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The Rough, The Smooth, and the Empty Mansion: A Conclusion to Fridman v Agrofirma Oniks LLC & Anor EWCA Civ 139

Fridman v Agrofirma Oniks LLC & Anor [2026] EWCA Civ 139

Date: 19 February 2026

Judges: Lord Justice Lewison, Lord Justice Phillips, and Sir Launcelot Henderson

Key Words:

Sanctions, Travel Ban, Excluded Person, Service of Process, Personal Jurisdiction, Common Law Presence, Territoriality, Civil Procedure Rules (CPR), Usual Residence, Temporary Absence, Substituted Service, Service Outside the Jurisdiction

Summary

The case of *Fridman v Agrofirma Oniks LLC & Anor* [2026] EWCA Civ 139 concerns whether Mr Mikhail Fridman, a sanctioned Russian oligarch, was validly served with a claim form at his London property, Athlone House [1]. Following his designation under the Russia (Sanctions) (EU Exit) Regulations 2019, Mr Fridman became an "excluded person" and is legally banned from entering the UK [1, 3-6]. The claimants attempted to serve him at Athlone House in March 2024, despite his physical departure from the UK in September 2023 [6-8, 11]. The Court of Appeal overturned the High Court's decision, ruling that because Mr Fridman is indefinitely banned by the State from entering the country, he cannot be considered "present" or "resident" in the jurisdiction for the purposes of service [80, 87-88, 94-95]. The appeal was allowed, meaning the claimants must instead apply for permission to serve outside the jurisdiction [72-73, 95-98].

Key Themes:

1. ***Territorial Jurisdiction vs Procedural Rules****: The tension between the substantive common law requirement of a defendant's "presence" in the jurisdiction and the procedural rules for service under the Civil Procedure Rules (CPR) [16-17, 28, 30-31].*
2. ***The Meaning of "Presence" and "Residence"****: How the courts define physical presence, usual residence, and whether temporary absence negates jurisdiction [23-24, 61-63, 77-79, 81-82].*
3. ***Impact of Sanctions and Travel Bans****: How a state-enforced travel ban alters an individual's legal status regarding residency, specifically distinguishing voluntary temporary absence from an enforced exile [80, 86-88, 94].*

4. ***The "Rough with the Smooth" Principle****: The legal concept that subjection to a court's jurisdiction (the rough) is reciprocal to receiving the protection and benefits of its laws (the smooth) [88-90].*

Background

Mr Fridman, an immensely wealthy individual with dual Russian and Israeli nationality, acquired Athlone House in London in 2016 and was granted indefinite leave to remain in the UK in 2019 [1-4]. On 15 March 2022, he was sanctioned under the Russia Regulations, resulting in his assets being frozen and his leave to remain being cancelled [4]. He became an "excluded person" under section 8B of the Immigration Act 1971, subjecting him to a "Travel Ban" [1, 3-6].

Mr Fridman physically left the UK on 27 September 2023 [7]. On 9 February 2024, the claimants issued proceedings against him and subsequently posted and hand-delivered the claim form to Athlone House in March 2024, arguing it was his "usual or last known residence" [10-12, 17]. The High Court judge initially held that Mr Fridman had been validly served because he had not ceased to be a resident despite the Travel Ban, granting the court common law jurisdiction over him [1-3, 13ii)d), 14]. Mr Fridman appealed this decision [1-3].

Legal Issues and Analysis

The central legal issue was **whether the common law principle—that an English court only has personal jurisdiction over an individual if they are present in the jurisdiction—remains a substantive requirement**, or whether it had been superseded by the CPR [16-17, 20, 28-31].

