
From:
Sent:
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Subject: Response to consultation

Categories: Blue Category, Green Category, Orange Category

Confidential email from

Sirs,

I wish to submit a brief response to two of the questions raised in your consultation "*The process for imposing monetary penalties for breaches of financial sanctions*".

For the purposes of recording my submission could you please treat this as a personal submission, rather than as a submission on behalf of

I wish to respond in particular to Questions 5 and 8.

Question 5

What are your views on our proposed case assessment approach?

1. In paragraphs 2.6 et seq of the consultation document the draft guidance describes in general terms the case assessment process that OFSI will adopt for potential breaches of financial sanctions. You specify at paragraph 2.6.1 four potential responses to a breach. While I recognise the policy point that providing more detail could potentially enable a person to structure a breach so that it would be treated less seriously, I believe there is also scope for some additional commentary in this area to encourage and incentivise positive behaviours.

Specifically, in the interests of ensuring that the case assessment and enforcement process is transparent, can I suggest that it would be extremely helpful if OFSI could provide some commentary on, and if possible some (non-exhaustive) examples of, the sorts of breaches that might tend to merit each of those four responses.

I have assumed that the first form of response (which seems to equate to a private written warning with remediation requirements) would be more likely to be used in cases where a firm had, for example, self-reported its breach, and so providing an example which makes this point clearer could thus help to incentivise that behaviour.

2. At paragraph 2.7.4 the draft guidance makes reference to UK sanctions applying to "international transactions clearing or transiting through the UK" and to "action by a local subsidiary of a UK parent company".
 - a. It would be extremely helpful if OFSI could expand its comments on this scenario to explain more specifically the circumstances in which a person involved with a

non-UK transaction denominated in Sterling could become subject to UK sanctions regulations, to avoid concerns that this might otherwise indicate the UK is seeking to take a more extra-territorial approach along the lines already adopted by OFAC to non-US transactions denominated in USD; plainly a UK bank providing UK clearing services for sanctioned non-UK parties or intermediaries would be within scope of UK sanctions regulations, but if there are other more subtle scenarios envisaged by these comments it would be helpful for OFSI to provide one or two generic examples.

- b. It would also be helpful to give examples of the circumstances in which OFSI considers that the non-UK subsidiary of a UK parent could become subject to UK sanctions regulations - the conventional reading of typical UK sanctions measures is that the non-UK branches of a UK company are fully subject to UK sanctions, but a local subsidiary with no other connection to the UK is not itself subject to UK sanctions regulations simply by virtue of its UK ownership.

Question 8

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

3. At paragraph 2.12.2 the draft guidance notes the content of the letter that OFSI would send imposing a monetary penalty. It seems to me very important that to enable any person receiving such a letter properly to assess the case against them, so that they have an opportunity to make meaningful representations in response, OFSI should also explain the evidence on which the decision is based. So I would request that a description of that evidence be listed as information that will be included in each such letter.

Thank you for taking account of my responses to these two questions.

Kind regards,
