acquired Athlone House as a residence for himself and his family. He is the registered proprietor of that property. In January 2019 Mr Fridman was granted indefinite leave to remain in the UK, and Athlone House, where he resided, was his usual residence.

4. Subsequently, however, on 15 March 2022, Mr Fridman was designated under regulations 5 and 6 of the Russia (Sanctions) (EU Exit) Regulations 2019 ("the Russia Regulations") and Part 1 of the Sanctions and Anti-Money Laundering Act 2018. Mr Fridman's assets were frozen in consequence. In addition, he became an "excluded person" within section 8B of the Immigration Act 1971. This means that his leave to remain in the UK was cancelled and he is not permitted to enter the UK (the "Travel Ban").

5. In an interview with Mr Fridman published by Bloomberg on 22 March 2022, Mr Fridman stated he did not own a house in Israel and that his only other property apart from Athlone House was a house in Moscow.

6. On 16 August 2023, the Claimants' solicitors sent a letter before action to Mr Fridman at Athlone House. This was sent at a time when Mr Fridman himself accepts that he was resident at the property. Mr Fridman did not respond to the letter before action.

7. Mr Fridman physically left UK soil on 27 September 2023, in part for medical reasons. In a posting by Bloomberg News dated 9 October 2023, Mr Fridman was quoted as saying: "A week ago, I moved to Israel … Now I've flown to Moscow because of the current situation" [i.e. the attack on Israel by Hamas militants].

8. Mr Fridman continues to be the beneficial owner of Athlone House, and it continues to be staffed by people who report to Mr Fridman via Athlone House Limited ("AHL"), which is the entity said to manage Athlone House on his behalf.

9. Following his designation, Mr Fridman was granted a number of licences by the Office of Foreign Sanctions Implementation ("OFSI"), which is part of His Majesty's

Treasury, to make payments to various entities. However, the OFSI refused to grant licences to make certain payments to AHL, which had concluded a service contract with Mr Fridman for the purposes of managing Athlone House. This refusal was challenged unsuccessfully by Mr Fridman on an application heard by Saini J on 17 October 2023. In the course of his judgment Saini J recorded that Mr Fridman had informed the court, through his solicitors, that he intended to return to the United Kingdom.

10. At [86] of his judgment, Saini J recited an extract from a letter written by Mr Gherson to the OFSI on Mr Fridman's behalf (in response to the OFSI informing Mr Fridman that he could submit further information to justify the fee of an entity "Ideaworks" as a "basic need") in which it was stated:

> "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 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."

11. On 9 February 2024 the Claimants began these proceedings. The Claim Form listed Athlone House as the location for service of Mr Fridman. Mr Fridman disputes that he was present or resident at Athlone House at the time. On 20 March 2024, the Claimants posted (by first class post) the Claim Form to Mr Fridman at Athlone House (but without a response pack, although during the course of the hearing before the judge, it was confirmed on behalf of both the Claimants and Mr Fridman that nothing ultimately turns on this). Accordingly, if service were effected, it would have been deemed to have occurred on 22 March 2024. The decision to identify that address in the Claim Form and the subsequent decision to serve there followed various enquiries which led the Claimants' solicitors to conclude that Mr Fridman's usual or last known address was Athlone House.

12. On 28 March 2024, Mr Kingston-Lee, a paralegal at Janes Solicitors, personally delivered the Claim Form and the documents comprised in the response pack to Athlone House and (on the instructions of the security staff) left it there in an envelope addressed to Mr Fridman at Athlone House.

13. On 6 June 2024, the Claimants took various further steps again to effect service of the Claim Form and Response Pack, as follows:

    i) On 6 June, posted them (first class) to Mr Fridman at Athlone House.

    ii) On 6 June, posted them (first class) and hand delivered them in person to three further possible alternative addresses that had been identified by the Claimants' solicitor during his enquiries (the "Alternative Addresses"). These were:

a) AHL: at the registered address of AHL (the entity said to manage Athlone House on behalf of Mr Fridman). Ms Zairova, Mr Fridman's assistant, was its Director (Mr Fridman is not himself a director or shareholder of AHL).

b) Gherson LLP: the address of Mr Fridman's solicitors in respect of the earlier sanctions proceedings at 17A to 19 Harcourt Street, London W1H 4HF). In a letter of 5 June 2024, i.e. the previous day, Gherson LLP had stated that they had been instructed by Mr Fridman in respect of an application to set aside a default judgment but were not instructed more generally and were "not authorised to accept service of the claim".

c) LetterOne Limited: the address of LetterOne Limited at Devonshire House, 1 Mayfair Place, London W1J 8AJ. This is an investment holding company which appeared to have been founded by Mr Fridman. Current HM Land Registry records showed it to be the "c/o", i.e. care of, address for Mr Fridman in respect of his purchase of Athlone House in 2016. Mr Fridman is not a shareholder or director of LetterOne.

d) On 7 June, by Mr Kingston-Lee again hand delivering them at Athlone House in an envelope addressed to Mr Fridman.

14. Having considered the evidence, the judge concluded that Mr Fridman had not ceased to be a resident within the jurisdiction despite the Travel Ban. The court therefore had jurisdiction at common law to exercise jurisdiction over him. He went on to consider whether the Claimants had a good arguable case that Athlone House was Mr Fridman's "usual residence" when the claim form was served and decided that it was. He went on to find that even if that were wrong, Athlone House was Mr Fridman's "last known" address; the Claimants had taken reasonable steps to ascertain the address of Mr Fridman's current residence and could not find it, with the consequence that they were entitled to serve the claim form at Athlone House.

15. It was accepted on Mr Fridman's behalf that service at least one of the alternative addresses was effective in bringing the claim form to Mr Fridman's attention.

16. Mr Fridman had also made an application under CPR Part 11 challenging the court's jurisdiction. His challenge was based entirely on the argument that he had not been validly served. The judge held that the outcome of that application followed from his decision on the question of service. Mr Fridman's challenge to the jurisdiction therefore failed.