1. **Common Law vs CPR:** The Court of Appeal analysed conflicting previous judgments. While the case of *Kamali* suggested that the introduction of the CPR had abolished the fundamental common law requirement for a defendant to be present in the jurisdiction, the later case of *SSL International* held that the principle survived the CPR [56-57, 65-66]. Lord Justice Lewison preferred the reasoning in *SSL International*, concluding that **presence is a substantive jurisdictional requirement rooted in international law and the principle of territoriality, not merely a procedural rule** [70-73, 76].
2. **The Nature of Mr Fridman's Absence:** Under common law, a temporary absence does not negate presence for jurisdictional purposes [77-79]. The High Court judge had relied heavily on Mr Fridman's declared intention to return to Athlone House to classify his absence as temporary [89-90]. However, the Court of Appeal ruled that an "intention" to return is meaningless if it is legally impossible to fulfil [90].
3. **State-Enforced Exile:** Because the State had indefinitely banned Mr Fridman from entering the UK, his absence could not be classified as "temporary" [94]. The court accepted the argument that it would be legally incoherent for the State to claim jurisdiction over him based on his "presence" while simultaneously legally denying him the right to be present [80-81]. Furthermore, because he is precluded from entering the UK, he cannot benefit from its laws, meaning he cannot be forced to submit to the burdens of its courts [88-89].

Conclusion

The Court of Appeal concluded that the High Court judge was wrong to find that Mr Fridman was validly served. **In no ordinary sense of the words could Mr Fridman be said to be present or resident at Athlone House after his departure in September 2023** due to his indefinite, state-enforced removal from the country [94]. Consequently, the English courts did not have personal jurisdiction over him as of right, and the appeal was allowed [94-95]. However, the court noted that ***"If the Claimants wish to bring proceedings against Mr Fridman, they will need to obtain***

the permission of the court to serve them outside England and Wales, relying on one or more of the 'gateways' listed in PD 6B. But if such permission is granted, they will then be able to apply for an order for substituted service at Athlone House" [95].

Key Takeaway:

The critical takeaway is that a person subjected to an indefinite travel ban and legally excluded from the UK cannot be considered "present" or "resident" in the jurisdiction for the purposes of standard service of legal proceedings as of right [94]. However, this does not grant sanctioned individuals total immunity from English legal proceedings. Claimants must instead explicitly apply for the court's permission to serve them outside the jurisdiction via established "gateways." Crucially, once this permission is obtained, the court may then allow substituted service at the defendant's UK property [95].

Parting Thoughts

The claimants asked the English courts to treat a man indefinitely banned from entering the United Kingdom as nonetheless "present" in his Hampstead mansion for the purposes of service. The High Court accepted that analysis.

The Court of Appeal did not.

Lewison LJ's reasoning restores intellectual coherence. It cannot be right for the State to bar a person from entry while simultaneously asserting jurisdiction on the footing that he remains territorially present. Jurisdiction at common law is not a procedural technicality; it rests on the reciprocal principle that protection and subjection travel together — the rough with the smooth.

Nor could an indefinite, state-enforced exclusion plausibly be characterised as "temporary absence". An intention to return is not legally operative where its fulfilment depends on surmounting a succession of governmental barriers. In no ordinary sense could Mr Fridman be described as present or resident at Athlone House at the time of service.

Importantly, the decision does not render sanctioned individuals immune from suit. It simply insists that claimants use the correct mechanism: permission to serve out under PD 6B. And once that hurdle is crossed, substituted service at the London property may yet follow.

The mansion remains; jurisdiction does not.

#Sanctions #TravelBan #ServiceOfProcess #PersonalJurisdiction #CommonLaw #CivilProcedureRules #CPR #MikhailFridman #ExcludedPerson #Jurisdiction #UKLaw #CourtOfAppeal #SubstitutedService #Territoriality #LegalUpdate #CaseLaw #DDAlegal

Authorities

Case Law:

1. The Substantive Common Law Requirement of Territoriality and Presence (Primary Theme)

1. *SSL International Plc v TTK LIG Ltd* [2011] EWCA Civ 1170, [2012] 1 WLR 1842 *[paras 65-67, 69-70, 76]. Relied upon to confirm that while temporary absence does not negate presence, the fundamental common law principle that courts only exercise jurisdiction over those present in the jurisdiction remains intact and was not excluded by the Civil Procedure Rules (CPR).*
2. *Barclays Bank of Swaziland Ltd v Hahn* (1989) 2 All ER 398; [1989] UKHL J0518-2; [1989] 1 WLR 506 *[paras 40-42, 44, 56, 61, 63, 68, 73-74, 76]. Relied upon as binding House of Lords*

authority establishing that a defendant's physical presence within the jurisdiction at the time of service is a substantive jurisdictional requirement that was not altered by changes in procedural rules permitting postal service.

