



Hilary Term  
[2026] UKSC 10

*On appeal from: [2024] EWCA Civ 628*

## **JUDGMENT**

**UniCredit Bank GmbH, London Branch  
(Respondent) v Constitution Aircraft Leasing  
(Ireland) 3 Ltd and another (Appellants);  
UniCredit Bank GmbH, London Branch  
(Respondent) v Celestial Aviation Services Ltd  
(Appellant)**

before

**Lord Hodge, Deputy President  
Lord Sales  
Lord Burrows  
Lord Stephens  
Lady Simler**

**JUDGMENT GIVEN ON  
25 March 2026**

**Heard on 8 and 9 December 2025**

*First Appellant*

Akhil Shah KC

Leonora Sagan

(Instructed by Quinn Emanuel Urquhart & Sullivan UK LLP)

*Second Appellant*

Mark Howard KC

Fred Hobson KC

(Instructed by Quinn Emanuel Urquhart & Sullivan UK LLP)

*Respondent*

David Quest KC

Rachel Barnes KC

James Sheehan KC

(Instructed by Reynolds Porter Chamberlain LLP (London))

*Intervener – International Trade and Forfeiting Association (written submissions only)*

(Instructed by Sullivan & Worcester UK LLP)

**LORD STEPHENS (with whom Lord Hodge, Lord Sales, Lord Burrows and Lady Simler agree):**

**1. Introduction**

1. The first issue raised on these two appeals is whether the obligation of the London branch of a German bank, UniCredit Bank GmbH, formerly UniCredit Bank AG (“the Bank”), to make payments under various letters of credit was prohibited by a UK sanction imposed on Russia, until licences to do so were obtained. The letters of credit were issued in connection with various leases of civilian aircraft to two Russian airlines as security for the lessees’ obligations under the relevant leases. The payments under the letters of credit were to be made by the Bank to Celestial Aviation Services Ltd (“Celestial”), Constitution Aircraft Leasing (Ireland) 3 Ltd (“Constitution 3”) and Constitution Aircraft Leasing (Ireland) 5 Ltd (“Constitution 5”) (together “the appellants”), all of whom are Irish incorporated entities. The appellants are the lessors of the relevant aircraft and the Russian airlines are the lessees.

2. In the courts below reference was made to several sanction provisions potentially prohibiting the Bank from making payments under the letters of credit. However, the only relevant sanction provision for the purposes of these appeals is contained in the Russia (Sanctions) (EU Exit) Regulations 2019, SI 2019/855 (“the Regulations”) in Chapter 2 of Part 5, regulation 28(3)(c) (“regulation 28(3)(c)”). Prior to its amendment with effect from 1 March 2022, the prohibition in regulation 28(3)(c) concerned financial services or funds in relation to military goods and military technology. The prohibition did not concern financial services or funds in relation to civilian aircraft. Therefore, at the time the letters of credit were opened (between 2017 and 2020), and the leases were entered into (between 2005 and 2014), regulation 28(3)(c) did not prohibit the Bank from opening or paying under the letters of credit.

3. Similarly, prior to 1 March 2022 the Regulations did not prohibit making civilian aircraft available to a person connected with Russia or for use in Russia.

4. Regulation 28(3)(c) was amended with effect from 1 March 2022 by the Russia (Sanctions) (EU Exit) (Amendment) (No. 3) Regulations 2022, SI 2022/195 (“the Amended Regulations”). The effect of the amendment was to extend the sanctions to encompass certain civilian goods. From 1 March 2022, rather than the prohibition concerning financial services or funds relating to military goods and military technology, the amended sanction concerned financial services or funds relating to “restricted goods” and “restricted technology”. The meaning of restricted goods includes not only military goods but also critical-industry goods. In turn, critical-industry goods include aircraft: see regulation 21(1) and Schedule 2A. Regulation 28(3)(c), as amended, and in so far as relevant, provides that:

“A person must not directly or indirectly provide financial services or funds in pursuance of or in connection with an arrangement whose object or effect is ... directly or indirectly making restricted goods or restricted technology available—

(i) to a person connected with Russia, or

(ii) for use in Russia ...”

The Bank contends that: (a) the aircraft leases are arrangements whose object or effect is making aircraft available to persons connected with Russia or for use in Russia; and (b) the provision of funds by the Bank under the letters of credit are “in connection with” the aircraft leases. Accordingly, the Bank contends that by virtue of the amendment of regulation 28(3)(c) its obligation to make payments to the appellants under the letters of credit was prohibited until it obtained licences to do so.

5. Shortly after regulation 28(3)(c) was amended the lessors terminated the aircraft leases and demanded the return of the aircraft. However, most of the aircraft were not returned and they have remained in Russia available to the two Russian airlines and continue to be used in Russia. This continued use of the aircraft in Russia by the Russian airlines is without the lessor’s consent and is in breach of the terms of each of the aircraft leases.

6. After the Bank received demands from the appellants to pay them under the letters of credit, it applied for and subsequently obtained licences to make those payments. However, in the meantime the appellants had commenced these proceedings contending that on its true interpretation regulation 28(3)(c) had never prohibited the Bank from making payments under the letters of credit.

7. Upon the Bank obtaining the licences, which was after trial but before judgment, the principal amounts under the letters of credit were paid to the appellants. The only matters which then remained in dispute were interest on the principal amounts and the costs of the proceedings. The Bank contended that under regulation 28(3)(c) it was prohibited from making any payments under the letters of credit until it obtained a licence to do so and that interest should not accrue during any period that it was prohibited from paying the principal amount. The appellants contended that on its true interpretation regulation 28(3)(c) had never prohibited the Bank from making payments under the letters of credit.

8. To resist an award of interest and costs the Bank also relied on section 44 of the Sanctions and Anti-Money Laundering Act 2018 (“SAML A”). Section 44, under the

heading “Protection for acts done for purposes of compliance”, in so far as relevant, provides that:

“(1) This section applies to an act done in the reasonable belief that the act is in compliance with—

(a) regulations under section 1 ...

(2) A person is not liable to any civil proceedings to which that person would, in the absence of this section, have been liable in respect of the act.

(3) In this section ‘act’ includes an omission.”

