IN THE SUPREME COURT OF THE UNITED KINGDOM **UKSC/2026/2012**

ON APPEAL FROM THE COURT OF APPEAL (CIVIL DIVISION)

[2025] EWCA Civ 1528

Singh, Males, Popplewell LJJ

BETWEEN:

THE KING
on the application of
(1) L1T FM HOLDINGS UK LIMITED
(2) LETTERONE CORE INVESTMENTS S.À.R.L.

Appellants

-and-

CHANCELLOR OF THE DUCHY OF LANCASTER IN THE CABINET OFFICE

Respondent

-and-

UPP CORPORATION LIMITED

Interested Party

RESPONDENT'S WRITTEN CASE

References in this Written Case in the form §1 AWC are to paragraphs in the Appellants' Written Case, §1 SFI are to paragraphs in the agreed Statement of Facts & Issues, §1 CA are to paragraphs in the judgment of the Court of Appeal and §1 HC to paragraphs in the OPEN judgment of the High Court.

A. INTRODUCTION

1. This appeal concerns Article 1 of the First Protocol to the European Convention on Human Rights ("A1P1") as it applies to a final order ("the Order") made under the National Security and Investment Act 2021 ("NSIA"). The NSIA is the scheme that Parliament created to address national security risks arising from the acquisition of control of certain types of entities and assets.

MB/0655 MB/0667 MB/0199

2. Pursuant to section 26 of the NSIA, the First Appellant was required by the Order to divest 100% of its shareholding in a broadband company, Upp. The First Appellant sold

MB/0686

its shareholding and retained the proceeds of the sale. The issue in this appeal is not whether the Order was necessary and proportionate as a national security measure; it is whether A1P1 required the Respondent[1] to pay the Appellants a sum, in addition to what they obtained through the sale of Upp, to put them in the hypothetical position they assert they would have occupied had there been no Order.

3. A1P1 does not impose the rigid rule for which the Appellants contend, namely, that a person required to divest property in the interests of national security must recover a hypothetical "*fair market value*"[2] unless payment of that value would undermine the national security objective pursued. The established approach is one of fair balance and proportionality, assessed in the applicable statutory context and with due regard to the wide margin of appreciation accorded to Parliament and the executive in matters of national security. Applying that established approach, compliance with A1P1 did not require the Respondent to pay the First Appellant an additional sum to ensure they recovered the "*fair market value*" of the shares.

4. The Court of Appeal correctly applied that approach. It was entitled to take account of the nature of the NSIA scheme, including Parliament's decision not to create a general compensation scheme but to make provision for financial assistance, and the fact that the Appellants retained the sale proceeds. It was also entitled to consider the national security risk arising from the First Appellant's ownership structure and the practical consequences of requiring a separate valuation exercise. For the Appellants' case to succeed, this Court would need to develop the law beyond the European Court of Human Rights' ("ECtHR") jurisprudence on A1P1 and beyond any principle recognised in domestic law. On the facts of this case, no such development is warranted.

---

[1] "Secretary of State" has been used throughout this skeleton to mean the Secretary of State for Business, Energy and Industrial Strategy prior to 7 February 2023 and thereafter the Secretary of State responsible for decisions under the NSIA. On 7 February 2023, the Department for Business, Energy and Industrial Strategy ("BEIS") was divided into the Department for Energy Security and Net Zero, the Department for Business and Trade and the Department for Science, Innovation and Technology. At that stage, responsibility for decisions under the NSIA moved from the Secretary of State for Business, Energy and Industrial Strategy to the Secretary of State in the Cabinet Office who was also the Chancellor of the Duchy of Lancaster ("CDL"). In July 2026, responsibilities for NSIA decision making transferred from the CDL to the SoS for Business Innovation Science and Trade ("BIST"). The Chancellor of the Duchy of Lancaster remains responsible for this litigation.

[2] "*Fair market value*" is defined by the Appellants as "*the fair market value that would have been agreed between a hypothetical willing seller and willing buyer in circumstances where there was no Final Order in place as opposed to the price obtained pursuant to the forced sale under the Final Order*" (§15 AWC).

B. THE STATUTORY FRAMEWORK

5. The NSIA[3] conferred wide powers on the Secretary of State to prevent, remedy, or mitigate national security risks of the kind which arose from the First Appellant's acquisition of Upp. On 11 November 2020, the NSIA had its first reading in Parliament. It was granted Royal Assent on 29 April 2021 and its key provisions were commenced on 4 January 2022.

MB/0667 6. Section 1 empowers the Secretary of State to issue a "*call-in notice*" if he reasonably suspects that a trigger event has taken place and the event has given rise to or may give rise to a risk to national security. The term "*trigger event*" is defined in ss.5(1), 7(2)- MB/0670 (3), and 8(1)-(2), (5)-(6), (8) and 9(1). A trigger event includes a person increasing the MB/0671 MB/0672 percentage of shares they hold in a qualifying entity from less than 75% to 75% or more: ss.8(1)-(2). The term "*qualifying entity*" is defined in ss.7(2)-(3) and includes a MB/0671 company carrying on activities or supplying services to persons in the United Kingdom.

MB/0668 7. Section 2 confers the power to issue a call-in notice in respect of a trigger event which occurred before the call-in power came into force provided that: (1) the event occurred after 12 November 2020 (the day after the NSIA's first reading in Parliament); and (2) the notice was issued within six months of the commencement date (i.e. 4 January 2022). This power retrospectively to call-in a completed acquisition was used in the present case.

MB/0680 MB/0682 8. Sections 19 and 20 confer information gathering powers on the Secretary of State, including a power to require a person to provide information and to attend a place and give evidence.

MB/0686 9. Section 26 provides that, before the end of the assessment period in relation to a call-in notice, the Secretary of State must (i) make a final order; or (ii) give a final notification to each person to whom the call-in notice was given. The conditions for making a final order are contained in s.26(3):

MB/0686 "*The Secretary of State may, during the assessment period, make a final order if the Secretary of State—*

(a) is satisfied, on the balance of probabilities, that—

[3] References to sections below are to sections in the NSIA unless otherwise indicated.

KB/056

(i) a trigger event has taken place or that arrangements are in progress or contemplation which, if carried into effect, will result in a trigger event, and

(ii) a risk to national security has arisen from the trigger event or would arise from the trigger event if carried into effect, and

(b) reasonably considers that the provisions of the order are necessary and proportionate for the purpose of preventing, remedying or mitigating the risk."

MB/0687 10. Section 27 gives the Secretary of State the power to vary or revoke a final order. Section 27(3) provides that "*If a person required to comply with an order requests that the Secretary of State vary or revoke it, the Secretary of State must consider the request as soon as practicable after receiving it*."