CPR rule 6.9

17. CPR rule 6.9 applies where a claimant is not obliged and does not wish to serve a claim form personally; the defendant does not have a solicitor authorised to accept service; and the defendant has not given an address at which he resides or carries on business in the UK for the purposes of service. In such a case the claim form must be served on an individual at his "usual or last known residence". CPR rule 6.9 goes on to provide:

> "(3) Where a claimant has reason to believe that the address of the defendant referred to in entries 1, 2 or 3 in the table in paragraph (2) is an address at which the defendant no longer resides or carries on business, the claimant must take reasonable steps to ascertain the address of the defendant's current residence or place of business ("current address").
>
> (4) Where, having taken the reasonable steps required by paragraph (3), the claimant—
>
> (a) ascertains the defendant's current address, the claim form must be served at that address; or
>
> (b) is unable to ascertain the defendant's current address, the claimant must consider whether there is—
>
> (i) an alternative place where; or
>
> (ii) an alternative method by which,
>
> service may be effected.
>
> (5) If, under paragraph (4)(b), there is such a place where or a method by which service may be effected, the claimant must make an application under rule 6.15."

The outline of the appeal

18. Mr Craig KC, on behalf of Mr Fridman, submitted that the common law rule that the right of an English court to exercise jurisdiction over an individual is based on the principle that a person present within the jurisdiction has the benefit of the laws of the jurisdiction and, as a corollary, must submit to the process of its courts. By contrast, a person who has no right to enter the jurisdiction and is physically residing elsewhere has no right to benefit from the law of the jurisdiction and, as a corollary, is not amenable to the process of its courts. That common law principle has not been abrogated by the terms of the CPR.

19. The judge was wrong to hold that a person who has been indefinitely excluded from the UK and who, therefore, cannot lawfully reside within the jurisdiction, is nevertheless present within the jurisdiction for the purposes of service.

20. Mr Hayman KC, for the Claimants, submits that the judge was right for the reasons that he gave. But he also submitted that it was unnecessary for the judge to have found that Mr Fridman was present or resident within the jurisdiction for the purposes of service, because the common law principle on which Mr Craig relied had been superseded by the CPR. If service is effected in accordance with the CPR that is enough. The latter point was raised by Respondents' Notice.

What is the common law principle?

21. Dicey, Morris & Collins on the Conflict of Laws (16th ed) formulates the principle in rule 32:

> "The court has jurisdiction … to entertain a claim *in personam* against a defendant who is present in England and duly served there with process."

22. According to this rule, both presence in England and due service of process there (i.e. in England) are requirements of jurisdiction.

23. Dicey, Morris and Collins elaborate on this in paragraphs 11-010 and 11-039. In paragraph 11-042 they state:

> "Any individual who is present in England is liable to be served with proceedings *in personam*, however short may be the period for which that person is present in England."

24. Thus, it is presence, not residence, which is the touchstone. Professor Adrian Briggs made a similar point in Civil Jurisdiction and Judgments (7th ed) para 21.02. He pointed out that the jurisdiction of the court at common law depends upon service of process. He continues:

> "The common law question then becomes one of how and when the claimant may serve process on a defendant. If the defendant is present within the territorial jurisdiction of the court, the claimant has a right to serve him there and then. If the defendant is not within the territorial jurisdiction of the court, and has not appointed an agent within the jurisdiction to accept process on his behalf, the claimant has no right to serve him. "

25. In *Chellaram v Chellaram (No 2)* [2002] EWHC 632 (Ch), [2002] 3 All ER 17 Lawrence Collins J put it thus at [47]:

> "… it has always been, and remains, a fundamental rule of English procedure and jurisdiction that a defendant may be served with originating process within the jurisdiction only if he is present in the jurisdiction at the time of service, or deemed service."

26. Similar statements of high authority may be found in the cases. In *Airbus Industries GIE v Patel* [1999] 1 AC 119, 132 Lord Goff put it thus:

> "There is, so to speak, a jungle of separate, broadly based, jurisdictions all over the world. In England, for example, jurisdiction is founded on the presence of the defendant within the jurisdiction, and in certain specified (but widely drawn) circumstances on a power to serve the defendant with process outside the jurisdiction."

27. To similar effect, in *Stichting Shell Pensioenfonds v Krys* [2014] UKPC 41, [2015] AC 616 Lords Sumption and Toulson said at [27] that in order for a foreign litigant to be "amenable to [the English court's] personal jurisdiction", he:

> "…must be present within the jurisdiction or amenable to being served with the proceedings out of the jurisdiction, or else he must have submitted voluntarily."

28. Professor Briggs also explains the somewhat paradoxical relationship between service and jurisdiction in para 1.05 of the 8th edition of his work in a passage which is worth quoting at some length:

> "A fundamental characteristic of the common law's approach to jurisdiction is that it equates jurisdiction with the service of process. A defendant who has not been served (at all) is not, or not yet, subject to the jurisdiction of the court. A defendant who has been served (in full conformity with the rules governing service *or not*) is subject to the jurisdiction of the court, for it is service, and only service, and always service, and nothing but service that gives the court personal jurisdiction over the defendant. To put it another way, service is the act which creates, crystallises, the jurisdiction of the court in relation to the claim.
>
> Service of the documents which institute legal proceedings is, therefore, not merely a notification that such proceedings are about to begin, but is the very act which gives the court jurisdiction over the defendant in respect of the claim set out in the documents. The material rules of English law, such as they are, are not rules of jurisdiction, but rules about service which have jurisdictional consequences. When the relevant committee alters the procedural rules about the service of documents, it is altering the rules which define the international reach, the jurisdiction of the court without any overt recognition that this is what it is doing. It is the strangest thing….
>
> And as service is, in most cases, an act undertaken by or on behalf of the claimant without any prior scrutiny of the claim form by the court, the result can be that a defendant is made subject to the jurisdiction of the court in circumstances in which this should not, even manifestly should not, have happened. If the matter is disputed by the defendant, the application may lead to the court declaring that it does not have jurisdiction even though it does have it, or until the moment of its decision and order did have it. It may lead to the court declaring that it has no jurisdiction (or that it had no jurisdiction after all), but the court will, in such a case, set aside service, and it is that which dissolves the jurisdiction which the court, until that point, has undoubtedly had. How, one may ask, can a court be said to have jurisdiction (because of service), only to declare that it does not have jurisdiction (and set aside service)? The answer is that this is the most practical answer to a question which otherwise drives those searching for an answer round and round in circles."

29. In short, the fact of service in accordance with the CPR does not conclusively establish the court's jurisdiction over a defendant. The defendant may apply to set aside service in which case the court will apply its substantive jurisdictional rules. In order to apply under CPR Part 11 for the purposes of disputing the court's jurisdiction, the defendant must first file an acknowledgment of service under Part 10: CPR r 11.1 (2). That presupposes that the defendant has in fact been served; but that the court may yet rule that it has no jurisdiction to try the claim.