Regulation 28(3)(c) is a regulation within section 44(1) as it was made under section 1 of SAMLA. The Bank contended that its omission to pay the principal amounts under the letters of credit was done in the reasonable belief that it was prohibited from making the payments by virtue of regulation 28(3)(c). The Bank argued that the protection in section 44(2) includes protection against: (a) claims in debt; (b) awards of interest on debts; and (c) associated costs. For their part the appellants argued that the Bank did not hold the requisite reasonable belief under section 44(1). In addition, the appellants argued that on the true construction of section 44(2) the protection does not extend to protection against claims in debt, awards of interest on debts, and associated costs.

9. Christopher Hancock KC sitting as a Deputy High Court judge (“the judge”), in a judgment delivered on 23 March 2023, considered the true interpretation of regulation 28(3)(c): [2023] EWHC 663 (Comm). The judge started by identifying the purpose of regulation 28(3)(c) as being “to ensure that financial assistance was not provided to Russian parties in relation to, inter alia, the supply of aircraft.” The judge reasoned that the payments under the letters of credit were outside the purpose of regulation 28(3)(c) as the supply of the aircraft had occurred long before the prohibition came into effect. The judge held that regulation 28(3)(c) did not prohibit the Bank from making payments to the appellants under the letters of credit.

10. In a subsequent judgment, delivered on 5 May 2023, the judge considered the application of section 44 of SAMLA: [2023] EWHC 1071 (Comm). He found that the Bank believed that regulation 28(3)(c) applied, but that that belief was not a reasonable one. Therefore, section 44 of SAMLA was not engaged on the facts. The judge awarded the appellants interest under section 35A of the Senior Courts Act 1981, at the US Prime rate, running for the period from the date that the payment obligations under the letters of

credit fell due until the date of payment. The judge also awarded the appellants their costs of the claim.

11. The Court of Appeal (Males, Snowden, and Falk LJ), in a judgment delivered by Falk LJ with which the other members of the court agreed, allowed the Bank's appeal in relation to the true interpretation of regulation 28(3)(c): [2024] EWCA Civ 628; [2025] 1 WLR 196. The Court of Appeal held that payment under the letters of credit would be in connection with an arrangement, the aircraft leases, under which aircraft were made available to a person connected with Russia or for use in Russia. Therefore, the Bank was correct that payment under the letters of credit was prohibited until licences to do so were obtained. The Court of Appeal held that the effect of regulation 28(3)(c) was that the Bank's obligation to pay was suspended and could not be enforced during the period between the obligation to pay arising and the UK licences being obtained. The Court of Appeal recognised, at para 66, that the prohibition in regulation 28(3)(c) "is a relatively blunt instrument" casting a wide net which risks catching arrangements that may not be seen to be within the overall mischief. However, the Court of Appeal reasoned that "the solution that the UK government has adopted for that is to provide for exceptions ... via the licensing regime ... to 'mitigate any unintended negative consequences' ...".

12. The Court of Appeal recorded, at para 68, that it was not in dispute that during the period of suspension statutory interest should not accrue. However, there was an approximate six-week period between the UK licences being granted on 13 October 2022 and payment by the Bank of the principal amounts in November 2022 under nine of the letters of credit. As regulation 28(3)(c) did not prohibit payment after the UK licences were granted, the Court of Appeal made an award of interest in favour of the appellants during the six-week period. There is no appeal in relation to that award of interest.

13. I mention briefly that in order to resist an award of interest during the six-week period the Bank also relied on US sanctions as prohibiting it from making payment on the letters of credit. The Bank accepted that the burden lay on it to make reasonable efforts to apply for a licence from the Office of Foreign Assets Control which is an office of the United States Department of the Treasury. The Court of Appeal held, at para 130, that the Bank had failed to make reasonable efforts to apply for that licence and so it could not rely on the US sanctions as preventing it from performing its obligation to pay under the letters of credit. Therefore, the Court of Appeal held that US sanctions did not protect the Bank from an award of interest during the six-week period. The Bank has not appealed in relation to that issue.

14. In the light of the Court of Appeal's resolution of the regulation 28(3)(c) issue, it was not necessary for it to resolve the issue under section 44 of SAMLA. Nevertheless, the Court of Appeal addressed that issue on an obiter basis. It upheld the judge's finding that the Bank believed that regulation 28(3)(c) applied but overturned his finding that the belief was not a reasonable one. However, the Court of Appeal held that on its proper

construction, section 44 of SAMLA would not have protected the Bank from “an action to recover a debt which is otherwise lawfully due but which has not been paid.” The Court of Appeal reasoned that “[e]xposure to a claim to recover [a debt] is not a new financial exposure ... [i]t is a pre-existing liability.” The Court of Appeal held, at para 90, that:

“The wording of section 44 also supports an interpretation that would allow proceedings to recover a debt. This is because a claim for debt is just that: it seeks payment of the debt. While the inevitable trigger for the claim is that the debtor has not paid, the action is not an action for the non-payment as such (which is the relevant omission for section 44 purposes) and can therefore be said not to be ‘in respect of’ it. Rather, it seeks recovery of an amount which is owed irrespective of any action or inaction in purported compliance with sanctions.”

The Court of Appeal held, at paras 93 and 95, that, as proceedings for recovery of the debt itself are not barred by section 44, it logically followed that a claim for interest under section 35A of the Senior Courts Act 1981 “which is no more than an adjunct of that, and has no independent foundation” should also not be barred. The Court of Appeal also held, at para 99, that as the Bank was not immune from an action to recover debt it was also not immune from any associated costs exposure.

## **2. The appeals and the cross appeals**

15. The appellants appeal in relation to the first issue. They contend that the Bank’s obligation to make payments under the letters of credit was not prohibited by reason of regulation 28(3)(c) during the period from the date that the payment obligations under the letters of credit fell due until the date upon which the licences were obtained.

16. The Bank not only resists the appellants’ appeal in relation to the first issue but also cross appeals, raising the second issue for determination on these two appeals. The Bank contends that even if regulation 28(3)(c) did not prohibit it from making payments under the letters of credit, then, as it reasonably believed that regulation 28(3)(c) applied, section 44 of SAMLA protected it until a licence was obtained. The Bank argues that, on its true construction, the protection in section 44(2) is from: (a) any liability to pay the principal amount under the letters of credit; (b) an award of interest on the principal amount; and (c) an adverse costs order. As the appellants have not appealed in relation to the Court of Appeal’s finding that the Bank did reasonably believe that regulation 28(3)(c) applied, the second issue is confined to a question of construction. Does the protection under section 44(2) of SAMLA include protection against an action to recover a debt, an award of interest on the amount of the debt, and an award of associated costs?