3. *Adams v Cape Industries plc* [1990] Ch 433 *[paras 31, 34, 88]. Relied upon to establish the "rough with the smooth" principle of territorial jurisdiction: a person must be able to benefit from the laws of a country to be amenable to the burdens and processes of its courts.*
4. *Sirdar Gurdyal Singh v Rajah of Faridkote* [1894] AC 670 *[paras 32-33, 35]. Relied upon to demonstrate that the principle of territorial jurisdiction is deeply rooted in international law, and decrees pronounced against foreigners not subject to the jurisdiction are considered absolute nullities.*
5. *Chellaram v Chellaram (No 2)* [2002] EWHC 632 (Ch), [2002] 3 All ER 17 *[paras 25, 57, 59, 61, 66, 70, 77]. Cited to support the fundamental rule of English procedure and jurisdiction that a defendant may only be served if they are physically present in the jurisdiction at the time of service.*
6. *Employers' Liability Assurance Corporation Ltd v Sedgwick, Collins & Co Ltd* [1927] AC 95 *[paras 34-35]. Relied upon to affirm the international law principle that absent a submission to jurisdiction, serving a writ only becomes an effective source of jurisdiction if the defendant is within the territory.*
7. *Re Sawers* (1879) 12 Ch D 522, 526 *[para 36]. Relied upon to establish the broad principle of territoriality, noting that English legislation applies only to English subjects or foreigners who come into the country and make themselves subject to its jurisdiction.*
8. *Airbus Industries GIE v Patel* [1999] 1 AC 119 *[para 26]. Cited to affirm the general view that English jurisdiction is fundamentally founded on the presence of the defendant within the jurisdiction.*
9. *Stichting Shell Pensioenfonds v Krys* [2014] UKPC 41, [2015] AC 616 *[para 27]. Cited to support the principle that amenability to personal jurisdiction strictly requires presence, amenability to service out of the jurisdiction, or voluntary submission.*
10. *The Theodohos* [1977] 2 Lloyd's Rep 428 *[para 65]. Cited as affirming the fundamental common law rule that a foreign corporation cannot be served within the jurisdiction unless carrying on business there.*

2. The Relationship Between the Civil Procedure Rules (CPR) and Common Law

1. *Kamali v City & Country Properties Ltd* [2006] EWCA Civ 1879, [2007] 1 WLR 1219 *[paras 56-64, 66, 68-69, 76]. Analysed as the primary authority arguing that the CPR abolished the common law presence requirement; however, this reasoning was explicitly rejected and overridden by the court in favour of SSL International.*
2. *Masri v Consolidated Contractors International (UK) Ltd (No 4)* [2009] UKHL 876, [2010] 1 AC 90 *[paras 48, 76]. Relied upon to assert that the presumption against extraterritoriality still strongly applies when considering the scope and interpretation of the CPR.*
3. *Okura & Co Ltd v Forsbacka Jernverks AB* [1914] 1 KB 715 *[paras 47, 75]. Relied upon to emphasize that procedural rules of court must always be interpreted subject to the broad principles of international comity and jurisdiction.*
4. *Clavis Liberty Fund 1 LP v HMRC* [2015] UKUT 72 (TCC), [2015] 1 WLR 2949 *[paras 69, 75]. Cited to support the proposition that the CPR must be interpreted against the background of the common law concerning jurisdiction over non-residents.*
5. *Broom v Aguilar* [2024] EWHC 1764, [2025] BPIR 4 *[paras 70, 73]. Cited approvingly for holding that a defendant outside the jurisdiction is simply not subject to the English court unless statutory extensions explicitly apply.*

