



Office of Financial
Sanctions Implementation
HM Treasury

OFSI enforcement and monetary penalties for breaches of financial sanctions

Guidance

Preface

Monetary penalties for financial sanctions breaches

The Policing and Crime Act 2017 (the “2017 Act”) contains powers for HM Treasury to impose monetary penalties for breaches of financial sanctions.

The Sanctions and Anti-Money Laundering Act (2018) (“SAML A”) amended the 2017 Act. Those amendments ensured the majority of provisions in regulations made under SAML A fall within the 2017 Act definition of ‘Financial sanctions legislation’, which in turn ensures that where there has been a breach of those provisions a monetary penalty under the 2017 Act can be applied.

The Office of Financial Sanctions Implementation (OFSI) is the part of the Treasury that applies these powers. This guidance sets out what the powers are, how OFSI will use them, and a person’s rights if OFSI imposes a monetary penalty on them.

We have issued this guidance in line with s.149 (1) of the 2017 Act, which states:

The Treasury must issue guidance as to-

(a) the circumstances in which it may consider it appropriate to impose a monetary penalty under section 146 or 148, and

(b) how it will determine the amount of the penalty.

In this guidance OFSI sets out:

- an explanation of the powers given to the Treasury in the 2017 Act
- a summary of our compliance and enforcement approach
- an overview of how we will assess whether to apply a monetary penalty, and what we will take into account
- an overview of the process that will decide the level of monetary penalty
- an explanation of how we will impose a monetary penalty, including timescales at each stage and rights of review and appeal

OFSI will periodically review this guidance in response to feedback and as we learn from using these powers.

Office of Financial Sanctions Implementation

HM Treasury

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1 Introduction

Part 1: Introduction

1.1 This section sets out some basic information about financial sanctions, the power to impose monetary penalties, and to whom the power can apply.

What are financial sanctions?

1.2 Financial sanctions are an important part of foreign policy, and they also support national security. They help to maintain the integrity of and confidence in the UK financial system. Generally, they are imposed in order to:

- coerce a target into changing their behaviour (or aspects of it) by increasing the cost on them to such an extent that they decide to cease the unacceptable behaviour
- constrain a target by trying to deny them access to key resources needed to continue their offending behaviour, including the financing of terrorism or nuclear proliferation
- signal disapproval of a target as a way of stigmatising and potentially isolating them, or as a way of sending broader political messages to international or domestic constituencies
- Protect the value of assets that have been misappropriated from a country until these assets can be repatriated.

1.3 The most common types of financial sanctions currently in use or used in recent years include:

- targeted asset freezes, which are usually applied to named individuals, entities and bodies, restricting their access to and ability to use funds and economic resources.
- restrictions on a wide variety of financial markets and services. These can apply to named individuals, entities and bodies, to specified groups or to entire sectors. To date they have taken the form of investment bans, restrictions on access to capital markets, directions to cease banking relationships and activities, requirements to notify or seek authorisation before certain payments are made or received, and restrictions on provision of financial, insurance, brokering, advisory services or other financial assistance.
- directions to cease all business of a specified type with a specific person, group, sector territory or country.

1.4 Guidance on financial sanctions is available on the OFSI gov.uk page:

<https://www.gov.uk/government/publications/financial-sanctions-faqs>

1.5 References to a 'person' throughout this guidance can be a reference to natural persons, as well as a legal person, body or entity. References to a 'designated person' are to persons who are subject to financial sanctions, and references to the 'listing' of a person means their inclusion on the lists of designated persons. The consolidated list of asset freeze targets and list of persons named in relation to financial and investment restrictions are available here:

<https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets>

Powers given to HM Treasury to impose penalties for financial sanctions breaches

1.6 A breach of financial sanctions may be a criminal offence, punishable upon conviction by up to 7 years in prison. There are both civil and criminal enforcement options to remedy breaches of

financial sanctions. Law enforcement agencies may consider prosecution for breaches of financial sanctions. The monetary penalties regime created by the 2017 Act provides an alternative to criminal prosecution for breaches of financial sanctions legislation. OFSI is the part of the Treasury that imposes these monetary penalties.

1.7 The power to impose a monetary penalty, and the limits on the amount of monetary penalty, are created by s.146 of the 2017 Act:

146 Power to impose monetary penalties

(1) The Treasury may impose a monetary penalty on a person if it is satisfied, on the balance of probabilities, that-

(a) the person has breached a prohibition, or failed to comply with an obligation, that is imposed by or under financial sanctions legislation.

(1A) In determining for the purposes of subsection (1) whether a person has breached a prohibition, or failed to comply with an obligation, imposed by or under financial sanctions legislation, any requirement imposed by or under that legislation for the person to have known, suspected or believed any matter is to be ignored.

(2) The amount of the penalty is to be such amount as the Treasury may determine but it may not exceed the permitted maximum.

(3) In a case where the breach or failure relates to particular funds or economic resources and it is possible to estimate the value of the funds or economic resources, the permitted maximum is the greater of-

(a) £1,000,000, and

(b) 50% of the estimated value of the funds or resources.

(4) In any other case, the permitted maximum is £1,000,000.

1.8 On 15 March 2022 the Economic Crime (Transparency and Enforcement) Act 2022 amended the powers in the 2017 Act to insert clause 1A above. This removed the requirement for OFSI to demonstrate that a person had knowledge or reasonable cause to suspect they were in breach of a financial sanction to issue a monetary penalty. This amendment applies only to consideration of civil liability and the imposition of a monetary penalty and is not relevant to any assessment of whether a criminal offence has been committed under sanctions regulations.

1.9 The 2017 Act previously increased the maximum sentence for criminal prosecutions from 2 to 7 years' imprisonment and brings financial sanctions into the scope of Deferred Prosecution Agreements and Serious Crime Prevention Orders. These changes are not discussed in this document. The full text of the regulations are available at:

<http://www.legislation.gov.uk/ukpga/2017/3/contents/enacted/data.htm>

1.10 All financial sanctions breaches come within the scope of OFSI's powers to impose monetary penalties, if they meet the criteria described in this guidance.

What do 'breached a prohibition' or 'failed to comply with an obligation' mean?