17. It is convenient at this point to note that the Bank does not dispute that, upon a licence being granted, there is no longer a prohibition under regulation 28(3)(c) and there could no longer be a reasonable belief in accordance with section 44 of SAMLA. Accordingly, the Bank has proceeded on the basis that neither regulation 28(3)(c) nor section 44 of SAMLA would protect it from a claim for interest on the amounts due under the letters of credit or protect it from an order for any further legal costs between the date upon which the licence was granted and the date of payment. The point of principle which arises on these appeals concerns interest and costs during the period between the date upon which the obligation to pay arose and the date upon which the licences were granted.

### **3. Factual background**

#### *(a) The two actions and the two appeals to this court each with its own cross-appeal*

18. There are two actions raising materially identical issues. The first action was brought on 15 March 2022 by Celestial and the second on 27 April 2022 by Constitution 3 and Constitution 5 (together “Constitution”). In the actions both Celestial and Constitution claim the amount owed in debt (or alternatively in damages), interest, a declaration in relation to the sanctions position, and costs. The principal amount claimed was approximately US\$45.8m for Celestial and US\$23.5m for Constitution.

19. The defendant in both actions is the Bank acting through its London branch.

20. Both actions were heard and determined together, and in this court there are appeals with cross appeals in relation to both actions.

#### *(b) Celestial and Constitution*

21. Celestial is a wholly-owned subsidiary of AerCap Holdings NV (“AerCap”), a Dutch company which is the world’s largest aircraft leasing company. Celestial provides services related to aircraft leasing.

22. Constitution acts directly as an aircraft lessor and is part of the Airastle aircraft leasing business, which owns and leases over 250 aircraft.

#### *(c) The letters of credit*

23. There are a total of 12 irrevocable standby letters of credit in issue. Each of the letters of credit were issued by the Russian bank Sberbank Povolzhsky Head Office

("Sberbank") and confirmed by the Bank as confirming bank. The seven Celestial letters of credit were issued in connection with leases by AerCap subsidiaries to AirBridge Cargo Airlines LLC ("Airbridge") (as to two aircraft) and JSC Aurora Airlines ("Aurora") (as to three aircraft), and the five Constitution letters of credit were issued in connection with leases of two aircraft to Airbridge.

24. Both Airbridge and Aurora are Russian airlines.

25. Each of the 12 letters of credit is denominated in US dollars, governed by English Law, and incorporates the Uniform Customs and Practice for Documentary Credits, 2007 Revision, International Chamber of Commerce Publication no 600 ("the UCP").

26. In relation to each of the letters of credit, Constitution or Celestial (as the case may be) is entitled to draw on them by making a demand on the Bank in the required form as specified in the letter of credit (which I will refer to as a "compliant demand"). The making of a compliant demand crystallises the relevant payment obligation under each of the letters of credit. The specified form of the demand varied as between the 12 letters of credit. Some of the letters of credit specified that there should be a written demand signed by the beneficiary. Other letters of credit specified that the written demand had also to state that the lessee had failed to comply with its obligations under the lease, though no details of the failure were required to be given. So, for instance, the compliant demand made by Constitution on 22 March 2022 merely stated that Airbridge had "failed to comply with its obligations under the aircraft lease agreement". It provided no further details.

27. In relation to the Celestial letters of credit, the Bank was required to make payment within four business days (in the case of the Airbridge letters of credit) or five banking days (in relation to the Aurora letters of credit) following receipt of a compliant demand. In relation to the Constitution letters of credit, the Bank was required to make payment within five banking days following receipt of a compliant demand.

28. At the time the letters of credit were opened (and the aircraft leases were entered into), there was no restriction under any relevant sanctions regime which prohibited entry into the leases or the opening of (or payment under) the letters of credit. That remained the position until 1 March 2022.

*(d) The terms of the letters of credit*

29. It will suffice to refer to the terms of one of the letters of credit, issued on the application of Airbridge in favour of Celestial on 21 August 2017 in the amount of US\$3.6m and confirmed by the Bank on 23 August 2017, as an example.

30. The material part of the Bank's confirmation to Celestial reads:

“The above Issuing Bank has opened [an] Irrevocable Transferable Standby Letter Of Credit in your favour, a copy of which is enclosed. This copy forms an integral part of the Irrevocable Transferable Standby Letter Of Credit

We herewith confirm this Irrevocable Transferable Standby Letter Of Credit and undertake to honour drawings under the above mentioned Irrevocable Transferable Standby Letter Of Credit up to and not exceeding the amount of USD 3,600,000.00 provided that the documents are presented in strict conformity with the terms and conditions of this Irrevocable Transferable Standby Letter Of Credit ...

This Irrevocable Transferable Standby Letter Of Credit is subject to Uniform Customs and Practice for Documentary Credits (2007 Revision International Chamber of Commerce Publication no 600.”

31. The enclosed Swift message from Sberbank to the Bank recorded the issue by Sberbank of its letter of credit “on the following conditions” and requested that the Bank added its confirmation. The terms provided that it was an “irrevocable transferable standby letter of credit” and that it was “provided in connection with the lease of one Boeing 747-400ERF aircraft with serial number 35420” to the applicant Airbridge under a lease agreement dated 21 December 2005 (as amended), but:

“This standby letter of credit however creates primary obligations on us and is independent from the lease.”

32. The conditions included provision as to a compliant demand on the letter of credit. Such a demand was to be in the following format:

“On behalf of (insert the name of the current beneficiary), the undersigned hereby draws upon irrevocable transferable standby letter of credit no 105911705406b dated 21.08.2017 issued by Sberbank and confirmed by [the Bank London branch], due to [Airbridge] having failed to comply with its obligations under an aircraft specific lease agreement, dated December 21, 2005 (as amended modified or novated from time to time) made in respect of one Boeing 747-400ERF

aircraft with serial number 35420, and instructs you to transfer USD ..... (say: United States Dollars ..... ) to (insert appropriate bank details) immediately.”

It was sufficient for the beneficiary to assert a failure by Airbridge to comply with its obligations under the lease without the need to give any particulars of that failure.