What is the basis of the common law principle?

30. It will be noted that in his formulation of the common law principle Lawrence Collins J described it as a rule of "English procedure and jurisdiction." Lords Goff, Sumption and Toulson also seem to me to have treated the principle as one of jurisdiction. That, in my view, has a significant bearing on the answer to the point raised by the Respondents' Notice. If it is merely a rule of procedure, then it is possible that the rule has been changed by the CPR. But if it is a rule of jurisdiction, then a mere change in procedural rules is less likely to have that effect.

31. Accordingly, it is, I think, necessary to identify the source of the common law principle. In *Adams v Cape Industries plc* [1990] Ch 433 (which concerned the recognition of a foreign judgment) this court explained at 513 that the recognition of a foreign judgment was determined in accordance with "our own rules of private international law." The court went on to cite from two decisions (one of the Privy Council and one of the House of Lords) which illuminate this issue and support the court's explanation.

32. The first of these was *Sirdar Gurdyal Singh v Rajah of Faridkote* [1894] AC 670, a decision of the Privy Council. The question was whether the courts of British India ought to have enforced against the defendant two judgments obtained against him ex parte in the native state of Faridkote, which for this purpose fell to be regarded as foreign judgments. The defendant had ceased to reside in the state before the actions were brought, and though he had received notice of the proceedings, he had never appeared in either of them or otherwise submitted to the jurisdiction of the Faridkote court. The Privy Council held the judgments to be a nullity under international law. Lord Selborne gave their Lordships' advice. It is necessary to quote a lengthy extract from it (minus some of the Latin):

> "Under these circumstances there was, in their Lordships' opinion, nothing to take this case out of the general rule, that the plaintiff must sue in the Court to which the defendant is subject at the time of suit…; which is rightly stated by Sir Robert Phillimore (International Law, vol. 4, s. 891) to "lie at the root of all international, and of most domestic, jurisprudence on this matter." All jurisdiction is properly territorial… Territorial jurisdiction attaches (with special exceptions) upon all persons either permanently or temporarily resident within the territory while they are within it; but it does not follow them after they have withdrawn from it, and when they are living in another independent country. It exists always as to land within the territory, and it may be exercised over moveables within the territory; and, in questions of status or

> succession governed by domicil, it may exist as to persons domiciled, or who when living were domiciled, within the territory. As between different provinces under one sovereignty (e.g., under the Roman Empire) the legislation of the sovereign may distribute and regulate jurisdiction; but no territorial legislation can give jurisdiction which any foreign Court ought to recognise against foreigners, who owe no allegiance or obedience to the Power which so legislates.
>
> In a personal action, to which none of these causes of jurisdiction apply, a decree pronounced in absentem by a foreign Court, to the jurisdiction of which the defendant has not in any way submitted himself, is by international law an absolute nullity. He is under no obligation of any kind to obey it; and it must be regarded as a mere nullity by the Courts of every nation except (when authorized by special local legislation) in the country of the forum by which it was pronounced.
>
> These are doctrines laid down by all the leading authorities on international law; among others, by Story (Conflict of Laws, 2nd ed., ss. 546, 549, 553, 554, 556, 586), and by Chancellor Kent (Commentaries, vol. 1, p. 284, note c, 10th ed.), and no exception is made to them, in favour of the exercise of jurisdiction against a defendant not otherwise subject to it, by the Courts of the country in which the cause of action arose, or (in cases of contract) by the Courts of the locus solutionis. In those cases, as well as all others, when the action is personal, the Courts of the country in which a defendant resides have power, and they ought to be resorted to, to do justice."

33. This part of their Lordships' advice makes it clear, in my judgment, that what is at issue is a rule of international law going back to Roman times. That rule of international law is concerned with the court's substantive jurisdiction.

34. The second case to which this court referred in *Adams* was the decision of the House of Lords in *Employers' Liability Assurance Corporation Ltd v Sedgwick, Collins & Co Ltd* [1927] AC 95. Lord Parmoor said at 114:

> "My Lords, in the case of actions in personam, in which a writ has been regularly served on foreigners or foreign corporations, when present in this country, and a judgment has been obtained, it seems to be clear, as a general rule, that, under the obligations of that branch of international law, which governs the application of foreign judgments, other countries, whose Governments have been recognized de jure and de facto by the Government of this country, will accept the jurisdiction of the Courts of this country, and regard their judgments as valid. In the case of such actions, it may also be stated negatively that, where a writ cannot be served on a defendant foreigner, or foreign corporation, when in this country, and no submission to

> jurisdiction is proved, any consequent judgment has no validity in any other country, on the ground that the Courts of this country have no jurisdiction under international law over the person of an absent foreign defendant. In other words, the right to serve a writ, in an action in personam, on a foreign defendant, only becomes effective, as a source of jurisdiction, to be recognized in other countries when, at the date of service, such defendant is within the territorial jurisdiction of the English Courts."

35. Again, the recognition by one country of a judgment given in another is treated as a substantive rule of international law. At 115 he explicitly referred to and approved the decision in *Singh*.

36. In both these cases the court applied the principle of territoriality. That principle was described by James LJ in *Re Sawers* (1879) 12 Ch D 522, 526:

> "It appears to me that the whole question is governed by the broad, general, universal principle that English legislation, unless the contrary is expressly enacted or so plainly implied as to make the duty of an English Court to give effect to an English statute, is applicable only to English subjects or to foreigners who by coming into this country, whether for a long or a short time, have made themselves during that time subject to English jurisdiction. Every foreigner who comes into this country, for however limited a time, is, during his residence here within the allegiance of the Sovereign, entitled to the protection of the Sovereign and subject to all the laws of the Sovereign. But, if a foreigner remains abroad, if he has never come into this country at all, it seems to me impossible to imagine that the English Legislature could have ever intended to make such a man subject to particular English legislation."

37. I would expect that the principle thus described as applicable to English legislation would be equally applicable to English subordinate legislation such as rules of court.

38. There are, of course, circumstances in which the courts of England and Wales assert jurisdiction over persons who are not within that territory. That may come about as a result of an international convention to which the United Kingdom is a party. Or it may come about because of a specific statutory provision (such as section 1140 of the Companies Act 2006). Or, as expressed by Dicey, Morris and Collins in rule 33:

> "The court has jurisdiction to entertain a claim *in personam* against a person who submits to the jurisdiction of the court."