1.11 OFSI provides guidance on prohibitions in our **UK Financial Sanctions: Guidance**, which can be found here:

<https://www.gov.uk/government/publications/financial-sanctions-faqs>

1.12 Please read that guidance for a fuller explanation; the summary below should not be relied upon in isolation.

Summary

1.13 Financial sanctions regulations will contain prohibitions on carrying out certain activities or behaving in a certain way where financial sanctions apply. What is prohibited depends on the exact terms of the relevant financial sanctions regulation.

1.14 Individuals and companies should always refer to the up-to-date version of sanctions regulations imposing the specific financial sanctions that apply in their case to understand exactly what is prohibited. OFSI interprets the prohibitions in sanctions regulations widely, as do courts.

1.15 If the financial sanction takes the form of an asset freeze, it is generally prohibited to:

- deal with the funds or economic resources belonging to or owned, held or controlled by a designated person;
- make funds or economic resources available, directly or indirectly, to, or for the benefit of, a designated person; or
- engage in actions that directly or indirectly circumvent the financial sanctions.

1.16 Financial sanctions also contain reporting obligations which apply to relevant firms, as defined in financial sanctions regulations.¹ For example, relevant firms are required to notify HM Treasury if they have dealings with a designated person, hold frozen assets or if they suspect that a person has committed a financial sanctions offence. Failure to comply with reporting obligations is an offence. Further information on the reporting obligations applicable to relevant firms can be found in Chapter 5 of OFSI's General Guidance.

1.17 When OFSI has licensed an activity, the licence may be subject to conditions and reporting requirements. It is an offence not to abide by them or not to take any actions that the licence requires. The licence does not authorise any activity incompatible with its conditions.

1.18 In the regulations the prohibitions will specify that a prohibition is breached where the person knew or had reasonable cause to suspect that they were in breach of the relevant prohibition. However, as outlined above, the removal of subsection 2 in s.146 of the 2017 Act means this is not required for OFSI to impose a monetary penalty.

1.19 OFSI also has powers to request information under sanctions regulations. Depending on the regulations concerned, these may include powers to request information in order to establish the extent of funds and economic resources owned, held or controlled by or on behalf of a designated person; to monitor compliance or detect evasion; or to obtain evidence of the commission of an offence. It is an offence not to comply with a requirement to provide information or an OFSI request for information.

On whom may a monetary penalty be imposed?

1.20 A monetary penalty may be imposed on a 'person', which is used throughout this guidance to include reference to natural persons, as well as a legal person, body or entity.

1.21 In addition, section 148(1) of the 2017 Act says:

If a monetary penalty is payable under section 146 by a body, the Treasury may also impose a monetary penalty on an officer of the body if it is satisfied, on the balance of probabilities, that the breach or failure in respect of which the monetary penalty is payable by the body-

- (a) took place with the consent or connivance of the officer, or*
- (b) was attributable to any neglect on the part of the officer.*

1.22 This means separate penalties could be imposed on a legal entity and the officers who run it. If so, OFSI will consider the imposition and level of monetary penalty on an officer of a body separately

¹ See the 'Information and records' part of financial sanctions regulations for the complete list of relevant firms.

from that of the corporate body. An officer on whom a monetary penalty is imposed will have separate appeal rights to the relevant corporate body under sections 147 and 148(3) of the 2017 Act.

1.23 Section 148(2) sets out who may be considered an 'officer' in this context.

'officer of a body' means-

(a) in relation to a body corporate, a director, manager, secretary or other similar officer of the body or a person purporting to act in any such capacity;

(b) in relation to a partnership, a partner or a person purporting to act as a partner;

(c) in relation to an unincorporated body other than a partnership, a person who is concerned in the management or control of the body or purports to act in the capacity of a person so concerned.

1.24 It is also possible for OFSI to impose a monetary penalty on one person involved in a case and for another to be prosecuted criminally.

2 Our compliance and enforcement approach

2.1 How OFSI assesses breaches, when deciding whether to impose a monetary penalty, is informed by our overall approach to financial sanctions compliance. This approach covers the whole lifecycle of compliance. That means we take a holistic approach to ensuring compliance with the regime, rather than simply waiting until the law is broken and responding to the breach.

2.2 Our approach is summarised by our compliance and enforcement model: **promote, enable, respond, change**:

- we will **promote** compliance, publicising financial sanctions and engaging with the private sector
- an effective compliance approach promotes compliance by reaching the right audiences, through multiple channels, with messages they can understand and respond to
- we will **enable** compliance by making it easier to comply, and providing guidance and alerts to help individuals and companies fulfil their own compliance responsibilities
- an effective compliance approach enables cost-effective compliance, makes it easy to comply and minimises by design the opportunities for non-compliance
- we will **respond** to non-compliance by intervening to disrupt attempted breaches and by tackling breaches effectively
- an effective compliance approach responds to non-compliance consistently, proportionately, and transparently, taking into account the full facts of the case, and learns from experience to continuously improve our response
- we do these things to **change** behaviour, directly preventing future non-compliance by the individual and more widely through the impact of compliance and enforcement action

2.3 Having an overall strategic approach helps us design our operational policies and processes in a consistent way. It also enables us to test how well they meet our strategic objectives.

2.4 This approach informs how we assess cases and decide monetary penalties (**respond**), ensuring that our processes maintain the credibility of financial sanctions by enforcing them proportionately and effectively. It also informs how we will publish details of breaches or monetary penalties we impose (**promote**). Doing so deters future non-compliance from the penalised individual. It also enables others to learn from the case, and shows we will act robustly against serious breaches (**change**).

2.5 We have designed our case-assessment and monetary penalty-decision processes in this context. Operating them effectively means we provide a professional service for the private sector and help ensure that financial sanctions are properly understood, implemented and enforced. The next two parts give guidance on these processes.

3 Case assessment

3.1 This section gives a summary of how OFSI assesses potential breaches of financial sanctions. The guidance in this section **applies to all cases where the potential breach took place on or after 00:00 15 June 2022**. Potential breaches that occurred prior to 00:00 15 June 2022 will be assessed in line with previous guidance. It does not set out the complete case assessment process that OFSI will use. However, it does provide a detailed overview of the process, and will help individuals and companies understand what we consider when we assess a potential breach of financial sanctions.