*(e) The invasion of Ukraine*

33. In March 2014 the Russian Federation illegally annexed Crimea, following which sanctions were imposed on it by the EU and the United States. The Regulations were made in 2019 to replace the EU sanctions regime that had previously applied.

34. On 24 February 2022, the Russian Federation further invaded Ukraine, in response to which the UK (together with the EU and United States) imposed significant new sanctions on Russia. Of particular relevance on these appeals is that regulation 28(3)(c) was amended with effect from 1 March 2022 to, for instance, encompass certain civilian goods, such as aircraft, which are of particular importance to the Russian economy.

*(f) The demands for payment under the letters of credit*

35. As a result of the conflict in Ukraine, the two Russian airlines, Airbridge and Aurora, failed to comply with their obligations under the respective leases. This gave rise to events of default under the aircraft leases.

36. Consequently, on various dates in March 2022, Celestial and Constitution made a series of compliant demands on the Bank for payment under the letters of credit.

37. Subject to the effect of any applicable sanctions, the payment obligations under the Celestial letters of credit fell due no later than 14 March 2022 and the payment obligations under the Constitution letters of credit fell due no later than 18 March 2022 (for the first Constitution 3 letter of credit) and 31 March 2022 (for the remaining Constitution 3 and Constitution 5 letters of credit).

*(g) Termination of the aircraft leases*

38. Celestial and Constitution also terminated the leasing of the aircraft in relation to which the letters of credit were issued:

(a) Celestial terminated the leasing of the aircraft on 3 and 4 March 2022. This was after the amendment of regulation 28(3)(c) took effect on 1 March 2022. All such leases were terminated before the demands under the Celestial letters of credit became due for payment. As at 19 August 2022, four of the five aircraft were located in Russia, but any continued use of or access to the aircraft was without Celestial's consent and in breach of the terms of the lease. One of the aircraft was outside Russia at the time of the termination of its leasing and AerCap was able to repossess it.

(b) Constitution 3 terminated the leasing of the aircraft on 4 March 2022, again after the amendment of regulation 28(3)(c) took effect on 1 March 2022. Constitution 5 terminated the leasing of the aircraft on 25 March 2022. Both leases were terminated before the demands under the relevant Constitution letters of credit became due for payment. As at 5 August 2022, the aircraft subject to the Constitution 5 lease had been repossessed. The aircraft subject to the Constitution 3 lease remained in Russia, but any continued use of or access to the aircraft was without Constitution's consent and in breach of the terms of the lease.

*(h) The Bank's non-payment under the letters of credit*

39. In response to the compliant demands, the Bank's position was that it was unable to make payment to either Celestial or Constitution by reason of the prohibition contained in regulation 28(3)(c).

40. The Bank also subsequently relied on further sanctions which had been introduced and stated that it was prohibited from making payment additionally in light of those sanctions, namely: (i) from 28 March 2022, EU Regulation 833/2014; (ii) from 26 March 2022, certain US sanctions; and (iii) from 6 April 2022, regulations 11 and 13 of the Regulations. Only regulation 28(3)(c) remains relevant on these appeals.

*(i) The Bank's licence applications*

41. The Bank applied for UK licences to permit: (i) the receipt of payment from Sberbank; and (ii) payment under the letters of credit. The applications were made to the Office of Financial Sanctions Implementation in HM Treasury, which administers financial sanctions, and to the Export Control Joint Unit in the Department for Business and Trade, which at the time administered licence applications for trade sanctions. The applications were subsequently updated, including to take into account the fact that Sberbank was listed as a Designated Person under the Regulations on 6 April 2022.

42. On 22 September 2022, the Export Control Joint Unit granted licences in respect of all letters of credit subject to the Office of Financial Sanctions Implementation doing likewise.

43. On 13 October 2022, the Office of Financial Sanctions Implementation granted a licence authorising payment under all letters of credit. As a result, the Export Control Joint Unit licence which had been granted on 22 September 2022 came into effect.

*(j) Payment of the principal amounts under the letters of credit*

44. On 14 October 2022 the Bank made payment to Celestial in US dollars under three of the seven Celestial letters of credit. As I have stated, there was an approximate six-week period before the Bank paid the principal amounts under the remaining letters of credit.

#### **4. The relevant legislative provisions**

*(a) SAMLA*

45. The primary legislation governing the UK sanctions regime is contained in SAMLA. The preamble to SAMLA records that it is:

“An Act to make provision enabling sanctions to be imposed where appropriate for the purposes of compliance with United Nations obligations or other international obligations or for the purposes of furthering the prevention of terrorism or for the purposes of national security or international peace and security or for the purposes of furthering foreign policy objectives...”

46. Section 1(1) of SAMLA contains a power to make sanction regulations. Section 1(1) provides that “[a]n appropriate Minister may make sanctions regulations where that Minister considers that it is appropriate to make the regulations— (a) for the purposes of compliance with a UN obligation, (b) for the purposes of compliance with any other international obligation, or (c) for a purpose within subsection (2).” A purpose is within section 1(2) of SAMLA if the appropriate Minister making the regulations considers that carrying out that purpose would be, for instance, in the interests of national security or international peace and security, or would further a foreign policy objective or promote the resolution of armed conflicts, or achieve human rights related objectives. Regulations made under section 1 may create criminal offences: see section 17(4) of SAMLA.

47. Section 1(3) of SAMLA requires regulations made under section 1 to state the purpose of the regulations. The stated purpose must be compliance with a UN obligation, or other international obligation, or a particular purpose that is within section 1(2).

48. Until section 2 of SAMLA was omitted on 15 March 2022 by virtue of sections 57(3) and 69(3) of the Economic Crime (Transparency and Enforcement) Act 2022, section 2(1) of SAMLA imposed additional requirements on the Minister in respect of sanction regulations being made for a purpose specified in section 1(2). The Minister was precluded from deciding to make sanction regulations for a purpose within section 1(2) unless the Minister had concluded that there were good reasons to pursue the particular purpose and that the imposition of sanctions was a reasonable course of action. Under section 2(4) the Minister was also required to lay a report before Parliament that covered those points as well as explaining why the purposes of the regulations fell within section 1(2).

49. Section 15 of SAMLA, under the heading of “Exceptions and licences” provides that regulations made under section 1 may, amongst other matters, provide for a prohibition imposed by the regulations not to apply to anything done under the authority of a licence issued by an appropriate Minister specified in the regulations.