39. In addition, the courts of England and Wales are empowered to permit a claimant to serve process outside that territory in a case to which CPR 6.36 applies (which in turn brings in one or more of the "gateways" in PD 6B). But that power will not be exercised unless the claimant establishes a serious issue to be tried on the merits of the claim; a good arguable case that the claim falls within one or more of the

"gateways"; and that in all the circumstances of the case England or Wales is clearly an appropriate forum for trial of the dispute.

Two previous cases

40. *Barclays Bank of Swaziland Ltd v Hahn* [1989] 1 WLR 506 concerned the validity of service under RSC Ord 10 r 1 (2). The rule permitted service of a writ either personally or by post. Service by post was permitted in the case of "a writ for service on a defendant within the jurisdiction". The main debate was whether the phrase "within the jurisdiction" referred to the writ or to the defendant. The House of Lords, reversing this court, held that it referred to the defendant. The argument for the defendant included this submission:

> "Put shortly, it was argued on Mr Hahn's behalf that the jurisdiction of the court to entertain an action in personam depended historically on the defendant being served personally with the King's writ. When the RSC were amended in 1979 to permit "letter box service," it was not intended to alter the substantive jurisdictional requirement that the defendant be physically present within the jurisdiction at the time of service, but merely to provide an alternative to the procedural requirement that the defendant be handed the process personally. Physical presence within the jurisdiction at the time of service remained an essential ingredient of valid service."

41. At 510H Lord Brightman said:

> "My Lords, I accept the appellant's proposition that the defendant must be within the jurisdiction at the time when the writ is served, and I do not find it possible to agree the Court of Appeal's approach. This approach would mean that a writ could validly be served under Order 10 on a defendant who had once had an address in England but had permanently left this country and settled elsewhere, by inserting the copy writ through the letter box of his last address, provided that the plaintiff was able within seven days to communicate to the defendant the existence of the copy writ; for in such circumstances the plaintiff could properly depose that the copy writ would have come to the knowledge of the defendant within seven days after it was left in the letter box of his last known address. This appears to me to outflank Order 11 (relating to service of process outside the jurisdiction) in every case where the defendant was formerly resident in this country and is capable of being contacted abroad within seven days. I feel no doubt that the words "within the jurisdiction" apply to the defendant, and not to the writ for service."

42. Nevertheless, he found an alternative interpretation of the RSC which enabled the House to conclude that the writ had been validly served at a time when the defendant was present in England. It is, however, critical to appreciate that the appellant's proposition which Lord Brightman accepted, was that presence within the jurisdiction

was a "substantive jurisdictional requirement" which had not been altered by a change in the rules permitting service by post.

43. *Rolph v Zolan* [1993] 1 WLR 1305 concerned the validity of service of a summons in the county court. It was sent to the defendant's last known address in England, but he had emigrated to Spain. But it was in fact received by him in Spain within the period of its validity. The procedure for service was governed by Ord 7 rr 1 and 10 of the County Court Rules. Ord 7 r 1 provided:

> "Where by virtue of these rules any document is required to be served on any person and no other mode of service is prescribed by any Act or rule, the document may be served —
>
> (a) if the person to be served is acting in person, by delivering it to him personally or by delivering it at, or sending it by first class post to, his address for service or, if he has no address for service —
>
> (i) by delivering the document at his residence or by sending it by first class post to his last known residence …"

44. Dillon LJ referred to the *Barclays Bank* case and pointed out that the RSC permitted service on a defendant within the jurisdiction. He then posed the question:

> "… whether a similar limitation has to be read into Ord 7 r 1 and 10 of the County Court Rules in order to limit postal service to service on defendants who at the time of actual or deemed service are physically within the jurisdiction."

45. He answered that question in the negative, holding that:

> "…I regard the limitation in RSC Ord 10 r. 1 as interpreted in [*Barclays Bank*] to postal service on defendants who are within the jurisdiction at the time of service as a very specific limitation, and not a general principle of practice in the High Court within the meaning of section 76 of the Act of 1984. Postal service itself is a matter of specific rules, and not a matter of general principles of practice."

46. The summons was, therefore, validly served. What Dillon LJ did not refer to was Lord Brightman's acceptance of the submission that presence was a substantive requirement of jurisdiction, which had not been altered by the introduction of service by post.

The CPR

47. Although it has often been said that the CPR are a complete procedural code, that does not mean that they are to be interpreted in a legal vacuum. In *Okura & Co Ltd v Forsbacka Jernverks AB* [1914] 1 KB 715 this court was concerned with the validity of service on a foreign corporation under previous rules of court. In the course of his judgment Phillimore LJ said at 722:

> "In determining this question the Court ought in my opinion, as Lord Coleridge CJ said in *Grant v Anderson*, to have regard to the broad principles of international comity which in questions of jurisdiction must always be assumed to underlie the rules of Court or the enactments of Parliament."

48. *Masri v Consolidated Contractors International (UK) Ltd (No 4)* [2009] UKHL 876, [2010] 1 AC 90 is to similar effect. The issue in that case was whether CPR r 71.2 enabled a judgment creditor to obtain an order for the examination of an officer of a foreign company which had submitted to the jurisdiction to be examined in England in respect of the company's foreign assets. The House of Lords held that he was not. Lord Mance (who gave the only substantive speech) accepted that at least in theory it was open to the Rules Committee operating under the Civil Procedure Act 1977 to extend the court's extra-territorial jurisdiction by making rules to that effect (as Professor Briggs explained in the passage I have quoted). But at [16] Lord Mance accepted the submission that:

> "… even though the rule-making power is wide enough to enable rules to be made relating to the examination of an officer who is outside the jurisdiction, the presumption against extraterritoriality still applies when considering the scope of CPR Pt 71."

49. Mr Hayman took us to a number of rules in Part 6 of the CPR. Section II concerns service of the claim form within the jurisdiction. Rule 6.6 (1) provides:

> "(1) The claim form must be served within the jurisdiction except where rule 6.7(2) or 6.11 applies or as provided by Section IV of this Part."

50. That rule, he said, made service within the jurisdiction mandatory where a claimant is able to effect service by one of the methods laid down by Part II of the rules. But in my judgment that begs the question whether the defendant is amenable to service within the jurisdiction at all. He referred also to rule 6.7 (1) authorising service on a solicitor at a business address within the jurisdiction. But that only applies where the defendant has given written notice of that address as an address at which he may be served. So that rule provides for a form of submission to the jurisdiction. The same is true of rule 6.8 which enables service at an address "at which the defendant resides … and which the defendant has given for the purpose of being served with the proceedings." Again this is a form of submission to the jurisdiction. Moreover, the mere fact of residence is not enough. It must be coupled with the defendant's willingness to be served at that address. Rule 6.11 permits service by a contractually agreed method. But that, too, is a form of submission to the jurisdiction; and, moreover, where the agreed method is for service outside the jurisdiction, then with limited exceptions, the claimant must obtain permission to serve out.