MB/0689 11. Section 30 allows the Secretary of State, with the consent of the Treasury, to give "*financial assistance*" to an entity "*in consequence of the making of a final order*." Section 30(2) defines financial assistance as meaning "*loans, guarantees or indemnities, or any other kind of financial assistance (actual or contingent)*". This provision is not a general compensation scheme (see for example the HMG Guidance[4] which states: "*The government is not obligated to provide financial assistance and this is not a general compensation scheme. The government expects to provide financial assistance very rarely, and only when no appropriate alternative is available*").

C. FACTS AND PROCEDURAL HISTORY

MB/0007 12. The key facts are set out at §§1-23 SFI. They are covered in more detail in §§2-5, 16-36 CA and in §§35-88 and 93 HC.
MB/0087 MB/0089-0093 MB/0121-0133

13. The Appellants' investment in Upp and their engagement with the Investment Security Unit of the Department for Business, Energy and Industrial Strategy ("BEIS") are best understood in the context of the legislative process, against which they can be mapped as follows:

[4] "Guidance: Check if you need to tell the government about an acquisition that could harm the UK's national Security", published 20 July 2021 and last updated 15 July 2026: https://www.gov.uk/guidance/national-security-andinvestment-act-guidance-on-acquisitions#what-to-do-if-you-think-you-require-financial-assistance-as-a-resultof-a-final-order.

a. On 11 November 2020, the NSIA had its first reading in Parliament.

b. On 9 December 2020, representatives of the Appellants met with a BEIS official (§3 SFI). They sought "*comfort*" that the Secretary of State would not intervene in their proposed "*greenfield*" investment and "*if / when the new National Security regime entered into force the investment would not be subject to review*" (Attendance note by Akin Gump Strauss Hauer & Feld dated 9 December 2020). No undertaking was given by the official (nor could it have been: she could not bind the Secretary of State, and the legislation was not then in force).

MB/0008

MB/0161

c. In December 2020, the Appellants' board approved a £300 million investment to operate and develop the company that was then called FibreMe (§10 Second Witness Statement of Benjamin Babcock ("Babcock 2")). FibreMe was later renamed Upp. The initial investment opportunity envisaged an eight-year investment and growth period (§9 Babcock 2).

MB/0377

MB/0377

d. On 21 January 2021, the trigger event took place: the First Appellant bought 100% of the share capital of FibreMe (§5 SFI). At that stage, it was a non-operating company which the First Appellant intended to use to establish a fibre broadband business (§35 HC). It had a business plan and an outstanding application for Ofcom Electronic Communications Code powers (page 12, First Appellant's Second Representations submitted to the Respondent, dated 24 October 2022). The purchase price was £100 (§5 SFI).

MB/0008

MB/0121

MB/0008

e. On 29 April 2021, the NSIA was granted Royal Assent.

f. On 4 January 2022, the key provisions of the NSIA were commenced.

g. On 19 December 2022, the Secretary of State made the Order.

h. The Appellants suggest at §9 AWC that the Order was imposed "*because, after the Russian invasion of Ukraine, it was perceived to be contrary to national security for a broadband company to be owned by an investment group whose ultimate beneficial owners…included Russian individuals who might themselves be vulnerable to leverage by the Russian state"*. They also assert that the purpose of the Order was "*to prevent a national security risk arising*" (§70(1)).

MB/0024

MB/0041

i. These are misleading characterisations of the basis on which the Order was imposed. The Appellants' contentions are also contrary to their stance, both at first instance and in the Court of Appeal. The Order was imposed because the Secretary of State was satisfied on the balance of probabilities that a trigger event had taken place and that "*a risk to national security* ***had arisen*** *from the trigger event*" (emphasis added). This is what section 26(3) of the NSIA required; see §9 above. There was no issue about this before Farbey J or the Court of Appeal: see §13 HC and §17 CA. Further, the "*national security risks in this case relate to*":

MB/0686

MB/0116

MB0089

> *the ownership of Upp Corporation Ltd by the ultimate beneficial owners of LetterOne Core Investments SARL (parent company of L1T FM Holdings UK Ltd), the ultimate beneficial owners' vulnerability to leverage by the Russian state, and Upp's full fibre broadband network rolling out in the East of England.* (§19 SFI; §77 HC)

MB/0130
MB/0012

j. After the Secretary of State had made the Order pursuant to s.26(3), the First Appellant sought £39million of financial assistance under section 30 NSIA, not as compensation but to cover Upp's funding requirements until the end of the sale process (§80 HC, §21-25 Babcock 2). On 6 July 2023, the Secretary of State declined to provide this financial assistance (§80 HC). The Appellants did not challenge that decision. They have not made any other application for financial assistance or compensation.

MB/0686
MB/0689

MB/0130
MB/0381

MB/0130

k. On 8 August 2023, the Chancellor of the Duchy of Lancaster (then the Deputy Prime Minister, who at that time had responsibility for the application of the NSIA) proactively reviewed the Order under section 27(2) NSIA and concluded that the Order should not be varied or revoked (§80 HC).

MB/0687

MB/0130

l. On 5 September 2023, Upp was sold to Virgin Media O2 for a sum which is subject to a confidentiality order made by the courts below. The Supreme Court is invited to note the sum paid to the First Appellant. That sum is material because the compensation now sought by the Appellants is additional to the consideration they received on the sale of Upp.

14. The rolled-up hearing before Farbey J included a closed session. Farbey J reached her conclusions on the basis of the open evidence but confirmed it was "*supported by the*

MB/0161 *closed material*" which she addressed in a closed judgment (§232 HC). Neither that judgment nor the closed material was reviewed by the Court of Appeal.

15. At first instance, the Appellants' Re-Amended Grounds challenged the making of the Order requiring the First Appellant to divest itself of its shareholding in Upp. Among other grounds, the Appellants submitted that the Order was disproportionate and contrary to their rights guaranteed by A1P1. Under Ground 1A, they submitted that the Order was disproportionate under A1P1. Under Ground 1B, they contended that, not providing full compensation for the financial loss incurred by the divestment gave rise to a breach of A1P1. Permission was refused on Ground 1A. The judge did not regard the Secretary of State's decision to make the Order "*a borderline one…The Secretary of State was on any standard justified in having significant concerns about a package* MB/0156 *of measures less than divestment*" (§204 HC). On Ground 1B, permission was granted but the ground failed (§§216 and 230 HC). MB/0158 and 0161