Overview

3.2 OFSI can respond to a potential breach of financial sanctions in several ways, depending on the case. The steps we could take in response to a potential breach include:

- issue a warning
- refer regulated professionals or bodies to their relevant professional body or regulator in order to improve their compliance with financial sanctions
- publish information pertaining to a breach, even where no monetary penalty is imposed, if this is in the public interest
- impose a monetary penalty
- refer the case to law enforcement agencies for criminal investigation and potential prosecution

OFSI may undertake several of these actions in any particular case in line with section 1.7 of this guidance.

3.3 'Balance of probabilities' is the civil standard of proof and means OFSI consider that, on the evidence, the occurrence of the breach was more likely than not. We will not be seeking to prove facts beyond reasonable doubt (the criminal standard), but to make a judgement on whether it is more likely than not that they are true

3.4 Civil monetary penalties can be applied to persons for breaches of financial sanctions with no requirement for OFSI to demonstrate that the person knew or had reasonable cause to suspect the conduct amounted to a breach of sanctions. However, OFSI will still need to demonstrate that a breach occurred on the balance of probabilities. An example of factors OFSI will take into account when assessing what action to take is set out at 3.16.

Establishing whether there is a breach

3.5 OFSI will seek to establish whether there is a breach of a prohibition or a failure to comply with an obligation under sanctions regulations. If there is not, we will close the case.

3.6 A breach does not have to occur within UK borders for OFSI's authority to be engaged. To come within OFSI's enforcement of sanctions, there has to be a connection to the UK, which we call a UK nexus.

3.7 Financial sanctions apply to all persons within the territory and territorial sea of the UK and to all UK persons, wherever they are in the world. Individual and legal entities who are within or undertake activities within the UK's territory must comply with financial sanctions that are in force. All UK nationals and legal entities established under UK law, including their branches must also comply with UK financial sanctions that are in force, irrespective of where their activities take place.

3.8 A UK nexus might be created by such things as a UK company working overseas,

transactions using clearing services in the UK, actions by a local subsidiary of a UK company (depending on the governance), action taking place overseas but directed from within the UK, or financial products or insurance bought on UK markets but held or used overseas. These examples are not exhaustive or definitive - whether or not there is a UK nexus will depend on the facts in the case.

3.9 Some breaches of financial sanctions involve complicated structures or relationships, where a genuine UK nexus exists but is not immediately apparent. In every case, we will consider the facts to see whether the potential breach comes within our authority.

3.10 If we come across breaches of financial sanctions in another jurisdiction, we may use our information-sharing powers to pass details to relevant authorities if this is appropriate and possible under UK law.

3.11 OFSI will continue to take a fair and proportionate approach to assessments and consider each breach on a case-by-case basis, as set out below. In certain circumstances, OFSI may choose not to impose a monetary penalty where alternative and more proportionate remedial action is in the public interest.

Being fair and proportionate in our assessment

3.12 We will treat each suspected breach on its own merits. We will assess the facts to decide on an outcome that is fair, proportionate and best enforces the purpose of the regime.

3.13 We take a number of factors into account when assessing a case. We will consider each factor by referring to our strategy, policy, guidance and processes, and to the specific facts of the case. We may also seek legal advice, and advice from law enforcement agencies.

3.14 To ensure our response is proportionate, we will assess overall how severe the breach is and the conduct of the individuals involved. A relevant factor in this assessment will include whether the person committing the breach knew or suspected that their conduct amounted to a breach of financial sanctions. Broadly, the more aggravating factors we see, the more likely we are to impose a monetary penalty. The more serious the breach, and the worse the conduct of the individuals, the higher any monetary penalty is likely to be.

3.15 Mitigating factors may reduce a monetary penalty we impose or lead us not to take enforcement action. We will take mitigating factors into account when deciding how to proceed with a case.

Case factors

3.16 OFSI will take several factors into account that will aggravate or mitigate when determining the facts and how seriously OFSI view a case. These can include the following:

Circumvention of sanctions

3.17 A person will usually commit an offence when they intentionally participate in activities knowing that the object or effect of them is (directly or indirectly):

- to circumvent any of the prohibitions, or
- to enable or facilitate the contravention of any such prohibition or requirement

OFSI takes circumvention very seriously. It attacks the integrity of the financial system and damages public confidence in the foreign policy and national security objectives that the sanctions regimes support.

Value of the breach

3.18 OFSI will consider the financial value (which may be a reasonable estimate) of the transactions or resources involved in the breach of the regulations as one factor in the overall assessment of the case. While a high value breach is generally more likely to result in enforcement action, there are circumstances involving lower-value breaches where it will be

considered appropriate to take enforcement action.

Harm or risk of harm to the sanction regime's objectives

3.19 We will make an assessment of the harm, or the risk of harm, done to the sanction regime's objectives. Those objectives are set out in the relevant regulation, which describes what activities the regime aims to prevent or encourage - for example, to guard against nuclear proliferation. The greater the risk of harm to the regime's objectives, the more seriously we are likely to regard a case.

Knowledge of sanctions and compliance systems

3.20 When we consider what action to take, we take into account the level of actual and expected knowledge of financial sanctions held by an individual or a company, considering the kind of work they do and their exposure to financial sanctions risk.

3.21 Regulated professionals should meet regulatory and professional standards. We may consider their failure to do so an aggravating factor.

Ownership and Control

3.22 Where OFSI determines that a breach has occurred, and an incorrect assessment of ownership and control of an entity is relevant to the commission of the breach, OFSI will consider the degree and quality of research and due diligence conducted on the ownership and control of that entity.

3.23 The test for establishing ownership and control of an entity is contained in the relevant sanctions regulations, and guidance on the test can be found in OFSI's General Guidance. OFSI does not prescribe the level or type of due diligence to be undertaken to ensure compliance with financial sanctions.

3.24 OFSI will consider appropriate due diligence conducted on the ownership and control of an entity to be a mitigating factor where the ownership and control determination reached was made in good faith and was a reasonable conclusion to draw from such due diligence. OFSI may also consider a failure to carry out appropriate due diligence on the ownership and control of an entity, or the carrying out of any such due diligence in bad faith, as an aggravating factor. The weight to be attributed to the mitigating or aggravating factor (as applicable) will be assessed on a case-by-case basis.