50. Section 43 of SAMLA requires the Minister making regulations under section 1 to “issue guidance about any prohibitions and requirements imposed by the regulations”.

51. The appropriate Minister also has the power by further regulations under section 1 of SAMLA to revoke or amend regulations: see section 45 of SAMLA. If the Minister uses the power to amend (rather than revoking) the earlier regulations then, if the purpose of making the amended regulations is a purpose within section 1(2) of SAMLA, the Minister is under an obligation to lay a report before Parliament: see section 46(2).

*(b) The Regulations and the Amended Regulations especially Regulation 28*

52. In 2019, to replace the EU sanctions regime that previously applied, the Minister made the Regulations under the power contained in section 1(1) of SAMLA. The Regulations have been the subject of significant amendments by the Minister making further regulations under sections 1 and 45 of SAMLA. The particular amendments relevant to these appeals were made with effect from 1 March 2022 by the Amended Regulations. Further amendments have been made thereafter, including with effect from 8 March 2022. However, these appeals concern only the Regulations as amended with effect from 1 March 2022.

53. Regulation 3, which in so far as relevant remained unchanged as at 1 March 2022, under the heading “Application of prohibitions and requirements outside the United Kingdom”, extends the territorial scope of the Regulations so that, for instance, a United Kingdom person may contravene a relevant prohibition by conduct wholly or partly outside the United Kingdom: see regulation 3(1).

54. Regulation 4, as required by section 1(3) of SAMLA, sets out the purposes of the Regulations. The purposes as set out in regulation 4, which remained unchanged as at 1 March 2022, are to encourage Russia “to cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine.”

55. It is convenient at this point to say something more about the purposes of both the Regulations and of the Amended Regulations. The report in relation to the Regulations under section 2(4) of SAMLA (laid before Parliament on 11 April 2019) reflected the purpose set out in regulation 4. The report, at para 8, says:

“Sanctions are intended to increase pressure on Russia to achieve the outcome of Russia ceasing actions which are destabilising Ukraine, or undermining Ukrainian sovereignty ... The UK has ... been clear that we need to hold Russia to account for its actions in Ukraine, and to encourage a change in Russian behaviour towards Ukraine ...”

56. The report laid before Parliament in relation to the Amended Regulations under section 46 of SAMLA says, at para 13, that the purposes identified in the earlier report laid before Parliament on 11 April 2019 remain relevant. In relation to critical industry items the report, at para 19, says:

“Prohibiting the export, supply and delivery, making available and transfer of critical industry items to, or for use in, Russia (as well as the provision of related technical assistance, financial services, funds and brokering services) would constrain Russia, *by disrupting strategic industries* such as ... aviation ... This measure would signal to Russia and the wider international community that Russian territorial expansionism is unacceptable and should be met with a serious response. This measure would *coerce* Russia by impacting on its longer-term economic interests.” (Emphasis added.)

57. The Court of Appeal held, at para 53, that, “[s]tated shortly”, the purpose of the Regulations as set out in regulation 4 and as confirmed by the report laid before

Parliament on 11 April 2019 is “to put pressure on Russia.” That very broad purpose is also identified in the report laid before Parliament in relation to the Amended Regulations. I agree that the very broad purpose of the Regulations and of the Amended Regulations is to put pressure on Russia by, for instance, disrupting strategic industries such as aviation.

58. The Regulations, as amended with effect from 1 March 2022, in Chapter 2 of Part 5 sanction a range of activities in respect of restricted goods and restricted technology. Regulations 22 and 24 prohibit the export or supply of restricted goods to Russia. Regulation 25 prohibits a person from making available restricted goods or technology to a person connected with Russia. Regulation 26 prohibits a person from transferring restricted technology to a place in Russia or to a person connected with Russia. Regulation 27 prohibits a person from providing technical assistance relating to restricted goods/technology to a person connected with Russia or for use in Russia. Regulation 28 deals with funding arrangements.

59. Regulation 28, as amended with effect from 1 March 2022, in Chapter 2 of Part 5, under the heading “Financial services and funds relating to restricted goods and restricted technology”, and in so far as relevant, provides:

“(1) A person must not directly or indirectly provide, to a person connected with Russia, financial services in pursuance of or in connection with an arrangement whose object or effect is—

(a) the export of restricted goods,

(b) the direct or indirect supply or delivery of restricted goods,

(c) directly or indirectly making restricted goods or restricted technology available to a person,

(d) the transfer of restricted technology, or

(e) the direct or indirect provision of technical assistance relating to restricted goods or restricted technology.

(2) A person must not directly or indirectly make funds available to a person connected with Russia in pursuance of or in connection with an arrangement mentioned in paragraph (1).

(3) A person must not directly or indirectly provide financial services or funds in pursuance of or in connection with an arrangement whose object or effect is—

(a) the export of restricted goods to, or for use in, Russia;

(b) the direct or indirect supply or delivery of restricted goods to a place in Russia;

(c) directly or indirectly making restricted goods or restricted technology available—

(i) to a person connected with Russia, or

(ii) for use in Russia;

(d) the transfer of restricted technology—

(i) to a person connected with Russia, or

(ii) to a place in Russia; or

(e) the direct or indirect provision of technical assistance relating to restricted goods or restricted technology—

(i) to a person connected with Russia, or

(ii) for use in Russia.

...

(6) Paragraphs (1) to (3) are subject to Part 7 (Exceptions and licences).

(7) A person who contravenes a prohibition in any of paragraphs (1) to (3) commits an offence, but—

(a) it is a defence for a person charged with an offence of contravening paragraph (1) or (2) ('P') to show that P did not know and had no reasonable cause to suspect that the person was connected with Russia;

(b) it is a defence for a person charged with the offence of contravening paragraph (3) to show that the person did not know and had no reasonable cause to suspect that the financial services or funds (as the case may be) were provided in pursuance of or in connection with an arrangement mentioned in that paragraph.”

60. It is convenient at this point to make several preliminary observations in relation to regulation 28(3)(c) as amended with effect from 1 March 2022.

61. First, regulation 28(3)(c) contains a prohibition in that a person “must not” directly or indirectly provide financial services or funds in certain circumstances.