51. None of these rules are, in my judgment, sufficient to displace the presumption of territoriality.

52. Mr Hayman also submitted that if the claimants were not permitted to serve Mr Fridman at Athlone House, there was nowhere else that he could be served. He

pointed to rule 6.37 (1) which requires a claimant asking for permission to serve out to set out:

> "(c) the defendant's address or, if not known in what place the defendant is likely to be found"

53. In the present case, despite inquiries the claimants do not know whether Mr Fridman is in Israel or in Russia (or indeed anywhere else). I consider that this fear is overblown. I can see no objection to a claimant stating that the defendant is likely to be found either in Israel or in Russia. Next, he drew attention to rule 6.40 (4) which provides that the court cannot authorise a person to do anything which may be contrary to the law of the country were the claim form is to be served. But again, I do not consider that that hurdle is unsurmountable. The court may for instance authorise different methods of service in different countries. Finally, he referred to rule 6.37 (5) which requires the court to specify the period within which the defendant must file an acknowledgment of service and take certain other steps. Those periods are specified in the Table to PD 6B and apply on a territory by territory basis. It may well be possible to specify different periods according to where service actually takes place. But if permission to serve out is successfully applied for, the court may make an order for service by alternative means or at an alternative address under rule 6.15: see *Fairmays v Palmer* [2006] EWHC 96 (Ch) at [16]; *Marashen Ltd v Kenvett Ltd* [2017] EWHC 1706 (Ch), [2018] 1 WLR 288 at [17] to [20].

54. Quite apart from all that, rule 6.1 provides that:

> "This Part applies to the service of documents, except where—
>
> (a) another Part, any other enactment or a practice direction makes different provision; or
>
> (b) the court orders otherwise."

55. So, despite the apparently mandatory rules on which Mr Hayman relied, the court has the power to "order otherwise" if the exigencies of a particular case so require.

Two conflicting authorities?

56. Two further decisions of this court have featured strongly. The first is *Kamali v City & Country Properties Ltd* [2006] EWCA Civ 1879, [2007] 1 WLR 1219. The claim was one for unpaid rent for commercial property. The claim form was served at the defendant's place of business, at a time when he was temporarily abroad. Default judgment was entered, and the appeal was an appeal against the judge's refusal to set aside that default judgment. May LJ traced the history of changes to the rules of court both in the High Court and the county court. At [8] he referred very briefly to Lord Brightman's speech in *Barclays* but said that Lord Brightman "decided the matter as one of construction". That is true, but the construction that Lord Brightman adopted gave effect to what he had just described as a "substantive jurisdictional requirement". The critical part of May LJ's reasoning is at [11]:

> "The CPR introduced in 1998 are a new procedural code applying to both the High Court and the county court. RSC Ord

> 10, r 1 is no longer in force; and so there is no rule perpetuating the idea that a person has to be within the jurisdiction for service by post to be effected. The CPR as to service more closely resemble the former county court provisions than those of the High Court; for instance, the court now normally effects service of the claim form."

57. Based on his analysis of the changes in the rules he concluded at [12]:

> "In my judgment, there is not, or at least no longer is, a fundamental principle such as Lawrence Collins J supposed. Further, I do not think that he was substantially correct to say, as he did in para 46 of *Chellaram*'s case [2002] 3 All ER 17, that *Rolph*'s case [1993] 1 WLR 1305 was not binding. In my view, if it is not strictly binding, it is plainly applicable and not in substance distinguishable. The reasoning in *Rolph*'s case applies without qualification, in my view, to CPR Pt 6, which in substance are, so far as is relevant, the same as the former CCR. "Within the jurisdiction" depended after 1979 on the wording of the RSC, and the relevant part of RSC Ord 10, r 1 has gone. The court's reasoning and conclusion in *Rolph*'s case are not affected by the existence of provisions enabling an application to be made for service out of the jurisdiction. I derive no assistance, for instance, from rule 6.20(1). I do not regard the present rules as ambiguous."

58. He then dealt with the argument that the principle that service should be on a person within the territory or England and Wales was an entrenched principle. As to that he said:

> "[14] … They mostly depend in essence on the proposition that service on a defendant who has to be within the jurisdiction at the time is an entrenched principle which cannot be abolished by an inexplicit sidewind of secondary legislation, which should accordingly be construed as not abolishing it. In my judgment, this overstates the durability of the so-called principle. Of course it applied in the days of personal service. For personal service could not otherwise be effected. But things have moved on and we have had service by post for over 35 years, and now by other means as well.
>
> [15] Now that service by post is permitted, it makes little sense that its effectiveness should depend on the chance that the defendant happens not to be abroad at the time, if service is in accordance with the rules, including rule 6.5. The CPR are not removing an entrenched principle, since the so-called principle has not applied in the county court for more than 35 years. As did Dillon LJ in that case, I find it impossible to construe the CPR as the defendant would have it. Even if this were arguable, which in my view it is not, I consider that *Rolph*'s case is

> applicable to the facts of this case and to the point that is taken."

59. Neuberger LJ agreed with the result although he had more difficulty in threading his way through the labyrinth. First, he said at [20] that the relevant words of the CPR did not "exclude service in accordance with their terms simply because the defendant is out of the jurisdiction" and he rejected the argument that words should be implied. Second, he referred to *Rolph* and said that it would be "inappropriate to imply the common law principle identified in the *Chellaram* case ...into rules 6.2 to 6.5." He continued:

> "The decision in the *Rolph* case ...is also important here because it answers Mr Wolman's point that one should not lightly assume that a common law principle has been reversed, as it were sub silentio, by a change in rules of procedure. If the CCR already had the effect determined in the *Rolph* case, the common law principle had already been reversed, albeit only in the county court. In effect, the effect of our conclusion is that, in the present connection, we are holding that the CPR followed the CCR, as interpreted in the *Rolph* case, rather than the RSC."