3.25 OFSI will consider whether the level of due diligence conducted was appropriate to the degree of sanctions risk and nature of the transaction. The nature of a person's contractual or commercial relationship with the entity will also be relevant to OFSI's consideration of the appropriateness of measures undertaken. OFSI would expect to see evidence of a decision making process that took account of the sanctions risk and considered what would be an appropriate level of due diligence in light of that risk. OFSI would usually expect these decisions to be made by reference to an internal framework or policy, but recognises that there is no one-size fits all approach. OFSI expects careful scrutiny of information obtained as part of any ownership and control assessments, particularly where efforts appear to have been made by designated persons to avoid relevant thresholds.

3.26 Depending on the circumstances, OFSI may consider demonstration of any and/or all of the following efforts as potentially mitigating:

- An examination of the formal ownership and control mechanisms of an entity to establish whether there is available evidence of ownership and control by a designated person
- An examination of actual, or the potential for, influence or de facto control over an entity by a designated person
- Open-source research on an entity and any persons with ownership of, or the ability to exercise control over, the entity, together with an examination of whether such persons are, or have links to, designated persons such that further investigation may be warranted

- Direct contact with the entity and/or other relevant entities to probe into indirect or de facto control, including, where appropriate, seeking commitments by UK persons as to the role of any designated person or person with links to a designated person
- Regular checks and/or ongoing monitoring of the above where appropriate

3.27 Whilst paragraph 3.29 expands on the above by listing some specific potential areas of enquiry, it is not possible for OFSI to set out an exhaustive list of factors that could be considered as each case will depend on its individual circumstances.

3.28 Where we determine a breach to have occurred, OFSI will take into account any relevant efforts and checks undertaken. The extent to which the efforts and checks undertaken are appropriate and reasonable in a given case will inevitably depend on the facts of the case, the degree of sanctions risk of the relevant entities and the nature of the transaction.

3.29 Examples of areas of enquiry OFSI may expect to be undertaken by persons seeking to establish whether an entity is owned or controlled by a designated person are below. It may not be necessary for the due diligence undertaken in a given case to have covered all of the areas of enquiry set out in paragraph 3.29 in order for such due diligence to be a mitigating factor. It may not always be necessary to assess all of these for lower risk activities and transactions, and a relevant consideration may be the existence or lack of a direct or ongoing relationship. These are not intended and should not be considered thresholds for meeting the ownership and control test in the regulations.

Formal ownership and/or control

- The percentage of shares and/or voting power of shareholders
- The ownership and distribution of other shares in a company
- Whether ownership / shareholding has recently been altered or divested, including in possible anticipation or response to the imposition of financial sanctions. If so, consideration of whether this warrants further investigation into the possibility of joint arrangements or indirect or *de facto* control
- The composition of shares, and whether shares have been split into different classes, or other structural changes made
- Whether changes to ownership and/or control were part of a pre-planned or wider business/financial strategy
- Corporate constitutional documents, including articles of association or constitution
- Any commercial justifications for complex ownership and control structures
- Agreements between shareholders or between any shareholders and the entity (e.g., shareholders', joint venture, operating, or guarantee agreements)

Indirect or *de facto* control

- Indications of continued influence (or the potential for it) by a designated person, including through personal connections and financial relationships
- The presence or involvement of proxies, including persons holding assets on behalf of a designated person
- Ownership, holdings of shares, or control by trusts associated with a designated person
- If shares or other ownership interests of a designated person have been divested, the nature of any relationships and prior involvement of the person benefitting
- If applicable, how recent transfers of shares were funded and whether this was done at an accurate and true valuation
- Any operational steps taken to ensure that the designated person cannot exercise control over the entity and/or that the designated person cannot benefit from, or use, corporate assets
- Information relating to the circumstances of board and/or management appointments, including the backgrounds, relevant experience, and relationships with designated persons
- The running of board meetings and governance processes, including board or shareholders' meeting minutes concerning recent changes in the entity's ownership and control relating to the designated person
- Ongoing financial liabilities directly related to a designated person, e.g., personal loans, loan guarantees, property holdings, equipment etc.
- Other shareholder agreements, voting agreements, put or call options or other coordination

agreements in place between the entity and the designated person or controlled entities

- Whether there are any benefits conferred to the designated person by the entity or transactions between the entity and the designated person

3.30 Where relationships or activity is ongoing, OFSI expects that due diligence is, and assessments are, reviewed at appropriate times. Ownership and control is not static and OFSI's consideration of the due diligence undertaken will consider the regularity of checks, and/or ongoing monitoring where appropriate.

3.31 For consideration of due diligence as a mitigating factor, the onus for demonstrating that reasonable and appropriate due diligence into ownership and control has been undertaken, and that the ownership and control determination reached was made in good faith and was a reasonable conclusion to draw from such due diligence, rests with the person against whom OFSI is considering taking enforcement action.

Behaviour

3.32 We will consider how each party in a case has behaved. Individuals may display different behaviour over time and several types of behaviour in a particular case. We have divided behaviours into several broad categories that we believe reflect non-compliance with the financial sanctions regime. Doing so enables us to ensure we respond appropriately to similar behaviour in different situations.

3.33 We will consider, for example, whether the breach appears to be deliberate; whether there is evidence of neglect or a failure to take reasonable care; whether there has been a systems and control failure or an incorrect legal interpretation; whether the person seems unaware of their responsibilities; or whether there has simply been a mistake.

3.34 It is possible for a mistake to cause a breach of financial sanctions regulations, for example making funds available to a designated person. Even without the knowledge that the action would be a breach or provide any reasonable cause to suspect this, the matter would still meet the legal standard for HM Treasury to impose a monetary penalty. As stated above, OFSI will take into account all relevant factors and the public interest when determining what action should be taken.

Failure to apply for a licence; breach of licence terms

3.35 We license certain uses of frozen funds under derogations present in the financial sanctions legislation. A licence is a written permission from OFSI allowing an act that would otherwise breach prohibitions imposed by financial sanctions. Once we have issued a licence, monetary penalties may also apply to breaches of licence conditions.

Professional facilitation

3.36 Facilitation of a financial sanctions breach is a form of circumvention (see paragraph 3.17). Individuals who act on behalf of or provide advice to others as part of their job may be considered professional facilitators. They should ensure they act within the law while representing their client. Simply discovering a potential breach when acting for a client does not automatically make a professional facilitator party to it, but they may become so if their subsequent actions amount to collusion in the breach. Potential breaches should be reported to OFSI.