6. *Rolph v Zolan* [1993] 1 WLR 1305 *[paras 43-46, 57-59, 66, 76]. Discussed as an earlier case that incorrectly assumed postal service negated the substantive requirement of physical presence, and which was criticised for ignoring binding House of Lords precedent.*
7. *Fairmays v Palmer* [2006] EWHC 96 (Ch) at [16] *[paras 53, 68]. Cited to show that the CPR did not sweep away earlier common law authority on presence, and that alternative service orders can still be made if permission to serve outside the jurisdiction is granted.*
8. *The Libyan Investment Authority v Société Générale* [2017] EWHC 781 (Comm) *[para 69]. Noted for following the Clavis analysis that procedural rules do not override the substantive common law background.*
9. *Marashen Ltd v Kenvett Ltd* [2017] EWHC 1706 (Ch), [2018] 1 WLR 288 at [17] to [20] *[para 53]. Cited as an example of the court's ability to make orders for substituted service by alternative means once the proper permission to serve out of the jurisdiction has been obtained.*

3. The Concept of "Intention" to Return and the Impact of State-Enforced Sanctions

1. *Cunliffe v Goodman* [1950] 2 KB 237, 253 *[para 90]. Relied upon for the classic legal exposition of "intention", establishing that a person cannot logically "intend" a result (such as returning to reside in the UK) if it is wholly beyond their control and dependent on surmounting formidable, state-erected barriers.*
2. *Shulman v Kolomoisky* [2018] EWHC 160 (Ch) *[paras 84-85, 94]. Discussed for its multi-factorial guidelines on whether UK residence has ceased; however, it was distinguished by the court because it applied to the Brussels 1 Regulation rather than the stricter common law requirement of presence.*
3. *Dalston Projects Ltd v Secretary of State for Transport* [2024] EWCA Civ 172, [2024] 1 WLR 3327 at [210] *[para 93]. Cited to reinforce the factual reality that the sanctions regime is "severe and open-ended", making a sanctioned individual's absence indefinite.*
4. *PJSC National Bank Trust v Mints* [2023] EWCA Civ 1132, [2024] 3 WLR 714 at [181] *[para 93]. Cited to further underline the indefinite nature of the UK sanctions regime, noting that no one can say how long the sanctions will last.*

4. Stare Decisis and the Resolution of Conflicting Precedents

1. *Great Peace Shipping Ltd v Tsavliris Salvage (International) Ltd* [2002] EWCA Civ 1407, [2003] QB 679 at [157] to [159] *[para 76]. Relied upon for the procedural rule that where the Court of Appeal faces its own decision (e.g., Kamali) that conflicts with an earlier House of Lords decision (e.g., Barclays Bank), it is bound to follow the House of Lords.*
2. *Nasrullah v Rashid* [2018] EWCA Civ 2685, [2020] Ch 37 at [50]*. Relied upon to support the identical principle of stare decisis, mandating the court to follow binding upper-court precedent over its own conflicting or erroneous decisions.*
3. *Key Homes Bradford Ltd v Patel* [2015] 1 BCLC 402 *[para 76]. Cited to highlight the long-standing difficulty courts have faced in attempting to logically reconcile the conflicting legal reasoning between Kamali and SSL International.*

Legislation:

Rules of Court, Civil Procedure, and Jurisdiction *(This theme forms the primary basis of the court's legal reasoning, focusing on the tension between procedural rules for serving documents and the substantive common law limits of the court's territorial jurisdiction).*

1. ***Civil Procedure Rules (CPR) (specifically Parts 6, 10, 11, and Practice Direction 6B):*** -

Relied upon extensively to analyse whether procedural rules for serving a claim form (such as leaving it at a "usual or last known residence" under rule 6.9, or utilising the "gateways" for service out of the jurisdiction under rule 6.36 and PD 6B) can override the substantive common law requirement that a defendant must be physically present in the jurisdiction. The court concluded that the CPR are subordinate to, and must be interpreted against, the common law presumption of territoriality.

