



## Imposition of Monetary Penalty – Clear Junction Limited

### SUMMARY

1. On 2 February 2021 the Office of Financial Sanctions Implementation (OFSI), part of HM Treasury, imposed a monetary penalty of £36,393.45 in accordance with s146 of the Policing and Crime Act 2017 (“PACA”) against Clear Junction Limited (“Clear Junction”) for contravention of regulation 4 of the Ukraine (European Union Financial Sanctions) (No. 2) Regulations 2014 (“the UK Regulations”).
2. The penalty related to 15 transactions Clear Junction made to accounts held at the Russian National Commercial Bank (“RNCB”) between 20 March 2018 and 18 June 2018. The total value of the transactions was £7,703.68. Clear Junction made funds available to a person designated under the above regime.
3. Clear Junction made a voluntary disclosure in this case, and the penalty included a reduction of 26.7% in line with the process set out in OFSI’s published guidance on case assessments. Although Clear Junction disclosed an initial eight transactions to OFSI on 18 April 2018, during its investigation OFSI identified further transactions before and after this date which Clear Junction had not self-disclosed, so no discount was applied in respect of those transactions.
4. OFSI imposed a monetary penalty because it was satisfied, on the balance of probabilities, that Clear Junction breached prohibitions imposed by financial sanctions legislation and either knew or had reasonable cause to suspect that it was in breach of those prohibitions.
5. Any person who has a penalty imposed on them by OFSI has the right to a review under s147 of PACA. Under these provisions, 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.
6. Clear Junction exercised its right to a ministerial review, which was carried out by the Economic Secretary to the Treasury personally. The Minister concluded his review on 25 June 2021, and upheld OFSI's decisions both to impose the penalty and on the amount of the penalty. Clear Junction appealed the Minister's decision but these proceedings have now been withdrawn.

## DETAIL

7. In March 2014, the European Union (including the UK) imposed restrictive measures against those responsible for actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine. The restrictive measures set out in the Council Regulation (EU) No 269/2014 ("the EU Regulation") impose asset freezes on those identified as being involved in destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. RNCB was designated on 30 July 2014. After the illegal annexation of Crimea RNCB became fully owned by the so-called 'Republic of Crimea'; it has become the dominant player in the market while it had no presence in Crimea before the annexation. By buying or taking over from branches of retreating banks operating in Crimea RNCB supported materially and financially the actions of the Russian government to integrate Crimea into the Russian Federation, thus undermining Ukraine's integrity. Article 2(2) of the EU Regulation prohibits making funds available, directly or indirectly, to a person, entity or body listed in Annex I; Annex I includes RNCB.
8. On 18 April 2018 Clear Junction submitted a suspected breach report detailing 8 payments made by 2 different individuals to 2 different accounts at RNCB. These transactions were initiated by TransferGo, a client of Clear Junction's, who provided a Russian Bank Identification Code ("Russian BIC") to Clear Junction in order to enable the transactions to be made. OFSI considered that Clear Junction knew or had reasonable cause to suspect that the payments would breach financial sanctions restrictions. They were a Financial Conduct Authority ("FCA") regulated payment services provider with knowledge of sanctions, which sent payments to accounts of individuals resident in Crimea using a Russian BIC which identified RNCB as the receiving financial institution.
9. On 19 April 2018 Clear Junction contacted TransferGo to notify it that certain banks/ financial institutions were subject to international sanctions, and therefore payments to certain Russian BICs, including the BIC relating to RNCB, could no longer be processed.

Despite this and despite listing the specific Russian BIC relating to RNCB in the 8 payments already identified within the report submitted to OFSI, further transactions were made to accounts with that same Russian BIC meaning further breaches occurred.