Repeated, persistent or extended breaches

3.37 Repeated, persistent or extended breaches by the same person will be considered as an aggravating factor. This is particularly true when the person is unresponsive to a previous warning and makes further breaches of financial sanctions. We will view multiple breaches extended over time as being more serious collectively, even if individually they are of low value or relative seriousness.

Reporting of breaches to OFSI

3.38 Breaches of financial sanctions must be reported to OFSI. Please note that reporting

obligations apply regardless of client confidentiality, but remain subject to legal professional privilege. A number of factors around reporting affect how we deal with a case, as explained below.

Voluntary disclosure, materially complete disclosure and good faith

3.39 OFSI values voluntary disclosure. Voluntary disclosure of a breach of financial sanctions by a person who has committed a breach may be a mitigating factor when we assess the case. It may also have an impact on any subsequent decision to apply a monetary penalty.

3.40 If multiple parties are involved in a breach, we expect voluntary disclosure from each party.

3.41 OFSI also values co-operation throughout its investigations. Co-operation makes enforcing the law simpler, easier, quicker and more effective.

3.42 Reports regarding breaches or suspected breaches should be submitted to OFSI using the form on GOV.UK:

<https://www.gov.uk/guidance/suspected-breach-of-financial-sanctions-what-to-do>

3.43 We expect breaches to be disclosed as soon as reasonably practicable after discovery of the breach. What this means will differ in each case. Although it is reasonable for a person to take some time to assess the nature and extent of the breach, or seek legal advice, this should not delay an effective response to the breach. In practice, it is better to contact us early to inform us of a breach or potential breach. Where full disclosure is not possible, a person could make an early disclosure with partial information on the basis that it is still working out the facts and will make a further disclosure as soon as possible.

3.44 We expect disclosures to include all evidence relating to all the facts of the breach. We expect facts to be truthfully stated in good faith.

3.45 OFSI takes very seriously any evidence that a disclosure did not include relevant information, unless this was a mistake or new facts emerge.

3.46 To determine whether a disclosure is voluntary, we will consider the facts and timing of each disclosure individually. The mere fact that another party has disclosed first will not necessarily lead to the conclusion that later disclosure has any lesser value. However, we will not consider disclosure to be voluntary and therefore a mitigating factor if:

- we have used our information powers to require provision of information about a breach;
- the person has been prompted to disclose facts because OFSI is assessing a case; or
- the person has been prompted or required in law to disclose facts because of a separate law enforcement or regulatory investigation.

3.47 We will consider any issue around voluntary disclosure as part of a person's representations.

Failure to provide information on financial sanctions breaches

3.48 Failure to provide information on breaches can be a criminal offence in its own right. In some circumstances, financial sanctions regulations require relevant firms to give information. In other circumstances HM Treasury, through OFSI, can use statutory powers to require the provision of information. In both cases, failure to provide information may be an offence for which we may impose a monetary penalty. An offence is only committed where a person fails to produce information 'without reasonable excuse'.

3.49 We also recognise that some documents may be protected by legal professional privilege. Protections for legally privileged material are explicitly written into the majority of the current regulations, which exempt legally privileged information from having to be disclosed under the above obligations and requirements. Such protections will apply even where not explicitly referenced.

Public interest

3.50 As part of our assessment of a case, OFSI will consider the public interest. This will encompass such issues as the prudent use of public resources and fairness and consistency in applying the law. In some instances, it may not be in the public interest to take enforcement action even where this appears to be warranted, and in other instances it may be in the public interest to take more serious action than the facts of the breach appear to warrant.

Other relevant factors

3.51 We reserve the right to consider any factor in a case if it is material and relevant. This enables us to consider new situations and ensure all the facts receive due attention.

3.52 Some sectors are affected by financial sanctions in ways that require specialist knowledge of the sector to assess. We will always consider specific circumstances when assessing the facts of a case and may take specialist advice to ensure we understand the situation correctly. We may also ask for more information from those involved.

Assessment outcome

3.53 When we have assessed the case, we will take a decision on the severity of the breach and conduct of each person involved. If the threshold is met, we will consider imposing a monetary penalty. We will also classify the severity of the breach in all monetary penalty cases as either 'serious' or 'most serious'.

3.54 While every case that meets the criteria for a monetary penalty is by definition serious, it is also true that some cases are clearly much more serious. It is appropriate to be able to make this distinction as part of our consideration of the facts. OFSI uses the terms 'serious' and 'most serious' to make this distinction.

3.55 'Most serious' type cases may involve a very high value, particularly poor, negligent or intentional conduct or severe or lasting damage to the purposes of the sanctions regime. OFSI will decide this based on the facts of the case. The most serious cases are likely to attract a higher monetary penalty level. We will explain why we consider a case to be 'most serious' to the person we intend to penalise and when we publish a case summary (if we do). This distinction also affects any reduction of the monetary penalty due to voluntary disclosure, described in chapter 4, below.

Revisions to case-assessment process

3.56 OFSI is a learning organisation. From time to time we will review our case-assessment process and may change it based on our experience. Where we make substantive amendments to our approach, we will publish these changes before implementing them. We will assess each case against the guidance applicable at the time OFSI discovered or was informed of the potential breach.

4 The monetary penalty process

4.1 OFSI's monetary penalty-decision process consists of three parts:

- 1 penalty threshold
- 2 baseline penalty matrix
- 3 penalty recommendation

Monetary penalty threshold

4.2 The monetary penalty threshold is reached if our case assessment results in the following outcomes:

- the case meets the tests in s.146 (1) of the Policing and Crime Act 2017; that is, on the balance of probabilities, there has been a breach.

4.3 Following a case assessment, as per Chapter 3, OFSI will likely assess the penalty threshold is reached if one or more of the following can be demonstrated:

- the breach has involved funds or economic resources being made available to a designated person. The financial sanctions regimes are designed to prevent this
 - the breach has involved a person dealing with the funds or economic resources of a designated person or entity in breach of an asset freeze
 - there is evidence of circumvention. By making arrangements to circumvent the law, a person not only breaches the law but attacks the integrity of the system
 - a person has not complied with a requirement to provide information
- and/or
- OFSI considers that a monetary penalty is appropriate and proportionate.

4.4 OFSI will assess these matters on a case-by-case basis. If the penalty threshold is reached, we may impose a penalty. We have discretion not to do so.