2. ***Rules of the Supreme Court (RSC) (Ord 10 r 1(2) and Ord 11):*** *- Analysed in the context of historic House of Lords case law (Barclays Bank) to demonstrate that even when procedural rules were historically updated to permit postal service, the substantive jurisdictional requirement that the defendant be physically within the jurisdiction remained intact. This ensured that the strict rules for serving defendants outside the jurisdiction (Ord 11) were not "outflanked".*
3. ***County Court Rules (CCR) (Ord 7 rr 1 and 10):*** *- Discussed when reviewing conflicting Court of Appeal precedents (Rolph, Kamali) which had erroneously suggested that the introduction of postal service rules in the county courts abolished the substantive common law presence requirement.*
4. ***Civil Jurisdiction and Judgments Act 1982 (sections 41 and 42):*** *- Cited in relation to the CPR PD 6B "Gateway (1)" for service out of the jurisdiction. It establishes that proving a defendant's "domicile" requires demonstrating both residence and a substantial connection to the UK. The judgment used this to illustrate how interpreting domestic service rules too broadly would wrongly bypass these strict statutory gateways.*
5. ***Brussels 1 Regulation (recast) (Article 4(1)):*** *- Referenced to distinguish the multi-factorial test used to determine "residence" for the purposes of European jurisdiction from the much stricter common law requirement of physical "presence" needed to establish English territorial jurisdiction.*
6. ***Civil Procedure Act 1977:*** *- Identified as the enabling legislation that grants power to the Rules Committee. It was relied upon to establish that, while the committee might theoretically have the power to extend extra-territorial jurisdiction, a strong presumption against extraterritoriality still applies when interpreting the CPR.*
7. ***County Courts Act 1984 (referred to as the "Act of 1984", section 76):*** *- Mentioned historically within a quote from an earlier case (Rolph) to contrast general principles of practice with the specific procedural rules governing postal service.*

Sanctions and Immigration Framework *(This theme provides the essential factual and legal matrix that makes Mr Fridman's physical presence in the UK an impossibility, thereby directly impacting the jurisdictional analysis).*

1. ***Russia (Sanctions) (EU Exit) Regulations 2019 (specifically regulations 5 and 6):*** *- Relied upon as the primary legal mechanism under which Mr Fridman was designated. This designation resulted in the freezing of his assets and triggered a severe, open-ended travel ban that legally prevented him from returning to, or being present in, the UK.*
2. ***Immigration Act 1971 (specifically section 8B):*** *- Relied upon to establish Mr Fridman's legal status as an "excluded person" immediately following his sanctions designation. This statutory provision was the specific legal instrument that automatically cancelled his indefinite leave to remain and legally barred his entry into the UK.*
3. ***Sanctions and Anti-Money Laundering Act 2018 (Part 1):*** *- Cited alongside the Russia Regulations as the foundational statutory authority for Mr Fridman's designation, which imposed the travel ban and subsequent legal exclusion from the jurisdiction.*

Statutory Exceptions to Territoriality *(This minor theme is used briefly to contrast the general*

common law position with specific areas where Parliament has expressly legislated for extraterritorial reach).

1. ***Companies Act 2006 (specifically section 1140):*** *- Cited as an explicit example of a specific statutory provision where Parliament has explicitly empowered the courts of England and Wales to assert jurisdiction over persons who are not physically present within the territory, contrasting sharply with the default common law rule applied to individuals.*

Legal Texts & Commentary:

1. The Fundamental Relationship Between Service, Presence, and Jurisdiction (Primary Theme)

1. ***Dicey, Morris & Collins on the Conflict of Laws (16th ed)****: Relied upon for the formulation of Rule 32 and Rule 33, as well as paragraphs 11-010, 11-039, and 11-042. It establishes the foundational common law principle that the court has jurisdiction to entertain a claim in personam against any individual who is physically present in England (no matter how short the period) and duly served there with process, or against a person who voluntarily submits to the jurisdiction.*
2. ***Professor Adrian Briggs, Civil Jurisdiction and Judgments (8th ed)****: Quoted extensively to explain the paradoxical characteristic of the common law's approach to jurisdiction, specifically that jurisdiction is equated with, and crystallized by, the service of process. It highlights how alterations to procedural rules about service implicitly define and alter the international reach and substantive jurisdiction of the court.*
3. ***Professor Adrian Briggs, Civil Jurisdiction and Judgments*** *(7th ed): Cited to support the proposition that common law jurisdiction depends on the claimant's right to serve process, which exists as of right only if the defendant is physically present within the territorial jurisdiction or has appointed an agent to accept process.*

