

SANCTIONS ENFORCEMENT - AN UPDATE ON MONETARY PENALTIES

On 8 June 2022, the Office of Financial Sanctions Implementation (OFSI) published their recently updated Monetary Penalty guidance which contain changes to the UK's ongoing approach to sanctions enforcement.

The changes come from the Economic Crime (Transparency and Enforcement) Act 2022, a new piece of legislation which was fast-tracked through the government as a response to the Russia/Ukraine conflict (we previously wrote about this [here](#).)

Crucially, the new legislation removes the requirement for OFSI to prove that the person had 'knowledge or reasonable cause to suspect' that they were in breach of the financial sanctions. From 15 June 2022 onward, OFSI will only need to prove that there was a breach of financial sanctions prohibitions. The new law makes it easier for OFSI to impose civil monetary penalties where there has been a breach of financial sanctions on a purely strict liability basis.

Giles Thomson, the director of OFSI has clarified that irrespective of the new power to impose penalties OFSI will not necessarily impose a monetary penalty where there has been a breach of financial sanctions, and will continue to impose penalties when 'appropriate, proportionate, and in the public interest to do so'¹

This is in line with the usual practice of those enforcing who will typically exercise prosecutorial discretion when considering what enforcement steps (if any) to take. It is important (as we described in our earlier briefing dated [30/03/2022] to present matters in the best light and obtain professional advice when doing so to achieve the best outcome possible when dealing with OFSI and others engaged in enforcement.

Additional powers

By virtue of the new legislation, OFSI is also able to now publish details of financial sanctions breaches which occurred after 15 June 2022, but where a monetary penalty is not imposed. This gives OFSI a new, albeit blunt, instrument with which to deter future non-compliance with financial sanctions. The guidance now issued states that this may be done where there may be valuable compliance lessons for industry, and will include information such as:

- Who performed the breach;
- The summary facts of the case including breach type, sanctions regime, regulation which was broken, and whether there was any voluntary disclosure (of which see more below);
- The aggregated GBP value of the transactions in breach, where this is identified and why a case summary has been published; and
- Compliance lessons from OFSI

Where OFSI decides to publish details of breach cases where no monetary penalty has been imposed, the person who is subject to the proposed publication must be informed and shall be given 28 working days from the date of notification in order to make any representations.

Additionally, any requests for reviews of decisions made by OFSI made after 15 June may be dealt with by a 'Minister of the Crown', which means a holder of office in government (Section 147(7) of the Policing and Crime Act 2017).

¹ New enforcement powers - a message from Giles Thomson, Director of OFSI - OFSI (blog.gov.uk)

However, a minister may now also delegate the review to another senior official², which will allow Her Majesty's Treasury to conduct reviews more efficiently.

What does this mean in practice?

As mentioned in our previous briefing, OFSI places heavy emphasis on the mitigating and aggravating factors when making any decision, and its recent update shows that this overall approach to enforcement has not changed. An effective compliance and due diligence programme as well as self-disclosure continue to be important mitigating factors, and each breach is assessed on a case-by-case basis. We recommend that professional advice is taken if dealing with suspected or actual sanctions breaches and considering or being engaged with OFSI.

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² Para 6.6 of Monetary Penalty Guidance Microsoft Word - 070622 Monetary Penalty Guidance - Cleared (publishing.service.gov.uk)