Baseline monetary penalty matrix

4.5 Generally, OFSI will impose a level of monetary penalty that is clearly and consistently related to our view of the impact of the case and the value of the breach (which may be estimated).

4.6 Voluntary disclosure may be a mitigating factor in our assessment of the case. It may also reduce the level of monetary penalty we impose.

4.7 The baseline monetary penalty matrix therefore encourages prompt and complete voluntary disclosure of the facts of the case. It also seeks to ensure that the most serious cases receive a higher monetary penalty.

How this works

4.8 OFSI will first work out the statutory maximum monetary penalty it could impose. This will be the greater of £1 million or 50% of the value of the breach. Within this maximum, OFSI will then decide what level of monetary penalty is reasonable and proportionate, based on our view of the seriousness of the case. This could still be the permitted maximum

if that is reasonable and proportionate, and could be any amount between the maximum and zero.

- 'reasonable' means an ordinary reasonable person would regard the proposed penalty as appropriate to the offence
- 'proportionate' means there is a relationship between the value of the proposed penalty and a holistic assessment of all the other factors present in the case. This does not mean that a penalty should necessarily be either a specific percentage or multiple of the breach amount. It only means it must be neither an insufficient nor excessive response.

This creates a baseline penalty level to which the following penalty matrix applies. We will make up to a 50% reduction in the final monetary penalty amount to a person who gives a prompt and complete voluntary disclosure of a breach of financial sanctions. If we assess a case as 'serious', we may make reductions of up to 50% for voluntary disclosure. If we assess a case as 'most serious', we may make reductions of up to 30% for voluntary disclosure. If we assess a series of breaches where only some were voluntarily disclosed to OFSI we will take that into account when determining any reduction.

4.9 This makes clear the value we place on voluntary disclosure, and that there may be a benefit to voluntary disclosure even in the most serious cases. A voluntary disclosure reduction will usually be applied when a person notifies OFSI of a suspected breach. However, this will be assessed on a case by case basis and may not be given if, among other things, it transpires that they have not made a complete disclosure in the course of the investigation, if they are self-disclosing to OFSI only because they believe OFSI is already aware, or if they refuse to provide information upon request.

Monetary penalty decision

4.10 The penalty process follows this approach:

- determine the estimated value of the transactions which breach the regulations
- determine the maximum monetary penalty: this is £1 million or 50% of the estimated value of the breach, whichever is higher
- apply the seriousness determination: either 'serious' or 'most serious', depending on the facts
- determine the baseline: this is also based on the facts of the case and what level of monetary penalty under the relevant maximum would be reasonable and proportionate
- determine if a reduction applies: if so, determine an appropriate percentage reduction and apply it to the baseline

4.11 In the event that there is no transaction value to base a calculation on (for example, if a penalty is imposed for an information offence) OFSI will impose such monetary penalty as seems reasonable and proportionate to the facts of the case. The permitted maximum in such cases is £1 million.

This initial process creates a monetary penalty recommendation.

4.12 This recommendation is then considered by a decision maker, who can decide to agree, change or reject the recommendation. If OFSI is minded to impose a monetary penalty, this is then communicated to the person on whom OFSI intends to impose the penalty. They have a right to make representations (see Chapter 5) which could change OFSI's view on whether a monetary penalty should be imposed, or the value of any penalty.

Monetary penalties for information offences

4.13 OFSI will treat a failure to provide requested information as an aggravating factor in a case.

4.14 For relevant firms, as defined in regulations made under SAMLA 2018, a failure to provide information on breaches of financial sanctions may be a criminal offence. This offence is created by

regulations, so it comes within the scope of OFSI's powers to impose monetary penalties.

4.15 OFSI issues licences to permit acts that would otherwise breach prohibitions imposed by financial sanctions. We often set reporting requirements in licences. If a person fails to comply with reporting requirements in an OFSI licence, it may be an offence and we may issue a monetary penalty.

4.16 OFSI also has broad powers to require information from anyone. It may be a criminal offence in its own right not to provide it. We may issue a penalty if, for example, OFSI has specifically demanded information that has not been provided, or our demand for information has been refused, particularly when this has the effect of frustrating our proper case assessment.

4.17 OFSI will impose a level of monetary penalty that reflects the seriousness of the failure to provide information. We may impose a penalty for information offences relating to a breach as well as the penalty for the breach itself. They will be imposed separately to show clearly that there are monetary penalties for separate offences.

4.18 If we impose a monetary penalty for information offences, we will use the process described above.

5 Procedure for imposing a monetary penalty

5.1 Section 147 of the 2017 Act sets out the steps that HM Treasury must take to impose a monetary penalty, the rights that a person has to make representations and seek a review, and the right to appeal the decision to the tribunals. This section explains the processes involved.

5.2 Before imposing a monetary penalty on a person, HM Treasury, through OFSI, must inform the person of its intention to do so. We will normally do so in writing. OFSI will:

- explain the reasons for imposing the penalty
- specify the penalty amount and how it has been calculated
- explain that the person is entitled to make representations, and specify how long they have to do so

5.3 OFSI will explain the reasons for the monetary penalty by summarising our case assessment in enough detail to justify why it is appropriate and also to allow the person to make meaningful representations.

Making representations

5.4 OFSI wants the process of making representations to be fair, proportionate and effective. A person may make representations about any relevant matters. These may include (for example) matters of law, the facts of the case, our interpretation of the facts, how we have followed our processes, and whether the penalty is fair and proportionate. A person may also make representations on the effect that publication of the imposition of a monetary penalty would have on them or their company (or both).

5.5 We may consider but disregard representations that are irrelevant. If we disregard a representation, we will explain why in our response.

5.6 Representations must be in writing and in a format that:

- summarises each point that the person wishes OFSI to take into account
- explains why these points are relevant
- explains how the person expects these points to affect our case decision or penalty level
- evidences any assertions of fact
- provides copies of supporting documents as required, with relevant sections highlighted as appropriate

5.7 OFSI requires representations in writing so that it has a clear record of all information considered when making the decision. Consequently, OFSI will not normally allow representations to be made in person, but will consider any request to do so. If a party feels that they are disadvantaged by being unable to make representations in person then they may make an application to OFSI stating their reasons, and we will take this into account.