16. The Appellants appealed, contending that A1P1 required that they receive full compensation for the "*deprivation of their possessions*". The Court of Appeal made the MB/0099 assessment of proportionality for itself (§58 CA) and dismissed the appeal. The court considered that the principle of proportionality was satisfied because:

    a. It was not determinative of whether the measure in question was characterised as a deprivation of property or a control of use (§84 CA); MB/0108

    b. Compensation in the form of fair market value of the shares was not required where the Appellants had been able to conduct a sale in the open market and retain the proceeds of that sale (§§85-86 CA); MB/0108

    c. There is a wide margin of judgement which must be afforded to the legislature and the executive; Parliament had chosen not to include a compensation scheme within the primary legislation (§87 CA); MB/0109

    d. The UBOs posed a risk to national security and it was that which prompted the Secretary of State to make the Order (§88-90 CA); MB/0109-110

e. Section 30 NSIA was a provision for financial assistance which would allow mitigation measures to be taken (for example if hardship was shown); this was important to the overall assessment of proportionality (§91 CA); MB/0110

f. The process of assessing the "*fair market value*" of a company would be a complicated and lengthy process with the potential to impede the process by which the Respondent is able to achieve the important public interest purposes which lie behind the scheme of the NSIA (§92 CA); and MB/0110

g. There was no ECtHR authority directly on point, nor any coming close to requiring a state to compensate against any diminution in value flowing from a forced sale (§93 CA). MB/0110

D. CHARACTERISATION OF THE ORDER AS DEPRIVATION OR CONTROL OF USE

17. Singh LJ held that the question of whether the measure in question was characterised as a deprivation of property or a control of use was not determinative. That conclusion is not challenged in this appeal.[5] Although he was prepared to put the Appellants' case at its highest and proceed on the footing that the measure constituted a deprivation of property, Singh LJ recognised that there was "*force in [the submission] that when viewed as a whole rather than taking particular elements of the process in isolation, this scheme is properly to be viewed as a control of use case*" (§84 CA). MB/0108

18. That approach is consistent with the case law of the ECtHR, which demonstrates that the distinction between deprivation and control of use is neither clear-cut, nor crucial to the analysis: *R (Mott) v Environment Agency* [2018] UKSC, [2018] 1 WLR 1022 (SC) ("*Mott*") *per* Lord Carnwath JSC at §32. Even if an interference amounts to a control of use rather than a deprivation, it is possible in principle for compensation to be required if the control is sufficiently severe. In practice, however, this is rare. *Mott* was an exceptional example of a control of use for which the state was required to pay compensation because of the severity of the impact on an individual salmon fisherman (see Lord Carnwath at §37, quoted at §40 below). MB/1317 MB/1372

MB/0108 [5] Nor is there any need for the Respondent to challenge Singh LJ's observations at §84 CA which must be read in context (c.f. §58 AWC).

19. Nevertheless, the distinction remains instructive when considering the seriousness of the interference and whether, and to what extent, A1P1 requires compensation. For that reason, if necessary, it is submitted that the Order involved an A1P1 control of use, not a deprivation.

20. In *AXA General Insurance v. HM Advocate* [2011] UKSC 46, [2012] 1 AC 868 ("*Axa*") at §107, Lord Reed described the well-known A1P1 taxonomy: MB/0859

> "*The first is a rule of a general nature, set out in the first sentence of the first paragraph, which enunciates the principle of the peaceful enjoyment of property ('Every natural or legal person is entitled to the peaceful enjoyment of his possessions'). The second is the rule contained in the second sentence of the first paragraph, which covers deprivation of possessions and subjects it to certain conditions ('No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law'). The third rule, stated in the second paragraph, is an explicit recognition that states are entitled, amongst other things, to control the use of property in accordance with the general interest.*"

21. Having stressed that "*the importance of classification should not be exaggerated*", Lord Reed continued at §108: MB/0859

> "*Although, where an interference is categorised as falling under the second or third rule, the Strasbourg court will usually consider the question of justification under reference to the language of those specific provisions of A1P1, the test is in substance the same, however the interference has been classified. If an interference has been established, it is then necessary to consider whether it constitutes a violation. It must be shown that the interference complies with the principle of lawfulness and pursues a legitimate aim by means that are reasonably proportionate to the aim sought to be achieved. This final question focuses upon the question whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights: Sporrong and Lönnroth, para 69. In that regard, the Strasbourg court accepts that a margin of appreciation must be left to the national authorities.*"

22. The second rule concerning deprivations of property applies not only to formal expropriation but also to measures which amount to a *de facto* expropriation but where legal title is retained: see for example *R (British American Tobacco UK Ltd) v. Secretary of State for Health* [2016] EWCA Civ 1182, [2018] QB 149 ("*Tobacco CA*") at §93. MB/1245

23. The distinction between control of use and deprivation is established in the ECtHR's case law. In *Tobacco CA,* the Court of Appeal considered the distinction in detail and by reference to the relevant ECtHR case law, at §§91-100. (See also Green J's analysis at first instance in *Tobacco* [2016] EWHC 1169 (Admin) especially at §§732 *et seq*; noting his correct analysis of *Vékony v. Hungary* [2015] ECHR 5 at §768 and §770; his citation of *Tre Traktörer v. Sweden* (1991) 13 EHRR 309 at §769; and especially his citation of *Yukos v. Russia* (2012) 54 EHRR 19 ("*Yukos*") at §§779-781 (that case involving compulsory sale of shares to meet alleged tax demands, which was nevertheless characterised as a control of use)).

MB/1244-1247 MB/1207 MB/1218 MB/1219 MB/1220 MB/1228

24. The key principles on the distinction between deprivation and control of use are as follows:

a. The test for deprivation is a very high one: "*all meaningful use*" of the property must be removed or taken away. That test can be traced back to *Fredin v. Sweden* (1991) 13 EHRR 784, §45, and has been consistently applied by the ECtHR. See, for example, *Pine Valley Developments v. Ireland* (1992) 14 EHRR 319 ("*Pine Valley*") at §56 in which an interference with land was a control of use, rather than a formal expropriation or *de facto* deprivation. Planning permission had been revoked but "*the land was not left without any meaningful alternative use, for it could have been farmed or leased. Finally, although the value of the site was substantially reduced, it was not rendered worthless, as is evidenced by the fact that it was subsequently sold on the open market*." Citing *Pine Valley* in *Tobacco CA*, Lewison LJ at §96 noted that part of the test for deprivation was whether the complainant has retained "*any meaningful use of the possession in question. If the answer to that question is 'yes', then the interference is unlikely to amount to de facto deprivation or expropriation…The rights may lose some of their substance, but provided that they do not disappear it is unlikely that the interference will be treated as a de facto expropriation…*".

MB/1740 MB/2077 MB/1246

b. The correct approach under A1P1 is not to atomise and then focus in on the right or interest affected in isolation. Rather, the correct approach is to focus more broadly on the substance and reality of what has occurred in the round, taking all of the circumstances into account (see for example *Sporrong and Lönroth v. Sweden* (1983) 5 EHRR 35 ("*Sporrong*") at §63).