62. Secondly, the prohibition is not time limited.

63. Thirdly, the prohibition does not apply to anything done under the authority of a licence: see regulations 28(6) and 65.

64. Fourthly, the prohibition can be removed by the Minister revoking regulation 28(3)(c) or amending it in such a way so that it no longer applies on the facts of a particular case: see sections 1 and 45 of SAMLA and para 51 above.

65. Fifthly, the prohibition applies to a person who provides financial services or funds “in pursuance of or in connection with” an arrangement the “object or effect” of which is (among other things) the supply of any goods falling within the definition of restricted goods to a person connected with Russia or for use in Russia. “Funds” are broadly defined in section 60(1) of SAMLA to mean “financial assets and benefits of every kind”, a definition which is followed by a non-exhaustive list which includes cash, payment

instruments, and letters of credit. “Arrangement” is also broadly defined in regulation 2 and includes “any agreement, understanding, scheme, transaction or series of transactions, whether or not legally enforceable”.

66. Sixthly, by virtue of regulation 28(7) read with section 17(4) of SAMLA, it is an offence for a person to contravene the prohibition contained in regulation 28(3)(c). Under regulation 80(2), an offence under regulation 28(3)(c) is punishable on conviction on indictment to imprisonment for a term not exceeding ten years or a fine (or both). Substantial civil penalties may also be imposed on a strict liability basis, pursuant to section 146 of the Policing and Crime Act 2017 as amended by the Economic Crime (Transparency and Enforcement) Act 2022.

67. Seventhly, letters of credit give rise to private rights which are enforceable by civil action whilst the sanction regulations are made for public purposes. The public purposes are: (a) compliance with a UN obligation; (b) compliance with any other international obligation; or (c) a purpose within section 1(2) of SAMLA. The purposes within section 1(2) are also all public purposes such as being in the interests of national security or in the interests of international peace and security. To fulfil those public purposes regulation 28(3)(c) prohibits a person, such as the Bank, from directly or indirectly providing financial services or funds in certain circumstances. On these appeals the parties proceeded on the basis that the prohibition in regulation 28(3)(c) left the private rights as between the appellants and the Bank otherwise untouched so that, once the prohibition was removed, the private rights could be enforced in the ordinary way. I proceed, without deciding, on the assumption that the effect of regulation 28(3)(c) on the facts of this case is that it suspends the obligation to pay during the period between the obligation arising and the licence being obtained.

## **5. The approach to statutory interpretation**

68. The issues on these appeals and cross appeals turn on the true interpretation of regulation 28(3)(c) and of section 44 of SAMLA.

69. Normal principles of statutory interpretation are engaged. The courts in conducting statutory interpretation are seeking to ascertain the meaning of the words used in a statutory provision in the light of their context and the purpose of the provision: see for instance, *R (Project for the Registration of Children as British Citizens) v Secretary of State for the Home Department* (“*R (O)*”) [2022] UKSC 3; [2023] AC 255, paras 28–29; *News Corp UK & Ireland Ltd v Revenue and Customs Comrs* [2023] UKSC 7; [2024] AC 89, para 27; *R (N3) v Secretary of State for the Home Department* [2025] UKSC 6; [2025] AC 1473, paras 61–63; *Darwall v Dartmoor National Park Authority* [2025] UKSC 20; [2025] AC 1292, para 15; *X v Lord Advocate* [2025] UKSC 44; [2026] 2 WLR 43, para 22.

70. A leading statement of principle was given by Lord Hodge in *R (O)*, with whom those in the majority agreed. He stated, at para 29:

“The courts in conducting statutory interpretation are ‘seeking the meaning of the words which Parliament used’: *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591, 613 per Lord Reid. More recently, Lord Nicholls of Birkenhead stated: ‘Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context.’ (*R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd* [2001] 2 AC 349, 396.) Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained. There is an important constitutional reason for having regard primarily to the statutory context as Lord Nicholls explained in *Spath Holme*, p 397: ‘Citizens, with the assistance of their advisers, are intended to be able to understand parliamentary enactments, so that they can regulate their conduct accordingly. They should be able to rely upon what they read in an Act of Parliament.’”

71. A relevant aid to statutory interpretation in this case is the presumption that different words are used to denote a different meaning. If different words are used then the court has to do its best to find those different meanings: see *Bennion, Bailey and Norbury on Statutory Interpretation*, 8th ed (2020), section 21.3.

## **6. Issue one: the true interpretation of regulation 28(3)(c)**

*(a) Under regulation 28(3)(c) is there a requirement for a causal connection between the provision of financial services or funds and the prohibited supply?*

72. The appellants’ primary submission is that the Court of Appeal failed to construe regulation 28(3)(c) purposively thus overlooking a requirement for a causal connection between the provision of financial services or funds and the prohibited supply. The appellants submit that prohibiting a German bank from paying Irish entities funds which do not relate to making aircraft available from 1 March 2022 to persons connected with

Russia or for use in Russia is not within the mischief of the Amended Regulations. It is asserted that prohibiting the Bank from paying Irish entities does not disrupt Russia's strategic industries and does not encourage a change in Russian behaviour towards Ukraine. In short it does not put any pressure on Russia. Rather, the prohibition harms Irish entities. Therefore, the appellants argue that given the purpose of regulation 28(3)(c) the words "in connection with" require there to be a causative link between the provision of financial services or funds and the prohibited supply of aircraft.

73. If the correct interpretation of regulation 28(3)(c) requires a causal connection between the provision of financial services or funds and the prohibited supply then the appeals in relation to the first issue should be allowed. That is because it is not in dispute that, from 1 March 2022 the only matter which has caused and continues to cause the aircraft to be available to a person connected with Russia or for use in Russia has been and is the failure of the two Russian airlines to return them to the lessors in breach of the aircraft leases. There is no causative link between the Bank making payments under the letters of credit and the prohibited supply of aircraft.

74. But I reject the appellants' interpretation, and hence their primary submission, for several reasons.

75. First, the appellants argue that regulation 28(3)(c) requires a connection between the provision of financial services or funds and the prohibited supply of aircraft. The language of regulation 28(3)(c) does not do so. Rather, it requires a connection between the provision of financial services or funds and an arrangement.