5.8 Representations may be made by the person penalised or a properly appointed representative or agent. OFSI will usually require written evidence that a representative or agent has been properly appointed before we will communicate with them about the person's affairs.

5.9 OFSI will not normally consider representations by a third party unless they form part of the representations made by the person penalised or their agent. This ensures we take into account only representations the person wishes us to.

5.10 The person has 28 working days to make written representations from the date of our initial letter. We will not normally accept late representations. Persons or their representatives may ask us to extend this period and must provide evidence of the reasons for that request.

5.11 If no representations are made within this period, the monetary penalty is finalised and becomes payable. We will issue a written notice stating the penalty amount and how payment should be made.

5.12 If representations are made, we will consider them and review both the case assessment and the monetary penalty level in the light of them. Potential outcomes include reaffirming our decision to impose a penalty, changing the proposed penalty amount, or deciding not to impose a penalty.

5.13 OFSI will normally consider and respond to representations within 28 working days after the final date of the period for making representations. However, we may extend the period if this is necessary to ensure a fair assessment of the representations. We will inform the person of any extension and will respond as soon as we are able.

5.14 OFSI will write to the person or their representative with our final assessment, taking into account the representations. The penalty becomes payable at this stage. If the assessment means we still intend to impose a penalty, our letter will include advice on the person's right to seek a review, as set out in Chapter 6.

6 The right of review

This section replaces guidance for all reviews requested after 00:00 15 June 2022.

6.1 Section 147 of the 2017 Act states at subsections 3 to 8:

(3) If (having considered any representations), the Treasury decides to impose the penalty, the Treasury must-

(a) inform the person of its decision,

(b) explain that the person is entitled to seek a review by a Minister of the Crown, and

(c) specify the period within which the person must inform the Treasury that the person wishes to seek such a review.

(4) If the person seeks a review, the Minister may-

(a) uphold the decision to impose the penalty and its amount,

(b) uphold the decision to impose the penalty but substitute a different amount, or

(c) cancel the decision to impose the penalty.

(5) If on a review under subsection (4) the Minister decides to uphold the Treasury's decision to impose the penalty and its amount, or to uphold the Treasury's decision to impose the penalty but to substitute a different amount, the person may appeal (on any ground) to the upper tribunal.

(6) On an appeal under subsection 6, the upper tribunal may quash the Minister's decision and if it does so may-

(a) quash the Treasury's decision to impose the penalty;

(b) uphold that decision but substitute a different amount for the amount determined by the Treasury (or, in a case where the Minister substituted a different amount, by the Minister).

(7) In this section, "Minister of the Crown" means the holder of an office in Her Majesty's Government in the United Kingdom.

Process for review

6.2 OFSI will inform the person of our final decision to impose a monetary penalty in writing. In the same letter we will explain their entitlement to a review of the decision. In such circumstances, where a review is requested, such review will be undertaken by people not involved in the original case assessment.

6.3 The person will have 28 working days from the date of our letter to inform HM Treasury that they want a review. They can request an extension to the timeframe in exceptional circumstances, and OFSI will consider such requests on a case-by-case basis. This request must be in writing, unless there is a good reason for not doing so, and sent to OFSI.

6.4 The request must include:

- a statement that the person is using their right under s.147 of the Policing and Crime Act 2017 to seek a review of a monetary penalty for breaching financial sanctions regulations, and
- a summary of why they seek the review.

6.5 The review will not normally be a way of introducing new material, and no further material is required from the person. It reviews the decisions OFSI have taken based on the material we have used to assess the case, after the person has had an opportunity to introduce any material they wish to at the representations stage.

6.6 Financial sanctions are currently dealt with by the Economic Secretary to the Treasury (EST). Whilst the EST may carry out the review, they may also delegate to another minister or senior official to carry out the review (for example, in their absence), noting that the Minister is not required to conduct the review personally.

6.7 On receiving a review request, OFSI will prepare a summary of the case for the Minister or senior official that will explain the decisions OFSI took and why. The report will be accompanied by relevant material OFSI has about the breach, including any representations the person made.

6.8 To ensure a separation of decision-making and review, OFSI will not recommend a course of action to the decision maker. We will pass on the initial request and provide the summary and material to the Minister or senior official. The Minister or senior official may question OFSI officials to clarify existing materials or information related to the case.

6.9 HM Treasury will aim for most reviews to be concluded within 2 months. However, this period may be extended if required.

6.10 After reviewing the case, the Minister or senior official will make a decision. This may be that:

- the decision to impose the penalty and its amount is upheld;
- the decision to impose the penalty is upheld, but a different amount is substituted;
or
- the decision to impose the penalty is cancelled.

This decision will be communicated in writing to the person.

6.11 If the penalty is upheld, at the original or a different amount, the penalty is finalised and becomes payable.

How to make representations or request review

6.12 Both representations and requests for review must be made in writing (unless oral representations have been agreed) to:

Email:

OFSI@HMTreasury.gov.uk

Hard copies:

Office of Financial Sanctions Implementation
HM Treasury
Horse Guards Road
London
SW1A 2HQ

Procedural mistakes

6.13 It may be that OFSI mistakenly fails to fulfil part of this process within the requirements set in law or this guidance. If this is discovered during the process, OFSI will always seek to remedy the mistake by returning the process to the point the mistake was made and progressing the case correctly from that point.

6.14 OFSI will not automatically cancel a penalty after issue simply because of a procedural mistake. We will always review whether the mistake means we should reconsider the imposition of a penalty or its amount. This will help ensure a proper balance between the rights of a person on whom we impose a penalty and the public interest in ensuring the law is properly enforced.

7 Right of appeal

7.1 A person must seek review before they can appeal to the Upper Tribunal. If on review the decision is made to uphold the decision to impose the monetary penalty and its amount, or to uphold the decision to impose the monetary penalty but to substitute a different amount, section 147(6) of the 2017 Act enables a person to appeal (for any reason) to the Upper Tribunal.

7.2 Upper Tribunal procedure is outside the scope of this guidance. It is not a process managed by HM Treasury. The Upper Tribunal procedure rules can be found here:

<https://www.gov.uk/government/publications/upper-tribunal-procedure-rules>

7.3 A notice of appeal must be made in writing and received by the Upper Tribunal no later than 28 days after notice was given of the decision under challenge. Schedule 4 of the Upper Tribunal procedure rules, as inserted by The Tribunal Procedure (Amendment) Rules 2017, sets out what must be stated in the notice of appeal, and what must be provided with the notice of appeal.

