



**The process for imposing
monetary penalties for breaches
of financial sanctions:**

Consultation response form

Name:	
Organisation:	
<input checked="" type="checkbox"/> Please tick if you are responding on behalf an organisation	
Name of organisation (if applicable)	
Address:	Telephone:
Email:	
<p>1. Do these introductory sections give you enough information to understand the scope of the law on monetary penalties? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>What else would be useful?</p> <p>Click here to enter text.</p>	
<p>2. What are your views on OFSI's compliance and enforcement approach?</p> <p>This appears to be a reasonable approach.</p>	
<p>3. Is there anything else you would expect a compliance model to tackle?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>(if yes please explain what below)</p> <p>We take this opportunity to reinforce the importance of model elements "promote" and "enable".</p>	

By seeking to engage with the private sector, and ensuring financial sanctions are formulated so they are clear and understandable, businesses will be able to more easily design effective controls to mitigate the risk of unintended sanctions breaches.

4. Do you understand our proposed case assessment approach?

Yes No

On the whole the case assessment approach is well defined however we do not feel that OFSI's process of liaising with the applicable regulator is set out in sufficient detail; in the case of the UK has OFSI agreed with the FCA how it will proceed if OFSI is pursuing enforcement? For example, would the FCA delegate authority to OSFI to manage the investigation process or would it pursue a simultaneous investigation.

We also feel that it is not made clear the extent to which information would be exchanged between OSFI, the subject of the investigation, and the applicable regulator(s).

5. What are your views on our proposed case assessment approach?

We hold concerns that OFSI will not be seeking to categorically prove compliance failures prior to enacting enforcement "beyond a reasonable doubt" but rather based on the "balance of probabilities" (the civil standard) particularly where cases might subsequently be referred for criminal prosecution. Whilst the appeal and ministerial review processes somewhat mitigates the prospect of unjust penalties being imposed, if a firm was to be publically subject to what later transpired to be an unjustified HMT fine, significant reputational damage would be done regardless of the appeal outcome.

6. Does this guidance give you enough information to help you understand how a penalty is calculated?

Yes No

Despite the guidance regarding penalty calculation being clear we do not feel that there is sufficient clarity concerning the referral process with the NCA and whether or not penalties could be issued simultaneously. In addition, how OSFI's proposed processes would interact with a Deferred Prosecution Agreement.

7. OFSI will reduce the level of penalty if there is voluntary disclosure. What are your views on OFSI's approach to this?

We welcome this approach as it promotes firm's dealing openly and honestly with enforcement bodies and the regulators. This approach is also consistent with that of other jurisdictions, such as the USA (OFAC) which may already be reflected in firms policies and procedures, especially where that firm might be subject to multiple sanctions regimes.

8. Is the process for imposing a penalty and making representations clear from this guidance?

Yes No

(if no please explain why below)
Click here to enter text.

9. Do you understand the guidance on seeking a Ministerial review?

Yes No

10. What are your views on the process for seeking a Ministerial review?

We note the frank assertion within the "Procedural Mistakes" section that OFSI might fail to adhere to the stated procedures. Whilst this is caveated with mention that OFSI will always seek to remedy such a mistake, once again, significant reputational damage could have occurred by the point at which the remedy is put into action.

11. Does this guidance clearly explain why and how OFSI will publish information on penalties imposed for breaches of financial sanctions regulations?

Yes No

What are your views on the level of information OFSI will publish?

It is not clear where news of penalties will be published.

12. Considering the document as a whole, does this guidance help you clearly understand OFSI's approach to imposing monetary penalties?

The guidance is largely insightful with the exception of those areas noted above.

Please e-mail this form to: OFSIConsultation@hmtreasury.gsi.gov.uk

Or post to OFSI Consultation, HM Treasury, 1 Horse Guards Road, London SW1A
2HQ