MB/2119

c. Various factors of importance are evident from the case law including in particular:

i. whether the person has lost the property and what it represents entirely (hence the emphasis in the cases on whether the state has in effect taken over, for instance, land or a hotel or a monastery). For example, in *Depalle v. France* (2012) 54 EHRR 17 at §§79-80, the ECtHR found that a local authority's refusal to renew authorisation of the complainant's occupancy of a house built on public land and a court order to demolish the house was not a deprivation of possessions. Nor does the fact that an applicant loses ownership of possession mean necessarily that there was anything other than a control of use: *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* (30 August 2007) [2007] ECHR 5559 at §64.

MB/1720

MB/1821

ii. the impact on the person's property and its remaining uses – including whether what remains is of economic value and can be sold. *Yukos*, involving compulsory sale of shares to meet bogus tax demands by the state, provides a clear example. In *Sporrong*, the ECtHR held that there was no deprivation because, although the applicants' right "*lost some of its substance, it did not disappear*" (at §63). This point was also made in *Tobacco CA* at §96 and at §97 where Lewison LJ stated: "*On the other side of the line, even where the complainant does lose his legal title to the possession in question, that loss does not necessarily amount to a deprivation as opposed to a control of use*". Looking broadly at the substance and reality of the situation there, at §106, Lewison LJ concluded that although the regulations in question made the Appellants' rights "*far less valuable*", "*the fact that there is a residual utility in these negative rights coupled with the retention of legal title*" meant there was no deprivation. Accordingly, where the value of property is not what it was and has reduced, that is plainly not enough.

MB/2119

MB/1246

MB/1246

MB/1248

iii. the nature of the scheme, with a view to asking whether it is designed to control the use of assets even if some parts of the scheme take away property rights. The examples are the ECtHR licence cases (such as *Vékony* and *Tre Traktörer*), and the cases in which a business sells or operates a product or

MB/2197

MB/2173

thing which is then banned, putting them out of business[6]. All have been characterised as control of use cases. They include as a stark example *AGOSI v. UK* (1987) 9 EHRR 1 ("*AGOSI*"), in which gold was imported contrary to the scheme in question and was then forfeited entirely to the detriment of the innocent seller which lost its retention of title clause benefits. MB/1607

25. On the present facts, the key point is that the Order permitted the sale of the shares at market value and permitted the owners of the shares to retain the proceeds of the sale. In particular: MB/0199

a. The Appellants were at liberty to decide whether to wind down or sell Upp, or to make any other decisions as to the manner of disposition;

b. If they elected to sell Upp, they were free to decide to whom they wished to sell (provided the new purchaser did not give rise to any national security risk under the NSIA);

c. They could choose the method of sale (for example, inviting non-binding offers or sealed bids from a number of buyers or approaching a single buyer);

d. They were able to negotiate the price and terms;

e. They could also determine the time of sale, provided it was completed within nine months of the approval of the disposal plan;

f. They could seek to extend the initial divestiture period under §5(l) of the terms of the Order;

g. Neither the company itself nor the proceeds went to the state; and

h. The Appellants retained the entire proceeds of the sale.

26. Thus, applying the approach evident from the case law:

MB/2083

MB/2092

[6] *Pinnacle Meat Processors Co v. United Kingdom* (1998) 27 EHRR CD217 (meat deboned from the heads of cattle following the BSE crisis) or *Ian Edgar (Liverpool) Ltd v. United Kingdom* Reports of Judgments and Decision 2000-I, p 465 (firearms following the Dunblane massacre) and *R v. Secretary of State for Health, Ex p Eastside Cheese Co* [1999] 3 CMLR 123 (cheeses thought to be unsafe). MB/1503

a. The Court's focus is on looking at the property involved in the round, rather than simply focusing on the shares in isolation.

b. The shares represent the value of that portion of the company from time to time and can be sold so as to generate cash value. The legislation and the exercise of the powers it prescribes simply require that they be converted into cash as part of a necessary and proportionate national security divestment process. Accordingly, there is no question of the Appellants being deprived of "*all meaningful use*" of their property.

c. The ECtHR case law indicates that, even in extreme situations such as those involved in *Yukos* (in effect, a compulsory sale of shares as part of bogus takeover following tax demands by the Russian state) a required sale of shares was characterised as control of use.

MB/0402 d. Contrary to §10 AWC, the Order is not analogous to a compulsory purchase order or one of the equivalent measures which were analysed in the ECtHR cases relied on by the Appellants. The state did not appropriate the company for itself. In the case of a forced sale to a private actor, the property right retains some of its substance, whereas in an expropriation, the right is extinguished.[7] It is also to be noted that in the cases relied on by the Appellants (such as *James* and *Osmanyan,*
MB/0417 §56(1) AWC), it was not in dispute that the measures in question constituted a deprivation of possessions. The other cases cited by the Appellants (§56(2) AWC) MB/0418 are confiscation cases – a situation far removed from the circumstances of this case – and they are therefore similarly inapt.

e. In any event, this is a legislative scheme for controlling the use of property by empowering a range of measures, if necessary and proportionate for national security reasons. The scheme itself determines the character as a control of use. If that was so in the context of complete forfeiture in, for example, *AGOSI*, the same characterisation applies *a fortiori* here.

[7] For the avoidance of doubt, it is not correct to characterise this as saying "*the Secretary of State argued that a forced sale to a private actor…cannot amount to a deprivation of possessions*" (§56 AWC). There may be occasions where a forced sale to a private actor could amount to a deprivation, but this is not one. §191 HC accurately records the submissions that were made before the Administrative Court on this point. MB/0418 MB/0153

MB/0108
MB/0153
MB/0859
MB/1371

27. As both the judgments below correctly noted (§193 HC and §84 CA), the basic analysis is the same whichever characterisation is adopted. The approach to proportionality remains constant (*per* Lord Reed in *Axa* at §108, cited at §21 above). Moreover, as *Mott* at §32 *et seq* indicates, there is no rigid divide in relation to compensation – an extremely serious interference which is characterised as control of use can lead to a requirement, in order to satisfy proportionality, for compensation.

28. The cases of *Vistiņš* and *Osmanyan*, relied on by the Appellants in support of the contention that they are entitled to "*full compensation*" (§§64, 71, 97 AWC), are both cases in which the ECtHR found that the measure in question constituted an expropriation. No finding of expropriation has been made in this case and, for the reasons given above, no such finding needed to be made, or could have been made, applying the principles enunciated in the applicable authorities. Furthermore, in each case, the award of compensation had to be estimated because, unlike in this case, there was no sale to a third party.