60. Third, he considered that provisions in the CPR which permitted service by a contractually agreed method showed that the general provisions of Part 6 were intended to apply even if the defendant was outside England and Wales. Fourth, he did not consider that the specific provisions about service out of the jurisdiction precluded service in accordance with CPR r 6.2 to 6.5 on a defendant who was in fact outside England and Wales. He then referred to potential unfairness if a defendant abroad did not learn about proceedings being instituted against him; but he considered that there were mitigating factors. Thus at [29] he said:

> "A balance has to be struck between the rights of a claimant and those of a defendant; and it seems to me that the balance achieved by the rule, as interpreted by the judge below, is fair and reasonable."

61. At [32] he concluded that the common law rule identified in *Chellaram* had been displaced by rules 6.1 to 6.6 of the CPR. He went on to say at [33] that *Barclays* was "simply concerned" with the interpretation of the RSC.

62. Wilson LJ agreed with both judgments. Once again, none of the three judges referred to Lord Brightman's acceptance of the submission that presence was a substantive requirement of jurisdiction.

63. The problem which confronted the court in *Kamali* was that it was assumed that the requirement of "presence" on which, it seems, Mr Kamali relied was limited to physical presence at the moment of service. If that were, indeed, the law it would give rise to the absurdity pointed out by this court in *Barclays* and quoted by Lord Brightman:

> "if one had a defendant living in the northern part of Cumbria, who was regularly in the habit of crossing the border for his lunch, it appears to me to make a complete nonsense of the whole matter if he were able to say that service had been bad because at the time when the letter had been put through the letter box or at the time when it had been posted he had happened to be in the southern part of Scotland for no more than an hour."

64. But that absurdity has been addressed by a more flexible interpretation of the requirement of "presence" in the case to which I now turn.

65. The question next surfaced in *SSL International Plc v TTK LIG Ltd* [2011] EWCA Civ 1170, [2012] 1 WLR 1842. The relevant defendant was an Indian joint venture company. The claimants had the right to appoint directors to the board of the joint venture company. They brought proceedings and claimed to have validly served the Indian company by serving one of its nominee directors at the claimants' own offices. Stanley Burnton LJ considered a number of cases about service of proceedings on foreign corporations. He referred in particular to the judgment of Brandon J in *The Theodohos* [1977] 2 Lloyd's Rep 428 in which it was held that unless a foreign corporation is carrying on business at a place within the jurisdiction, it cannot be served with process within the jurisdiction. It was nevertheless argued that the position had been changed by the CPR. Stanley Burnton LJ rejected that argument saying at [49]:

> "In my judgment, no good reason has been shown for the principle enunciated in *The Theodohos*, which represents a fundamental rule of the common law, to have been excluded from the application of the materially identical provision in the CPR. …Moreover, for our courts to exercise jurisdiction on a *person* or company *that owes no allegiance to this country and is not present in it in any meaningful sense* is not to be lightly assumed: a company served under CPR r 6.5(3)(b) must, if it is to avoid a default judgment, incur the burden of coming to this country to apply for the proceedings to be stayed, even if the claim has no connection with this country at all." (Emphasis added)

66. He then turned to consider *Rolph* and *Kamali*. Having considered those cases he said:

> "[56] I respectfully entirely agree with the decision in *City & Country Properties Ltd v Kamali*. In that case, the defendant carried on business, and presumably resided, in this country (indeed, the claim was for unpaid rent due under the lease of his business premises), and relied on his temporary absence from the jurisdiction as a reason why the claim form had not been validly served. He was, by reason of his business if not his residence, subject to the jurisdiction. It is a very different thing to hold that, in effect, a company which has never had and has no presence within the jurisdiction may be validly served in this country, not by way of substituted service, but as of right if a

> director happens to be in this country. The artificiality in the present case of the claimants serving TTK by personal service on their own employee accentuates the unreasonableness of the position if the claimants are correct.
>
> [57] It is a general principle of the common law that absent specific provision (as in the rules for service out of the jurisdiction) the courts only exercise jurisdiction against those subject to, ie within, the jurisdiction. Temporary absence, for instance on holiday, does not result in a person not being subject to the jurisdiction. In my judgment, Lawrence Collins J's statement of principle in *Chellaram v Chellaram (No 2)* … was correct if read with that qualification, and was not inconsistent with the decision in *City & Country Properties Ltd v Kamali*."

67. The qualification to the principle as formulated by Lawrence Collins J ("if he is present in the jurisdiction at the time of service") was that temporary absence will not negate presence within the jurisdiction. It was that qualification which explained the result in *Kamali*.

Decisions at first instance

68. We were referred to a number of other decisions at first instance. Since they do not bind us, I think that I can deal with them shortly. In *Fairmays v Palmer* Evans-Lombe J said that he agreed with Lawrence Collins J that the CPR did not require earlier authority (and in particular *Barclays*) to be swept away. But since his decision pre-dates *Kamali*, it is of limited value on this point.

69. *Clavis Liberty Fund 1 LP v HMRC* [2015] UKUT 72 (TCC), [2015] 1 WLR 2949 is a decision of Warren J sitting in the Upper Tribunal. It was concerned with the service of a witness summons under the tax tribunal rules. At [25] Warren J said that the CPR and the tax tribunal rules "must be interpreted against the background of the common law concerning the jurisdiction and powers over persons not resident in the UK and not carrying on business in the UK." I agree. Warren J considered both *Kamali* and *SSL*. He held that the general principle formulated by Stanley Burnton LJ in *SSL* at [57] was the principle to apply. Teare J followed Warren J's analysis of the law in *The Libyan Investment Authority v Société Générale* [2017] EWHC 781 (Comm).

70. HHJ Matthews reviewed the authorities in *Broom v Aguilar* [2024] EWHC 1764, [2025] BPIR 4. He concluded at [93]:

> "In my judgment, the authorities make clear that, in a case where the defendant is *in fact* outside the jurisdiction, the "fundamental rule" adverted to by Lawrence Collins J in *Chellaram* and approved in qualified form by the Court of Appeal in *SSL International* applies. That person is simply not subject to the jurisdiction of the English court, *unless* brought within the relevant statutory extension to persons abroad." (Original emphasis)

71. Again, I agree.

Conclusions on the requirement of presence

72. In my judgment, the common law principle that a person may only be served with process in England and Wales if he is present in England and Wales is not a mere matter of procedure. Its source is to be found within international law and the principle of territoriality. None of the recent cases about rules of court to which we were referred have explicitly considered the source of the principle.

73. In addition, with the exception of HHJ Matthews in *Broom*, they have downplayed or ignored the express acceptance by the House of Lords in *Barclays* of the appellant's submission that for the purposes of service of process within England and Wales presence within England and Wales was a "substantive jurisdictional requirement." The way in which the House interpreted the RSC did not cut across that jurisdictional requirement. On the contrary it gave effect to it.