10. During its investigation, OFSI used the information powers contained in the UK Regulations to obtain further information from both Clear Junction and TransferGo. Clear Junction fully cooperated with OFSI and promptly provided all information which was requested of it. As a result of these information requests it identified 8 further potential breaches. Clear Junction provided representations in respect of one of these payments which showed it was the result of a technical issue with its compliance system which it has since fixed. Although OFSI considered that this payment was a breach of financial sanctions restrictions, OFSI removed this payment from its assessment due to the specific mitigating factors. The Minister agreed with OFSI's decision to exclude this payment from the monetary penalty.
11. However, OFSI considered that the other 7 payments, 2 of which occurred before Clear Junction's disclosure to OFSI on 18 April 2018, and 5 of which occurred between 18 April 2018 and 18 June 2018, were breaches for which it was reasonable and proportionate to impose a monetary penalty. No voluntary disclosure discount was provided in respect of these payments as Clear Junction did not voluntarily disclose them to OFSI. Had all of the breaches been voluntarily disclosed to OFSI Clear Junction could have received a 50% discount to the baseline penalty amount; instead it received a 26.7% discount.
12. Having reviewed the case materials, the Minister was satisfied that the decision OFSI took met the legal tests for imposing a penalty; that OFSI's assessment of the facts of the case were reasonable; that OFSI followed its own processes correctly and consistently; and that the penalty amount was within the range of reasonable and proportionate options open to OFSI.
13. Clear Junction had also requested anonymity should the penalty be upheld. The Minister considered that such anonymity would be contrary to the objectives of the financial sanctions regime and not in the public interest, and considered that the penalty should be publicised in line with s149 of PACA and OFSI's published monetary penalty guidance.

#### **NOTE ON COMPLIANCE**

14. A number of banks and financial institutions are designated under various financial sanctions regimes. OFSI considers that transferring funds to accounts held by non-

designated persons with designated banks is a breach of the prohibition on making funds available to a designated person in the UK Regulations if the person knew, or had reasonable cause to suspect, it was doing so. Companies and individuals must therefore ensure they carry out due diligence on the banks and financial institutions involved in transactions, as well as all other parties in the transaction, to ensure they do not breach financial sanctions.

15. TransferGo - a separate UK based company which is itself a licensed Authorised Payment Institution regulated by the FCA and supervised by HM Revenue & Customs – instructed Clear Junction to make these payments on behalf of its clients. However, these transactions were breaches of financial sanctions. Clear Junction was not able to rely on TransferGo ensuring that its instructions were compliant with financial sanctions restrictions; companies must themselves ensure that they undertake their own due diligence and systems and controls checks to ensure they comply with financial sanctions restrictions. OFSI has also imposed a monetary penalty on TransferGo in respect of its part in these breaches.
16. Despite identifying that it had made payments to RNCB and reporting these to OFSI on 18 April 2018, Clear Junction did not take appropriate steps to mitigate its sanctions risks and prevent further breaches from occurring until June 2018. Where companies and/or individuals identify potential financial sanctions compliance risks, it is essential that they take appropriate action to mitigate the risks of further breaches occurring as a matter of urgency. Where breaches are identified, OFSI would also expect a firm to consider whether any further breaches have previously taken place, and to report these to OFSI as soon as practically possible.
17. The breaches in this case occurred in 2018, and they were therefore breaches of the relevant EU Regulation. After 23:00 on 31 December 2020 the UK no longer applies EU sanctions regulations and all sanctions regimes are now implemented through UK regulations. RNCB remains subject to financial sanctions restrictions under The Russia (Sanctions) (EU Exit) Regulations 2019. OFSI will continue to investigate, and impose monetary penalties where appropriate, for breaches which occurred under the EU regulations prior to 31 December 2020.
18. Information on which persons are designated under each financial sanctions regime is published by OFSI and is available as a consolidated list on our website. You can also sign up for our e-mail alerts so you are notified each time the consolidated list is updated.

19. If you know or have reasonable cause to suspect that you are in possession of, or control of, or are otherwise dealing with, the funds or economic resources of a designated person you must:

- not deal with them, unless there is an exemption in the legislation that you can rely on or you have a licence from OFSI, and
- inform OFSI

You must also not make funds or economic resources available, directly or indirectly, to, or for the benefit of, any designated person, unless there is an exemption in the legislation that you can rely on or you have a licence from OFSI.

Further information and guidance on financial sanctions restrictions in the UK can be found on OFSI's website:

<https://www.gov.uk/government/organisations/office-of-financial-sanctions-implementation>