MB/0040
MB/0042
MB/0053

E. GROUND 1

The correct approach to the payment of compensation

29. There is no right under A1P1 to full compensation. *James v. United Kingdom* (1986) 8 EHRR 123 concerned the compatibility with A1P1 of the Leasehold Reform Act 1967, which involved the compulsory transfer of long leases to their tenants and the calculation of the price received for that transfer. At §54 (cited both at first instance §218 and §56 CA), the ECtHR said:

MB/1836
MB/0158
MB/0098
MB/1860

> *"… the taking of property without payment of* ***an amount reasonably related to its value*** *would* ***normally*** *constitute a disproportionate interference which could not be considered justifiable under Article 1.* ***Article 1 does not, however, guarantee a right to full compensation in all circumstances.*** *Legitimate objectives of 'public interest', such as pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value. Furthermore, the Court's power of review is limited to ascertaining* ***whether the choice of compensation terms falls outside the State's wide margin of appreciation*** *in this domain."*

MB/2245

30. In *Vistiņš v Latvia* (2014) 58 EHRR 4 at §110, the ECtHR observed that in "*many cases of lawful expropriation, such as a distinct taking of land for road construction or other*

'public interest' purposes, only full compensation may be regarded as reasonably related to the value of the property." This observation is consistent with the approach in *James*. It is not a statement of principle that the deprivation of property must involve full compensation in every case, irrespective of the strength of the public interest in the deprivation. Instead, A1P1 requires a proportionate and reasonably related amount, assessed in the context of the legitimate public interest and the state's margin of appreciation.

31. Nor does proportionality require "*full value*" to be paid in compensation. The applicable principles were summarised by the Court of Appeal in *R (SRM Global Master Fund LP) v Treasury Commissioners* [2009] EWCA Civ 788, [2010] BCC 558 ("*SRM Global*") in which it considered the basis on which compensation should be payable following the nationalisation of Northern Rock. Laws LJ at §43 distilled the "*three governing principles*" established by the Strasbourg jurisprudence:

MB/1390

> "*(1) the need for a fair balance to be struck between public interest and private right; (2) the principle of proportionality; (3) the doctrine of the margin of appreciation*".

MB/1391

32. At §48, Laws LJ said:

> "*the requirement of proportionality by no means implies that the erstwhile owner of property taken by the State must always be compensated at full value if a violation of A1P1 is to be avoided. Such a rule would frustrate, not fulfil, the search for fair balance*."

33. There is no principle discernible in either the domestic or the ECtHR authorities that the obligation to provide "*full*" compensation is only disapplied when doing so would be inconsistent with the public policy purpose of the impugned measure. In particular, and contrary to the Appellants' contention (§§63-70 AWC), neither the judgment in *Lithgow v United Kingdom* (1986) 8 EHRR 329 ("*Lithgow*") nor *SRM Global* are authority for such a proposition.

MB/0040-0041
MB/1897

34. In *Lithgow,* the shareholders in nationalised companies argued that the disparity between their compensation and the value of their nationalised interests was such that the UK was in violation of A1P1. The Grand Chamber rejected that argument. In doing so, it distinguished between the nationalisation measures and a compulsory acquisition of land for public purposes and confirmed at §121:

MB/1940

> "*the taking of property without payment of an amount reasonably related to its value would normally constitute a disproportionate interference which could not be considered justifiable under Article 1. Article 1 does not, however, guarantee a right to full compensation in all circumstances, since legitimate objectives of 'public interest', such as pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value.*"

35. This establishes that full compensation is not required "*in all circumstances*". It does not establish that compensation below full market value is permissible only where payment of full compensation would be incompatible with the public interest objective pursued by the measure. That is a materially different proposition. The former recognises that A1P1 does not impose an absolute rule of full compensation; the latter would impose an additional condition on any departure from that rule for which *Lithgow* provides no authority.

36. This is further evident when considering the relevant paragraphs of Laws LJ's judgment in *SRM Global* in full (§§55-56):

MB/1394

> *"The importance of these authorities lies in what they tell us about the constellation (as I have put it) between the three first rank principles. I would express it in this way. The overarching principle is the first, the need to strike a balance between public interest and private right. The other two, proportionality and the margin of appreciation, provide the means by which the balance is struck. In the context of A1P1 the application of proportionality to a confiscation will ordinarily mean payment of an amount reasonably related to the value of the property taken, so as not to impose a disproportionate burden on the person deprived. However the relation between proportionality and the first principle is qualified by the third, the margin of appreciation. Its effect is that that relation is not rigid or constant. It must acknowledge the claims of government policy on democratic grounds, albeit within the frame of the Convention rights. As no doubt one might expect, the balance between public interest and private right will be struck, now more in favour of one, now more in favour of the other: depending in each case on the nature of the interest and the right.*
>
> *"For the purpose of A1P1 this process takes concrete form as follows. The paradigm case of a reasonable relationship between compensation and the property's value arises, no doubt, where full market value is paid. In that case the relationship between the two is one of identity. That or something not far off is likely to apply in what may be called a 'micro-economic' setting, where for example a single property is taken to achieve a specific and limited local objective. In such a case proportionality is likely to require market value or something close to*

> *it, and the margin of appreciation may offer little or no scope to justify the deprivation of property for less. But there will be other cases in which the objective of the deprivation is much broader: perhaps a matter of high politics. In such instances, the policy aim of the measure in question may be diminished or undermined or even contradicted by a requirement of full market value. The measure's intention may be to re-distribute wealth, or to achieve a necessary social reform, goals which are or may be perceived to be inconsistent with full compensation payable to the previous owner. In these cases, the margin of appreciation allows a flexible approach to the right protected by A1P1 which may give place to those aspects of the policy which override the case for payment of full value."*

Laws LJ's focus in these paragraphs was on the margin of appreciation which "*allows a flexible approach to the right protected by A1P1 which may give place to those aspects of the policy which override the case for payment of full value*" (at §56) – and MB/1394 thus positively supports the submissions made above.

37. The Court of Appeal did not err in law. The striking of the fair and proportionate balance under A1P1 does not require the payment of compensation here, in addition to the retained proceeds of the sale. It does not require the payment of "*full*" compensation as the Appellants now[8] conceive it.

38. **First,** both Parliament and the Secretary of State are to be accorded the broadest margin in deciding whether or not there should be a requirement to compensate where there is a final order requiring divestment (as to which, see further Ground 2 below).

39. **Secondly,** both Parliament's legislative judgment and the judgment made by the Secretary of State are well within that margin. That is especially so having regard to the following:

    a. The structure of the scheme is in summary that a final order requiring divestment can only be made if the demands of national security require it. That regime is thus premised on the owners of the company posing real risks to national security through continued ownership.