74. It will also be recalled that one of the reasons that Lord Brightman gave for rejecting the approach of this court was that it would "outflank" the provisions of Ord 11 which at that time dealt with service out of the jurisdiction. Under the CPR service out is dealt with by r 6.36 which requires satisfaction of one or more of the "gateways" in PD 6B. Gateway (1) is that the claim is made for a remedy against a person domiciled within the jurisdiction within the meaning of sections 41 and 42 of the Civil Jurisdiction and Judgments Act 1982. Satisfaction of this "gateway" requires *both* that the defendant be resident within the jurisdiction *and also* that the nature and circumstances of his residence indicate that he has a substantial connection with the United Kingdom. If CPR r 6.9 is interpreted in the way that the judge did, this "gateway" is, to use Lord Brightman's word, outflanked.

75. As Phillimore LJ said in *Okura* the broad principles of international comity in questions of jurisdiction must always be assumed to underlie the rules of court; and as Warren J said in *Clavis* the CPR must be interpreted against the background of the common law concerning the jurisdiction and powers over persons not resident in the UK.

76. Mr Hayman submitted that because *Kamali* was a decision of this court on service of an individual, and *SSL* was a decision about service on a company, *Kamali* was directly binding on us and *SSL* could be distinguished. In my judgment, that would lead to unacceptable incoherence in the law. Like Master Marsh in *Key Homes Bradford Ltd v Patel* [2015] 1 BCLC 402 I have considerable difficulty in reconciling the reasoning in *Kamali* and *SSL*, although the actual results of the two cases may be compatible. But part of the ratio in *Kamali* was that the common law principle had *not* survived the introduction of the CPR, whereas in *SSL* part of the ratio was that the principle *had* survived the introduction of the CPR. Judging by the list of authorities cited in *Kamali* (but not referred to in the judgments) it does not appear that the court was referred to any of the authorities establishing the juridical basis of the common law principle. Moreover, I consider that the approach to the interpretation of the CPR in *Kamali* cannot survive the acceptance in *Masri* that the presumption of territoriality applied to the interpretation of the CPR. In the event of conflicting authority in this court we are entitled to choose between them. I consider that *Kamali* and *SSL* do indeed conflict. In my judgment the reasoning in *SSL* is to be preferred. It is

consistent both with the source of the common law principle and also the acceptance by the House of Lords in *Barclays* that "presence" (subject to the qualification in *SSL*) is a substantive jurisdictional requirement. I might also add that the decisions of this court in *Rolph* and *Kamali* are, to my mind, irreconcilable with Lord Brightman's acceptance *both* of the proposition that presence is a substantive jurisdictional requirement and *also* that that requirement has not been removed by the introduction of postal service. Where this court is faced with a decision of its own which cannot stand with an earlier decision of the House of Lords, this court must follow the decision of the House of Lords in preference to its own erroneous decision: *Great Peace Shipping Ltd v Tsavliris Salvage (International) Ltd* [2002] EWCA Civ 1407, [2003] QB 679 at [157] to [159]; *Nasrullah v Rashid* [2018] EWCA Civ 2685, [2020] Ch 37 at [50].

77. I consider, therefore, that Lawrence Collins J was correct when he described the principle as one of English procedure *and jurisdiction*.

78. Accordingly, the judge was correct to consider whether Mr Fridman was present within England and Wales at the time of service.

Was Mr Fridman present in England at the time of service?

79. Plainly, Mr Fridman was not physically present at Athlone House at the date of service. But temporary absence will not negate presence for the purposes of jurisdiction.

80. Mr Craig submits, however, that the cases about temporary absence are predicated on the underlying assumption that the temporary absence was voluntary; and that the defendant had the right to be present in England and Wales if he chose to be. In this case, the state itself has denied Mr Fridman the right to be present in England and Wales. It would be legally incoherent for the state on the one hand to claim jurisdiction over Mr Fridman on the ground of his presence in England and Wales, and on the other hand to deny him the right to be present there. Whether, for other legal purposes, Mr Fridman might be considered to be resident in England (or to have a usual residence there) is legally irrelevant.

81. In my judgment, this submission is compelling; and I accept it. But in case I am wrong, and presence (for the purposes of personal jurisdiction) embraces a wider concept of presence despite temporary absence, I will consider whether the judge was entitled to find that Mr Fridman was present in the wider sense in England and Wales at the date of service. Accepting, as I do, that temporary physical absence will not necessarily negate presence, nevertheless it seems to me that the concept of temporary absence for this purpose must be kept within relatively narrow bounds.

Was the judge entitled to find that Mr Fridman was resident at Athlone House?

82. If, as I think, there is a common law requirement of presence (in the wider sense) in England and Wales at the date of service, the next question is whether the judge was entitled to find that Mr Fridman was present in that sense at Athlone House on that date. That is not a question of interpreting the CPR; it is a substantive jurisdictional requirement.

83. There can be no doubt that until he left these shores on 27 September 2023 Athlone House was Mr Fridman's residence. In the ordinary way, whether a particular place is someone's residence or usual residence is a multi-factorial evaluative judgment; or as some of the cases describe it, a question of fact and degree.

84. The judge referred to the decision of Barling J in *Shulman v Kolomoisky* [2018] EWHC 160 (Ch) in which he gave guidance on the question whether a person who was once resident in England has ceased to be so for jurisdiction purposes. It is notable, however, that the basis of jurisdiction asserted in that case was domicile for the purposes of article 4 (1) of the Brussels 1 Regulation (recast) and not jurisdiction at common law. The first part of the test for the purposes of that Regulation depended on *residence* within the UK and a substantial connection with the UK. There was a presumption that residence for three months or more established the necessary connection. Barling J said at [28]:

> "i. The inquiry is a multi-factorial and fact-dependent evaluation, in which all relevant circumstances are considered in order to see what light they throw on the quality of the individual's absence from the UK:
>
> ii. For residence to cease there should be a distinct break in the sense of an alteration in the pattern of the individual's life in the UK
>
> iii. This may well encompass a substantial loosening of social and family ties, but does not require a severance of such ties
>
> iv. The individual's intention to cease residing in the jurisdiction is relevant to the inquiry but not determinative
>
> v. Actions of the individual after the material time (here, the issue of the claim form) may be relevant, if they throw light on the quality of the individual's absence from the UK
>
> vi. If the individual has in fact ceased to be resident according to the applicable criteria, the fact that his motive for doing so was unworthy or even unlawful will not affect the position
>
> vii. One should be careful to avoid the risk of over-analysis in applying what are ordinary English words."