7.4 The subsequent stages of the appeals process are set out in Schedule 4 of the Upper Tribunal procedure rules, as amended by The Tribunal Procedure (Amendment) Rules 2017.

7.5 During the appeal, the person who has been subject to a monetary penalty will be required to produce sufficient evidence to convince the independent tribunal that a penalty should not have been imposed.

7.6 On an appeal under section 147(6) of the 2017 Act, the Upper Tribunal may quash the review decision. If it does so, it may either quash the decision to impose the penalty, or uphold the decision but amend the amount of the penalty.

8 Paying a monetary penalty

8.1 Once a monetary penalty becomes finalised and payable, OFSI will inform the person concerned how they should pay. Payment should be made within 28 working days of the date the penalty has been imposed, and should not be unreasonably delayed. We can discuss payment timing with persons subject to a penalty.

8.2 HM Treasury will pursue non-payment of debt by appropriate means. Section 146 (11) of the 2017 Act says:

Any monetary penalty payable under this section is recoverable by the Treasury as a civil debt.

8.3 Section 146 (12) of the 2017 Act also says:

Any monetary penalty received by the Treasury by virtue of this section must be paid into the Consolidated Fund.

This means that the payment goes into the UK Exchequer's general funds for use by the government.

Publication of monetary penalty and breach details

9

The guidance in this section applies to all cases where a financial sanctions breach has taken place on or after 00:00 15 June 2022.

9.1 Section 149 (2) of the 2017 Act says:

The Treasury must, at such intervals as it considers appropriate, publish reports about the imposition of monetary penalties under section 146 or 148.

9.2 Section 149 (3) of the 2017 Act says:

The Treasury may also publish reports at such intervals as it considers appropriate in cases where—

(a) a monetary penalty has not been imposed under section 146 or 148, but (b) the Treasury is satisfied, on the balance of probabilities, that a person has breached a prohibition, or failed to comply with an obligation, that is imposed by or under financial sanctions legislation.

9.3 OFSI will normally publish details of all monetary penalties it imposes, as a summary of the case. Publishing such details helps increase awareness, deter future non-compliance and promote good practice.

9.4 This summary will set out the following:

- who the penalty has been imposed on - each person, company or entity
- the summary facts of the case, including breach type; sanctions regime; the regulation broken; and whether there was voluntary disclosure
- the aggregated GBP value of the transactions which are in breach of the regulations, where this can be identified, and why OFSI imposed the monetary penalty (where applicable)
- the GBP penalty value imposed on each person (where applicable)
- compliance lessons OFSI wishes to highlight in this case, to help others avoid committing a similar breach
- other information required to give a true understanding of the case and OFSI's consideration of it.

9.5 OFSI may also choose to publish details of breach cases where no monetary penalty has been imposed but where for example, there are valuable compliance lessons for industry. This summary will set out information which may include:

- who performed the breach
- the summary facts of the case, including breach type; sanctions regime; the regulation broken; and whether there was voluntary disclosure
- the aggregated GBP value of the transactions which are in breach of the regulations, where this can be identified, and why OFSI decided to publish a case summary
- compliance lessons OFSI wishes to highlight in this case, to help others avoid

committing a similar breach

- other information required to give a true understanding of the case and OFSI's consideration of it.

9.6 We may draw attention to the imposition of a monetary penalty or breach of financial sanctions where no monetary penalty has been imposed through media relations, highlighting the case and the action we took.

9.7 We will not generally make public more than a summary of the case. To do so may increase the risk of financial sanctions contravention, particularly where a new technique has been used to circumvent the law. Any information not published may be exempt from release under the Freedom of Information Act 2000. We will review and consider any FOI request on its own merits.

9.8 OFSI will continue to assess each breach on a case-by-case basis and determine what remedial action is appropriate in line with the principles set out in this guidance.

9.9 There may be circumstances in which we decide that it is not appropriate to publish a summary, for example where it is not in the public interest to do so or where the impact of publishing is considered to be disproportionate. It is for the person to tell us (during representations) about any effect that publication of a report may have, and we will consider it at that point. We would normally expect to publish a summary where it is in the public interest and there may be compliance lessons to be shared, therefore, the bar for not doing so will be high. OFSI recognises there may be different publication considerations where the breach has been carried out by an individual rather than an entity.

9.10 If we do not publish a summary or decide it is not proportionate, we will satisfy the requirement at section 149(2) by either publishing an anonymised report, or by including the case in statistical information and any aggregated reporting OFSI publishes.

Timing of publication where a monetary penalty is imposed

9.11 OFSI will not normally publish the case summary where a monetary penalty has been imposed until after the person has had the opportunity to exercise their right to a review - either they have asked for a review and the Minister or senior official has decided a monetary penalty should be imposed, or once the deadline for requesting a review set out in this guidance has elapsed. If the person, after requesting a Review, subsequently appeals to the Upper Tribunal, and if the tribunal subsequently amends or quashes the penalty, OFSI will publish amended information setting this out in place of our original report.

Timing of publication where a monetary penalty is not imposed

9.12 Where OFSI decides to publish details of breach cases where no monetary penalty has been imposed, OFSI will, prior to publication, inform the person that OFSI has assessed to have committed a breach of our decision to publish a case summary. OFSI will provide the person with 28 working days from this date in which to make any representations in relation to the finding of a breach and publication of the case summary. Persons or their representatives may ask us to extend this period and must provide evidence of the reasons for that request.

Following consideration of any representations made, OFSI may:

- Uphold the decision to publish details of the case;
- Uphold the decision to publish details of the case, but details of what OFSI decides to publish may be changed; or
- Cancel the decision to publish details of the case

If OFSI upholds its decision to publish details of the case, OFSI will share the written case summary in advance of publication. Please note that s147 (setting out a person's entitlement to seek a review by a Minister and to (in specified circumstances) appeal to the Upper Tribunal a decision by HMT to impose a monetary penalty does not apply where a monetary penalty has not been imposed.

Location of publication

9.13 Monetary penalty reports will be published on OFSI's gov.uk pages, here:

<https://www.gov.uk/government/collections/enforcement-of-financial-sanctions>