[8] In the Court of Appeal "*it became clear during the hearing […] that what the Appellant really seeks is the fair market value of the shares which it had to divest by reason of the Order, not (for example) reimbursement of the money it had invested in the past or loss of future profits*" (§85 CA). MB/0108

MB/0199

b. The Order simply requires a sale of the shares. The market value of the shares can be sought and obtained. As noted above, the Appellants were free to decide to whom they wished to sell (provided the new purchaser did not give rise to any national security risk under the NSIA); they could choose the method of sale (for example, inviting non-binding offers or sealed bids from a number of buyers or approaching a single buyer); they were able to negotiate the price and terms; they could also determine the time of sale, provided it was completed within nine months of the approval of the disposal plan. Thus, these matters (and the value for the shares) significantly mitigated the effects of the divestment requirement necessary for the protection of national security.

c. Parliament did not include a provision for compensation in all cases of divestment. Rather, the scheme created by Parliament envisages that the judgements involved, including as to necessity and proportionality on the facts of particular cases, will be made by the Secretary of State. That legislative choice attracts a wide margin. Notably, the Appellants do not challenge the compatibility of the scheme with A1P1.

d. Although the scheme had limited retrospective effect, the Appellants were on notice of the impending legislation at the time that they purchased FibreMe and began investing in its development (see §13 above).

MB/0182

e. The Secretary of State was informed in the Remedies Assessment that the First Appellant "*would highly likely incur a high cost in selling Upp as it would highly likely receive less than the amount at which it values the company and the investments they have made in Upp… There could be a perception that this is a distressed sale and this could bring the price offered for Upp below market value*". The Secretary of State was thus well aware when considering whether to make the Order that it may result in adverse consequences for the First Appellant. He nevertheless concluded that it was necessary and proportionate to make the Order for the purpose of preventing, remedying or mitigating a national security risk, the existence of which is not challenged in this appeal. Indeed, despite some mischaracterisations of the Order, there has never been any dispute during these proceedings that a risk to national security arose from the trigger event (§13 HC). MB/0116

MB/0088

f. As noted in §12 CA, instead of a requirement to compensate, Parliament in s.30 NSIA conferred a discretion on the Secretary of State to give financial assistance to or in respect of an entity in consequence of the making of a final order. There is no statutory cap on the amount that may be granted and the possibility of paying large sums to those affected is contemplated with provision for reporting to Parliament should the amount total £100 million or more. When considering section 30 at first instance, Farbey J observed that "*The provisions of the Act are adequate to enable full compensation, however that term is defined*" (§222 HC). MB/0159 The Appellants applied for financial assistance to cover the investments in the company prior to sale. The Secretary of State took the decision not to award financial assistance. The Appellants did not challenge that decision or ask for the Order to be varied under s.27 NSIA. The Secretary of State's decision to review (see §13.k above) was not made in response to an application to vary made by the Appellants.

MB/0687

40. **Thirdly,** for all the reasons given at §§17-28 above, this is a control of use, not an expropriation case. In such cases, compensation can be a requirement of proportionality. But the circumstances would need to be extreme. *Mott* is a very rare example – as Lord Carnwath stated (at §37): MB/1372

> "*... I would emphasise that this was an exceptional case on the facts, because of the severity and the disproportion (as compared to others) of the impact on Mr Mott. As the Strasbourg cases show, the national authorities have a wide margin of discretion in the imposition of necessary environmental controls, and A1P1 gives no general expectation of compensation for adverse effects. Furthermore, where (unlike this case) the authorities have given proper consideration to the issues of fair balance, the courts should give weight to their assessment*."

MB/0199

41. **Fourthly,** even if the Order is characterised as a deprivation, that would lead neither to the automatic consequence that compensation was required, nor (and still less) to the proposition that "*full*" compensation was required. In the present context, the "*full*" compensation that is contended for by the Appellants means not merely receiving the market value for their shares in Upp (they have already received the proceeds of the sale) but money from the state to compensate them for the consequences of the sale being compelled by the terms of the Order. There is no requirement for any such compensation, nor is it guaranteed by A1P1. Parliament was well within its margin in

judging it appropriate, balancing the various interests involved, to establish the legislative scheme as it did. The Secretary of State was well within his margin in making the Order as he did.

42. In any event, **fifthly**, proportionality does not require either a state, legislating and then acting in this sort of context and with these mitigating measures, or the Secretary of State exercising the discretion conferred on him by Parliament, to compensate against any potential diminution in value flowing from the fact that the sale is compelled by an otherwise lawful order made in the interests of national security or for past investment and / or possible profit from a future (unforced) sale. There is no ECtHR authority that comes close to requiring that.

43. In support of their contention that they are entitled to more than the market value of the shares, and to be protected from the consequences of the sale being compelled by the Order, the only case relied on by the Appellants is *Osmanyan v Armenia* (2019) (App No 71306/11) *("Osmanyan")*. This was a case of an undisputed expropriation where the government adopted a decree approving an expropriation zone that extended over the applicants' land to allow for the exploitation of a copper-molybdenum deposit. The applicants were a family whose "*main source of income*" (§70) was a small plot of arable land (0.383 hectares) on which they grew fruit trees (§6). The family were offered €485 which represented the "*cadastral*" price of the land plus 15% (§14). The central issue was whether the applicants were put in a position to purchase a plot of land that was comparable to the one that had been compulsorily purchased and on which they had subsisted. At §69, the court said:

MB/2023

MB/2037

MB/2026

MB/2027

MB/2037

> "*Without prejudice to the relevant provisions of the Law and the margin of appreciation of the state in these matters, the court considers that there may be situations where compensation representing the market price of the real estate in question even with the addition of the statutory surplus, would not constitute adequate compensation for deprivation of property. In the court's opinion, such a situation may arise in particular if the property the person was deprived of constituted his main, if not only source of income and the offered compensation did not reflect that loss (see Lallement v France (Application No 46044/99) (unreported) 11 April 2002, para 18).*"

44. This case is not authority for the proposition that the Appellants are entitled to compensation beyond the open market sale price to reflect their past investment in the

company and / or anticipated proceeds from a future sale. The courts below have been correct to reject such a proposition, the ramifications of which would be very significant for the legislative scheme.

45. The facts here are far removed from the subsistence farmers in *Osmanyan.* The Appellants are large-scale investors who understood that they might lose money on investments and would not lose their livelihood as a result of the divestment. Where it is known when an asset is purchased that it comes subject to certain conditions or that its retention is precarious and cannot be regarded as an absolute entitlement, it is easier to establish the proportionality of an interference giving effect to that conditionality or precariousness attaching to the asset: *AXA* at §§128-129 and 132 (*per* Lord Reed). The Appellants acquired their shares with full knowledge of the risk that the transaction might be called in and divestment ordered when the NSIA came into force. This was why, in December 2021, they sought "*comfort*" that the Secretary of State would not review the transaction after the NSIA came into force (which was not given) (see §13.b above). Well aware of the risk, they chose to invest in Upp. MB/0866-0867

46. Moreover, as noted at §39.e above, when deciding which remedy to impose, the Secretary of State was well aware of the possibility that divestment could – and indeed was likely to – have adverse financial consequences for the Appellants. He nevertheless concluded that divestment was necessary and proportionate. This process is itself an integral part of the legislative scheme, which envisages decision making by the Secretary of State.