85. In citing this passage, the judge emboldened the fourth guideline, which suggests that he regarded it as of considerable weight in his own evaluation. As Barling J was applying a test which differed from the common law test, these guidelines cannot simply be read across to a case in which jurisdiction depends upon presence (even in the wider sense).

86. Mr Craig's arguments on the question of residence echo many of the same points he made on the question of "presence". Although the point is put in several ways what it boils down to is the contention that if a person is under an indefinite travel ban, such that it is illegal for him to enter the UK, he can no longer be said to be resident in

England and Wales for as long as that ban endures, even if he "intends" to return if and when the ban comes to an end. The fact that he owns a house in London (and employs staff to look after it) does not change the position. The mere fact that Mr Fridman retains ownership of Athlone House is not enough. Whether Mr Fridman is or is not present at Athlone House for the purposes of jurisdiction is not simply a question of his subjective intention but an objective conclusion on the facts, although his intention may have a bearing on the answer.

87. Since Mr Fridman cannot use or occupy (or even set foot in) Athlone House he cannot be regarded as present there for the purposes of founding jurisdiction over him. There has, in effect, been a state-enforced expulsion of Mr Fridman from the UK. He is not and cannot be present here. Nor, even if he has an intention to return, can there be any expectation that he will be allowed to do so in the foreseeable future, if ever.

88. Mr Craig argues that, in effect, the susceptibility of an individual to the jurisdiction of the court at common law is part of a package of benefits and burdens. The point is encapsulated in this court's decision in *Adams v Cape* in which the court said at 519:

> "… we would, on the basis of the authorities referred to above, regard the source of the territorial jurisdiction of the court of a foreign country to summon a defendant to appear before it as being his obligation for the time being to abide by its laws and accept the jurisdiction of its courts while present in its territory. So long as he remains physically present in that country, he has the benefit of its laws, and must take the rough with the smooth, by accepting his amenability to the process of its courts. In the absence of authority compelling a contrary conclusion, we would conclude that the voluntary presence of an individual in a foreign country, whether permanent or temporary and whether or not accompanied by residence, is sufficient to give the courts of that country territorial jurisdiction over him under our rules of private international law."

89. The rough and the smooth go together and are inseparably entwined. As Sir William Blackstone put it (Commentaries on the Laws of England vol 1 p 226) "protection and subjection are reciprocal". Mr Craig's point is that for as long as he is precluded from entering the UK Mr Fridman cannot benefit from its laws (the smooth) and therefore cannot be made to accept the jurisdiction of its courts (the rough).

90. The judge correctly held that presence is not lost by "temporary" absence; and in considering whether absence was temporary, the judge was entitled to take into account Mr Fridman's declared intention to return to Athlone House. Indeed he gave it great weight. But what the judge did not do was to evaluate the possibility of Mr Fridman being able to put that intention into effect. In this connection an intention to return must be differentiated from a mere hope or aspiration. The classic exposition of what amounts to an intention is found in the judgment of Asquith LJ in *Cunliffe v Goodman* [1950] 2 KB 237, 253:

> "X cannot, with any due regard to the English language, be said to "intend" a result which is wholly beyond the control of his

> will. He cannot "intend" that it shall be a fine day tomorrow: at most he can hope or desire or pray that it will. Nor, short of this, can X be said to "intend" a particular result if its occurrence, though it may be not wholly uninfluenced by X's will, is dependent on so many other influences, accidents and cross-currents of circumstance that, not merely is it quite likely not to be achieved at all, but, if it is achieved, X's volition will have been no more than a minor agency collaborating with, or not thwarted by, the factors which predominately determine its occurrence. If there is a sufficiently formidable succession of fences to be surmounted before the result at which X aims can be achieved, it may well be unmeaning to say that X "intended" that result."

91. It seems to me, therefore, that where a claimant asserts that a putative defendant not physically present within England and Wales is nevertheless present here because of his declared intention to return, it is necessary to evaluate the prospects of that declared intention being put into effect.

92. Mr Craig referred to an extract from the Government's policy statement laid before Parliament on 11 April 2019 in relation to the Russia Regulations (i.e. nearly three years before the full-scale invasion of Ukraine). The Government's intention was that:

> "… sanctions on Russia will remain in place until the UK Government is assured that Russia has ended its illegal annexation of Crimea and Sevastopol; withdrawn from eastern Ukraine and is no longer carrying out actions that undermine Ukraine's sovereignty and territorial integrity."

93. He referred, too, to observations that "sanctions are severe and open-ended" (*Dalston Projects Ltd v Secretary of State for Transport* [2024] EWCA Civ 172, [2024] 1 WLR 3327 at [210] per Singh LJ) and that "no one could say how long the sanctions … will last" (*PJSC National Bank Trust v Mints* [2023] EWCA Civ 1132, [2024] 3 WLR 714 at [181] per Sir Julian Flaux C).

94. Mr Fridman was not physically present at Athlone House (or elsewhere in England and Wales) when the Claimants attempted to serve him. In short, I do not consider that his enforced and indefinite removal from the United Kingdom can be described as a "temporary" absence as that expression is used in this context. The fact that he is legally prevented from returning to Athlone House for an indefinite period which shows no sign of ending (and showed no sign of ending at the date of service) is a definite break in the pattern of his life. He may wish to return, but whether he can put that wish into effect is, for practical purposes, outside his control. Not only will he have to await the removal of the designation, but he will also have to reapply for leave to enter the UK. As Barling J put it in *Shulman,* one should be careful to avoid the risk of over-analysis in applying what are ordinary English words. In no ordinary sense of the words could Mr Fridman be said to have been present (or resident) at Athlone House after 27 September 2023. I would therefore hold that despite the Claimants' compliance with the CPR, the court did not have personal jurisdiction as of right over Mr Fridman.

Result

95. It follows, in my judgment, that the judge was wrong to make the order that he did. If the Claimants wish to bring proceedings against Mr Fridman, they will need to obtain the permission of the court to serve them outside England and Wales, relying on one or more of the "gateways" listed in PD 6B. But if such permission is granted, they will then be able to apply for an order for substituted service at Athlone House.

96. I would allow the appeal.

Lord Justice Phillips:

97. I agree.

Sir Launcelot Henderson:

98. I also agree.