2. Foundational International Law Principles of Territoriality and Reciprocity

1. ***Sir William Blackstone, Commentaries on the Laws of England (vol 1, p 226)****: Relied upon for the classic formulation that "protection and subjection are reciprocal." This underpins the court's core conclusion regarding the "rough with the smooth" principle: if a state denies a person the benefit, presence, and protection of its laws (such as through an enforced travel ban), it cannot simultaneously force them into subjection to the burdens of its courts' jurisdiction.*
2. ***Sir Robert Phillimore, International Law (vol 4, s. 891)****: Cited within the historic extracted advice of the Privy Council in Singh to assert that the general rule requiring a plaintiff to sue in the court to which the defendant is subject "lies at the root of all international, and of most domestic, jurisprudence," confirming that all jurisdiction is properly territorial.*
3. ***Story, Conflict of Laws (2nd ed, ss. 546, 549, 553, 554, 556, 586)****: Cited within the Singh judgment as a leading authority affirming the international law doctrine that territorial jurisdiction only attaches to those resident within the territory while they are within it, and that decrees against absent foreigners who have not submitted to the jurisdiction are absolute nullities.*
4. ***Chancellor Kent, Commentaries (vol 1, p 284, note c, 10th ed)****: Cited within the Singh judgment alongside Story as further foundational authority supporting the strict doctrines of territorial jurisdiction and the nullity of foreign judgments pronounced in absentem.*

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Arbitrator Assessor for the CIArb
ICE DRC Member
ICE DRC CPD Committee Chairman
Adjudicator Exam Question Setter for the ICE
CIArb Adjudication Panel Member since 2006
CIArb Arbitration Panel Member since 2006
CIC Adjudication Panel Member since 2010
FIDIC Adjudication Panel Member since 2021
ICE Adjudication Panel Member since 2021
Law Society Panel Arbitrator
RIBA Adjudication Panel Member since 2018
RICS Adjudication Panel Member since 2006
RICS Dispute Board Registered since 2013
TECSA Adjudication Panel Member since 2012

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MATTERS ARISING

A measured conversation on recent authority

***Fridman v Agrofirma Oniks LLC & Anor* [2026] EWCA Civ 139**

Athlone House.
An excluded person.
Presence.

George and Archie discuss jurisdiction.

GEORGE:
The claim form was served at Athlone House.

ARCHIE:
Yes.

GEORGE:
In Hampstead.

ARCHIE:
Yes.

GEORGE:
Where he resides.

ARCHIE:
Where he formerly resided.

GEORGE:
He left in September 2023.

ARCHIE:
Yes.

GEORGE:
Voluntarily?

ARCHIE:
He is subject to an indefinite travel ban.

GEORGE:
Meaning?

ARCHIE:
He may not enter the United Kingdom.

GEORGE:
So the State forbids him from setting foot in the house.

ARCHIE:
Correct.

GEORGE:
The claimants served him there nonetheless.

ARCHIE:
Yes.

GEORGE:
The High Court held he remained present.

ARCHIE:
In a wider sense.

GEORGE:
Because he intended to return.

ARCHIE:
That was the finding.

GEORGE:
Can a man intend to do what the State prohibits?

ARCHIE:
He may hope.

GEORGE:
Hope is not presence.

ARCHIE:
No.

GEORGE:
Temporary absence does not defeat jurisdiction.

ARCHIE:
Correct.

GEORGE:
Is an open-ended, state-enforced exclusion temporary?

ARCHIE:
It is not.

GEORGE:
He cannot enter.
He cannot reside.
He cannot lawfully benefit from English protection.

ARCHIE:
No.

GEORGE:

Yet he is to take the burden of English jurisdiction.

ARCHIE:
That was the submission.

GEORGE:
The Court of Appeal?

ARCHIE:
Presence is a substantive requirement.

GEORGE:
Rooted in territoriality.

ARCHIE:
Yes.

GEORGE:
Protection and subjection travel together.

ARCHIE:
The rough with the smooth.

GEORGE:
If the State excludes him, it cannot pretend he remains.

ARCHIE:
In no ordinary sense.

GEORGE:
So service within the jurisdiction?

ARCHIE:
Invalid.

GEORGE:
Jurisdiction as of right?

ARCHIE:
None.

GEORGE:
The claimants may serve out.

ARCHIE:
And perhaps serve the house thereafter.

GEORGE:
The mansion stands.

ARCHIE:
Empty. Yes.

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