47. Accordingly, the Court of Appeal did not err in its approach in principle under A1P1. A1P1 did not require the Appellants to recover what they considered to be "*fair market value*". It did not require them to receive an additional amount, on top of the retained proceeds of the sale, to compensate them for their lost investment. The Court of Appeal did not err in its assessment of the proportionality of the Order.

48. Finally, the Appellants do not challenge the proportionality assessment that was conducted in this case. They challenge only the Court of Appeal's failure to apply a supposed principle that A1P1 requires them to recover the compensation they seek. Nonetheless, should this Court review the proportionality assessments already

undertaken or conduct its own assessment on the existing factual findings, the outcome would be the same: the Secretary of State's decision to make the Order was proportionate, even without an award of compensation. Insofar as the Court considers it necessary to consider the proportionality assessments undertaken by the courts below, it is invited to review them, rather than undertake a further assessment of proportionality afresh. Both the Administrative Court and the Court of Appeal undertook a substantive assessment of proportionality and reached the same conclusion. The Administrative Court did so having had the benefit of considering the closed material and hearing closed arguments.

F. GROUND 2

Margin of appreciation

49. There is no dispute that the protection of a public interest (here, national security) attracts a margin of appreciation; the Appellants contend, however, that the wide margin of appreciation only applies where the state is "*entitled to deprive a person of their possessions without providing full compensation*" and is deciding the level of compensation to be afforded (§75 AWC).

MB/0043

50. The Court of Appeal was not only entitled to apply a wide margin of appreciation, it was obliged to do so by the relevant domestic and ECtHR case law. As Singh LJ observed (§§80-81 CA), in *Adriatic Land 5 Ltd v Long Leaseholders at Hippersley Point*[9] [2026] 1 WLR 1857 at §114 as summarised by Newey LJ:

MB/0107

MB/0770

> "*Having regard, however, to R (SC) v Secretary of State for Work and Pensions [2022] AC 223, it seems to me that the correct question to ask is what margin of discretion (or judgment) should be afforded given the nature of the legislation, not as such whether the MWRF [manifestly without reasonable foundation] test is applicable as regards the fourth Bank Mellat stage. What matters is whether a wide margin of judgment is appropriate in the light of the circumstances of the case. Where a particularly wide margin is appropriate (because perhaps a measure relates to economic and social policy, national security or penal policy, or raises sensitive moral or ethical issues), the ordinary approach to proportionality will accord the same margin to the decision-maker as the manifestly without reasonable foundation formulation. In cases of that kind, indeed, there may be 'no legal standards by which a court can decide*

[9] The Supreme Court is due to hear the appeal in this case (on Ground 1 (retrospectivity) alone) on 18 November 2026.

where the balance should be struck' and democratically elected institutions may be 'in a far better position than the courts to reflect a collective sense of what is fair and affordable, or of where the balance of fairness lies'."

MB/1941 51. The Grand Chamber's reasoning in *Lithgow* at §122 (quoted in *SRM Global* at §§52-53 (and set out at §33 *et seq* above) addressed this very issue: MB/1393

"*Whilst not disputing that the State enjoyed a margin of appreciation in deciding whether to deprive an owner of his property, the applicants submitted that the Commission had wrongly concluded from this premise that the State also had a wide discretion in laying down the terms and conditions on which property was to be taken.*

The Court is unable to accept this submission. A decision to enact nationalisation legislation will commonly involve consideration of various issues on which opinions within a democratic society may reasonably differ widely. Because of their direct knowledge of their society and its needs and resources, the national authorities are in principle better placed than the international judge to appreciate what measures are appropriate in this area and consequently ***the margin of appreciation available to them should be a wide one****.* ***It would, in the Court's view, be artificial in this respect to divorce the decision as to the compensation terms from the actual decision to nationalise, since the factors influencing the latter will of necessity also influence the former.*** *Accordingly, the Court's power of review in the present case is limited to ascertaining* ***whether the decisions regarding compensation fell outside the United Kingdom's wide margin of appreciation****; it will respect the legislature's judgment in this connection unless that judgment was manifestly without reasonable foundation.*" **[Emphasis added.]**

52. In *SRM*, Laws LJ did not say at §56 that the margin becomes wide because the court has already decided that full compensation is unnecessary: the width of the margin varies according to the subject matter. The Appellants' approach wrongly turns a statement about the effect of the margin into a precondition for its existence.

53. Parliament created a bespoke scheme in primary legislation for the protection of national security. In doing so, Parliament chose not to include any requirement in cases of divestment to make provision for "*forced sale*" compensation. It also chose not to include in it a general scheme for compensation, as it could have done (as Singh LJ MB/0109 observed at §87).

54. The NSIA therefore stands in stark contrast to, and can be distinguished from, legislation which expressly envisages the payment of compensation, such as the

Compulsory Purchase Act 1965. That legislation is instructive, as it demonstrates the complexity of creating a compensation scheme; it is not something that can simply be implied into legislation. For example, it may be necessary, as is the case with the 1965 Act, to calibrate the scheme to ensure that people whose property is acquired compulsorily should be left neither better nor worse off financially as a result of their property being acquired – being entitled to compensation which is neither more nor less than the value of their loss.

55. Parliament chose not to create a general compensation scheme and the Appellants' submission that there was "*no decision…that the recovery of market value compensation was not appropriate*" at §78 AWC is wrong. Instead, it chose to confer a discretion on the Secretary of State to give financial assistance. The Court of Appeal recognised – entirely properly – first, that this was a provision for financial assistance which would "*allow mitigation measures to be taken… if hardship was shown or something of that sort)*" (§91 CA). Second, that this was important to the overall assessment of proportionality (§91 CA) and third, that it was a choice that was entitled to be accorded a wide margin (§87).

MB/0044

MB/0110

MB/0110

MB/0109

56. Parliament's scheme provides that this is a question that is left for the Secretary of State to consider in each individual case thereby effectively transferring the wide margin from Parliament to the Secretary of State. The Secretary of State was aware of the forced sale aspect having been notified of the possibility in the Remedies Assessment: the Investment Security Unit recognised that the perception this was a distressed sale would depress the price "*below market value".* That was taken into account when considering proportionality and making the Order. This procedure was an integral part of the legislative scheme and the requirement for a process considering compensation was met. Again, the Court of Appeal recognised properly that this was a choice that was entitled to be accorded a wide margin.

57. The retrospective effect of the NSIA should have no bearing on the wide margin of appreciation. Contrary to the Appellants' submissions at §77 AWC, the legal rules contained in the NSIA were "*prospective, public and clear*". The Bill served to notify the Appellants of the impending scheme and allowed them to take steps to mitigate the risks it posed.