76. Secondly, there is no doubt as to the purpose of the Regulations and of the Amended Regulations. The purpose is set out in regulation 4 as required by section 1(3) of SAMLA and in the reports laid before Parliament as required by sections 2(4) and 46 of SAMLA. The very broad purpose is to put pressure on Russia, by, for instance, disrupting strategic industries such as aviation: see paras 54–57 above. However, the purpose can be achieved in different ways. Mr Quest KC, on behalf of the Bank, submits that the way of achieving the purpose adopted in the Amended Regulations is by casting a wide net prohibiting payments but with the safety valve of a licensing system. He submits that this way of achieving the purpose can be discerned not only from the language of the Regulations and of the Amended Regulations but also from the report laid before Parliament on 11 April 2019 which, at para 13, states:

"The trade measures in the Regulations are targeted and provide for the trade sanctions to be subject to a licensing framework that will be overseen by the Department for International Trade. The power to grant licences under this regime supports the reasonableness of imposing these sanctions

measures, as it will mitigate any unintended negative consequences.”

Mr Quest also submits that the lack of a causative link between the provision of funds by the Bank and the prohibited supply gives rise to a strong argument under the licensing regime in favour of granting the requisite licences.

77. I have concluded that Mr Quest’s submissions are correct. The structure of casting the net wide with a licensing system available to mitigate any unintended consequences serves the purpose of regulation 28(3)(c). The net is cast wide because vital public interests are involved and the arbiter of those interests should be public authorities involved in the licensing process. Those public authorities have institutional competence and are accountable through the relevant Minister to Parliament.

78. The purpose of regulation 28(3)(c) being served by casting a wide net combined with a licensing system can be demonstrated by reference to the practical position in relation to payments under letters of credit. A compliant demand does not require details of the lessee’s failure to be given to the Bank by the beneficiaries: see paras 26 and 32 above. Mr Howard KC on behalf of Celestial accepted, correctly, that on receipt of a compliant demand the Bank would be unaware as to whether the aircraft were still being made available by the lessors to persons connected with Russia or for use in Russia and the demand was being made for instance in relation to the failure of the lessee to pay rent. Mr Howard accepted that a bank would be in breach of regulation 28(3)(c) if it made a payment in relation to ongoing rent. He argued that if a compliant demand did not set out the details of the lessees’ failure, then, even though the Bank was not entitled under the letters of credit to do so, it should make inquiries of the beneficiaries to ensure that the payment was not being made in respect of the ongoing availability of aircraft from 1 March 2022. I observe that there would be no obligation on the beneficiaries to reply to such an enquiry and even if they chose to do so questions might arise as to the accuracy of the information supplied to the Bank. I would also observe that in the context of the vital public interests involved in sanction provisions it is consistent with the purpose of the Regulations and the Amended Regulations that the arbiter of the accuracy of the information should be the licensing authority rather than private individuals.

79. Another practical situation which demonstrates that the purpose of regulation 28(3)(c) is served by casting a wide net is that a bank or any other private individual will be unable to see the larger picture. Take as a hypothetical example, the provision of funds by a bank to a person “X”, a national of “Ruritania”, which country is outside the territorial reach of the Amended Regulations, which is solely confined to a payment for failure to comply with obligations prior to 1 March 2022 so that there is no causative connection between the provision of funds by the bank and the prohibited supply of aircraft in relation to that transaction. Left to its own devices and upon being so informed, the bank might provide the funds. However, the bank may be unaware, but the licensing

authority may be aware, that X intended to use the payment to fund another new commercial venture, from Ruritania, involving making aircraft available to a person connected with Russia or for use in Russia. In such circumstances the licensing authority could refuse to grant a licence, thereby disrupting the further commercial venture and putting pressure on Russia.

80. Thirdly, regulation 28(3)(c) uses different words (“in pursuance of” and “in connection with” the arrangement) thereby indicating that they have different meanings. In pursuance of the arrangement has the meaning of providing funds under or in accordance with the arrangement whose object or effect is making restricted goods or restricted technology available to a person connected with Russia or for use in Russia. As the Court of Appeal held, at para 55, the use of the phrase “in connection with” in “conjunction with ‘in pursuance of’ indicates a clear intention to cast the net more broadly than financial services or funds provided under or in accordance with the terms of the relevant arrangements (which would be covered by the natural sense of ‘in pursuance of’).” I agree. The words “in connection with” are far broader than “in pursuance of”. In conjunction with the phrase “in pursuance of” they mean anything which factually connects the provision of the funds to the arrangement. The phrase does not require there to be any causal connection.

*(b) Are the aircraft leases arrangements within regulation 28(3)(c)?*

81. The appellants submit that the Bank was not prohibited from making payments under the letters of credit as the aircraft leases are not “an arrangement” within regulation 28(3)(c). Again, if this is the correct interpretation of regulation 28(3)(c) the appeals in relation to the first issue should be allowed.

82. The appellants advance three reasons in support of their submission that the aircraft leases are not arrangements within regulation 28(3)(c).

83. First, the appellants submit that the aircraft leases are not relevant arrangements because there was no prohibition in respect of making aircraft available at the time the leases were entered into and the aircraft were made available. I reject this submission. There is simply no support at all in the wording of regulation 28(3)(c) for the submission that “an arrangement” within the regulation excludes arrangements which were not prohibited when made or performed. Rather, the relevant arrangements for the purposes of regulation 28(3)(c) are specified by their object or effect not by reference to whether they were or were not prohibited when made or performed. In short, the prohibition is in relation to funding of arrangements whenever the arrangements were made or performed.

84. Second, the appellants submit that the aircraft leases are not relevant arrangements because they were existing arrangements as at 1 March 2022, made and performed prior

to that date. I reject this submission. Again, there is no support at all in the wording of regulation 28(3)(c) for the submission that arrangements existing prior to 1 March 2022 are not arrangements for the purposes of the regulation. The Court of Appeal held, at para 57, that “the amendments to regulation 28 included nothing that limited their effect to arrangements entered into on or after 1 March 2022”. I agree.

85. Third, the appellants, in the alternative, submit that the aircraft leases cease to be arrangements for the purpose of regulation 28(3)(c) once they have been terminated. In support of this third submission the appellants rely on the use of the present tense in regulation 28(3)(c) in describing the arrangement (an arrangement “whose object or effect is ...”). Relying on this wording in regulation 28(3)(c), the appellants submit that there needs to be a temporal coincidence between the provision of funds and the existence of the relevant arrangement. As the leases had in fact been terminated by the time the demands under the letters of credit were made then at that time there was no arrangement with the relevant object or effect. Therefore, there was no temporal coincidence between the provision of funds and the existence of the relevant arrangement.

86. I reject this submission. Regulation 28(3)(c) refers to the “object or effect” of the arrangement. The object and effect of the aircraft leases are objectively determined when they are made. In this case the object and effect of the aircraft leases was to make aircraft available to two Russian airline companies for use in Russia. The question arises as to whether the object or effect of the aircraft leases alters once they have been terminated. I leave to one side for the moment whether the effect of the aircraft leases alters on termination. I do so because it is plain that the exercise of a contractual right to terminate the leases for default does not alter the object of those leases. By terminating the leases, the lessors may no longer have intended to continue to make the aircraft available, but their intention at that point does not retrospectively alter the object of the aircraft leases, which remains unchanged. The Court of Appeal rejected this submission, at para 63. It stated that:

“The most straightforward answer is that the words used are just a descriptor of the type of arrangements to which regulation 28(3) applies, whenever those arrangements exist. Further, even if it is a stretch of the language to say that the effect of particular arrangements ‘is’ making aircraft etc available when those arrangements have already been terminated, it is no stretch to say that that is their object. The object of the leases is unchanged by their termination: it is and always has been the making available of aircraft for use in Russia or to a person connected with Russia.”

I agree and add that the word “is” in regulation 28(3)(c) does not refer to an arrangement which is ongoing at the time that the financial services or the funds are provided. Rather,

the temporality associated with the word “is” is directed to looking at the arrangement itself when it was entered into by the parties to that arrangement.

87. For the sake of completeness, I also reject the appellants’ submission that the aircraft leases cease to be arrangements for the purpose of regulation 28(3)(c) once they have been terminated on the basis that this would lead to the absurdity that the regulation could be avoided by the simple device of drafting the leases in such a way as to avoid the prohibition on the provision of funds. This could be achieved by drafting the leases so that payment follows on after the termination of the lease. By adopting that device, aircraft could be made available to persons connected with Russia or for use in Russia by a person outside the territorial scope of the Amended Regulations, but as soon as the leases were terminated a person within the territorial scope of the Amended Regulations would not be prohibited from providing funds in relation to those aircraft.

*(c) Conclusion in relation to the first issue on these appeals*

88. In conclusion, I reject the appellants’ submissions as to the true interpretation of regulation 28(3)(c). There is no requirement for a causative connection between the provision of financial services or funds and the prohibited supply. Rather, there has only to be a connection with an arrangement the object or effect of which is making available aircraft to persons connected with Russia or for use in Russia. Clearly, in this case there was a factual connection between the payments under the letters of credit and the aircraft leases which are the arrangements whose object or effect is making restricted goods or restricted technology available. The letters of credit were issued in connection with those leases: see para 23 above together with the terms of a letter of credit set out in paras 29–32 above. Therefore, payment under the letters of credit was in connection with the arrangements, namely the aircraft leases, whose object or effect is making aircraft available to a person connected with Russia or for use in Russia. The Bank was prohibited under regulation 28(3)(c) from making payments under the letters of credit until licences to do so were obtained.

89. It is not in dispute that if the Bank succeeds in relation to the regulation 28(3)(c) issue then its payment obligation under the letters of credit was suspended until the UK licence process was completed on 13 October 2022. It is common ground that in those circumstances statutory interest should also not accrue for that period. The exercise of discretion in relation to costs is also clearly affected by the outcome of the regulation 28(3)(c) issue. For instance, a relevant factor in relation to the exercise of discretion in relation to costs is whether civil proceedings were unnecessarily commenced at a stage when payment was prohibited by regulation 28(3)(c) and before licences were obtained.

**7. Issue two: Does the protection under section 44(2) of SAMLA include protection against an action to recover a debt, an award of interest on the amount of the debt, and an award of associated costs?**

90. The resolution of the regulation 28(3)(c) issue means that statutory interest does not accrue until the UK licence process was completed. It also means that the prohibition on payment was a relevant factor in relation to the exercise of discretion in respect of costs. Therefore, it is not necessary to resolve the issue as to whether the protections under section 44(2) of SAMLA include protections against an action to recover a debt, an award of interest on the amount of the debt, and an award of associated costs. Because the true interpretation of section 44(2) of SAMLA is likely to affect a significant number of other cases and we have heard full argument on the point, I consider it appropriate to proceed on these cross appeals to deal with the issue.

91. The purpose of section 44 is to provide protection for a person who acts or omits to act in the reasonable belief that the act or omission is in compliance with, for instance, regulation 28(3)(c). The protection provided to the person furthers the public purpose of the sanctions provision. A person with the requisite belief should have that protection because making payments might undermine the sanction regime.

92. The protection provided by section 44(2) is that “[a] person is not liable to any civil proceedings to which that person would, in the absence of [section 44], have been liable in respect of the act.” Section 44(3) provides that in section 44 “act” includes an omission.

93. Section 44 does not prohibit civil proceedings. That would require clear words because it would prevent access to justice: see *R (UNISON) v Lord Chancellor* [2017] UKSC 51; [2020] AC 869 at paras 76–77. Rather, section 44 provides a defence in civil proceedings. In this case the civil proceedings are for a debt. Civil proceedings to recover a debt are only brought if the person, in this case the Bank, fails to pay the debt. As the Bank’s liability is “in respect of” its omission to pay upon receipt of a compliant demand under the letters of credit, the protection afforded falls within the language used in section 44(2). Furthermore, a failure to pay a claim for interest or a claim for costs is also an omission “in respect of” the debtor’s failure to pay the debt so as to fall within the language used in in section 44(2). I consider that section 44 would have provided protection to the Bank against an action to recover a debt, an award of interest on the amount of the debt, and an award of associated costs.

## **8. Overall conclusion**

94. On the true interpretation of regulation 28(3)(c) the Bank was prohibited from making payments under the various letters of credit until the licences to do so were obtained. I would dismiss the appellants' appeals.

95. Section 44 of SAMLA does provide protection to the Bank against an action to recover a debt, an award of interest on the amount of the debt, and an award of associated costs whilst it held the reasonable belief that the omission to pay was in compliance with regulation 28(3)(c). I would allow the Bank's cross appeals.