MB/0044

58. Although it applied a wide margin, it is notable that the Court of Appeal correctly recognised that proportionality was a matter for it to determine. There is no inconsistency between a court making the ultimate judgement as to whether a measure is proportionate under A1P1 (as the Court of Appeal did here), and the court recognising that margin or respect is due to Parliament and / or the Executive: see, for example, *R (Lord Carlile of Berriew and others) v Secretary of State for the Home Department* [2014] UKSC 60, [2015] AC 945 at §67. MB/1328

G. GROUND 3

National security risk relating to the UBOs

59. The Appellants pressed on the Court of Appeal that they were distinct from the UBOs, there was no question of impugning their character (§88 CA) and no suggestion that the appellant companies had done anything wrong or posed a risk to national security (§90 CA). They continue to suggest that the national security concern "*related not to the UBOs but to the Russian state*" and it was "*not alleged that the UBOs had engaged in any wrongdoing or themselves had any nefarious intentions*"[10] (§83 AWC). MB/0109 MB/0110 MB/0046

60. Their argument appears to be that it would not harm national security to award the Appellants compensation because of the distance between them and their indirect owners, the UBOs (§82 AWC). This is despite their acceptance that the UBOs had and sought to retain influence and control over Upp (§206 HC). Upp sat further down the "*chain of influence*" than the Appellant companies (§§112 and 212 HC). See also Farbey J's acknowledgement that *"[a]s expressed in the NCA intelligence report, there was no question of the Group depriving the UBOs of their ultimate economic ownership*" (§207). MB/0045 MB/0156 MB/0137 MB/0157 MB/0156

61. Nevertheless, it is well-established that an entirely innocent party is not guaranteed compensation under A1P1: see, in particular, *AGOSI* and §24.c.iii above.

62. It was in that context that Singh LJ said it was "*the risk posed to national security from those ultimate beneficial owners which has prompted the respondent to make the*

[10] The Appellants are in no position to make such submissions having not been privy to the CLOSED material. For the purposes of this appeal, the Respondent proceeds as if this position is correct but this should not be taken as confirmation either way.

order…courts must be alive to the realities of the situation irrespective of the legal position that a corporate entity is distinct from its shareholders" (§90 CA). The Appellants mischaracterise the point being made by the Court of Appeal. At §88 CA Singh LJ stated that this was "*important to keep in mind*" and went on to explain, correctly, at §90 CA that "*it was the risk posed to national security from those ultimate beneficial owners which has prompted the Respondent to make the order*".

MB/0110 MB/0109 MB/0110

63. This ground overstates the reliance placed on this aspect of the decision: it was contextual reasoning about why the Respondent concluded divestment was necessary, not a justification for not awarding full compensation. Furthermore, §206 HC was cited by Lord Justice Singh and was not under appeal (see §89 CA).[11]

MB/0156 MB/0109

H. GROUND 4

Complexity of assessing market value

64. The Court of Appeal did not hold that market-value assessment was impossible, nor that valuation difficulties by themselves extinguish an A1P1 entitlement. At §92 Singh LJ gave subsidiary contextual consideration to the proportionality assessment:

MB/0110

> "*One also needs to keep in mind that the process for assessing the 'fair market value' of a company, as distinct from what it can actually be sold for albeit in circumstances of a forced sale, is likely to be a complicated and lengthy process. This is evident from the disposal plan which we were shown in the present case. This would have the potential to impede the process by which the Respondent is able to achieve the important public interest purposes which lie behind the scheme of the NSIA."*

65. The factual observation that an entitlement to "*fair market value*" compensation could complicate and potentially delay the NSIA process cannot be impugned. The practical difficulties presented by such an entitlement are readily apparent. In each case, the government would be required to assess the cost to the public purse of compensating the owner at "*fair market value*", potentially in circumstances where that value was uncertain or disputed, against the national security considerations which had led to the call-in. The greater the value of the asset, the more acute that tension could become.

MB/0046

[11] In relation to §84 AWC and for the avoidance of doubt, no reliance in respect of compensation is placed on the fact that two of the UBOs remain subject to UK and EU sanctions (though on 22 September 2026, the EU agreed to lift Mr Fridman's EU sanctions).

66. But as the passage from Singh LJ's judgment demonstrates, the Court of Appeal did not state that complexity relieves the state of making provision for recovery of market value compensation entirely. The Court was entitled to take account of a practical feature of the compensation arrangement when assessing proportionality. It did not purport to make a factual finding that any valuation exercise would necessarily prevent achievement of the NSIA's and Order's objective. It said only that such an exercise "*would have the potential to impede*" the process.

I. GROUND 5

Following the ECtHR

67. The Appellants have been unable to locate any ECtHR judgment that requires a state to compensate against any diminution in value flowing from a forced sale, or for past investment and / or possible future profits. Although this was not dispositive, the Court of Appeal correctly recognised, applying the principles articulated in *R (Elan-Cane) v. Secretary of State for the Home Department* [2021] UKSC 56, [2023] AC 559, that, while it is open to domestic courts to develop the law in relation to Convention rights beyond the limits of ECtHR case law, on the basis of the principles established in that law, they should not go further than they can be fully confident that the ECtHR would do: see §93 (see also *R (AB) v Secretary of State for Justice* [2022] AC 487 at §§53-57). MB/1251 MB/0110 MB/1167-1169

68. The Court of Appeal was right to conclude that it could not be confident the ECtHR would agree with the Appellants' contention as to the scope of the obligation to compensate. As described throughout these submissions, the court applied the established principles in the ECtHR case law (and domestic law) to the facts in the present case. It did not, as the Appellants assert at §§99-100 AWC, conclude that this principle was limited to cases which give rise to "*precisely the same facts*". This is a misrepresentation of the court's judgment. MB/0054

J. CONCLUSION

69. It is submitted that the appeal should be dismissed for the following reasons:

REASONS

(1) The Court of Appeal applied the correct approach in principle under A1P1. It was correct to find that A1P1 does not impose a rule that full market value must be recovered in a (control of use) case such as this, unless full compensation would undermine the objective pursued. The Court of Appeal correctly applied the established A1P1 test of fair balance and proportionality.

(2) The Court of Appeal correctly applied a wide margin of appreciation.

(3) The Court of Appeal correctly observed that the national security risk related to the UBOs.

(4) The Court of Appeal fairly kept in mind that assessing full market value would be a lengthy and complicated process.

(5) The Court of Appeal was correct to note that there was no ECtHR authority directly on point and that it should go no further than it could be confident that the ECtHR would do.

SIR JAMES EADIE KC
RORY PHILLIPS KC
GEORGINA WOLFE
EMMANUEL SHEPPARD
KARL LAIRD

28 September 2026