

UK sanctions—a year in review

Crime analysis: To say that this has been a game-changing year in UK sanctions would be an understatement. Almost a year since the start of the conflict in Ukraine, John Binns, partner at BCL Solicitors LLP, reflects on what the last year has taught us about how sanctions regulation and enforcement has developed and what to expect in the future.

This analysis was first published on Lexis®PSL on 14/02/2023 and can be found [here](#) (subscription required).

Scale and type of prohibitions

Primary legislation has been changed to make sanctions more draconian, including by:

- enabling civil penalties for sanctions breaches on a strict liability basis
- removing safeguards, including reports to parliament and periodic reviews
- ending the requirement for designations to be appropriate
- introducing an urgent procedure for people designated in other jurisdictions, and
- capping and restricting damages for people whose designations are overturned

Sanctions aimed at addressing Russia's actions in Ukraine have massively increased in scope, expanding:

- criteria for designating persons, to include people carrying on business in certain sectors of the Russian economy and related parties
- broader financial sanctions, including on investments and loans involving designated persons (DPs) and persons 'connected with Russia' (PCRs), and
- the list of goods and services that may not be provided to Russia, DPs or PCRs

The government has signalled its intention to go further (including a still-awaited ban on 'transactional legal services') and to enforce sanctions via the Office for Financial Sanctions Implementation (OFSI) and a new Counter Kleptocracy Cell (CKC) of the National Crime Agency (NCA), while the Foreign, Commonwealth and Development Office (FCDO) have designated more and more individuals and entities, primarily on the Russia list.

Treasury licenses

OFSI has found it predictably hard to deal with the volume and complexity of licence applications, resulting in backlogs that have only partly been alleviated by the deployment of additional personnel and the belated granting of general licences (a notable feature of our post-Brexit framework) including for energy bills, insurance and legal fees.

Banks, lawyers and even courts have found it hard to wrestle with ambiguities in the terms of these licences, with the result (we may hope) that future licences, specific and general, will be clearer and more efficient.

Meanwhile, however, political attention to licensing of fees for defamation lawyers who wrote on behalf of unpopular clients threatens to shift the agenda from the reasonableness of fee levels to the merits of the claims DPs' lawyers may seek to make—a risky judgement to ask OFSI to make, at least where the claim is against a fellow government department.

Compliance challenges for organisations

Compliance procedures remain important to reduce and mitigate the risk of civil penalties (or even criminal breaches). With no prescriptive equivalent of the money laundering regulations, businesses must conduct their own bespoke risk assessments and tackle a complex and ever-increasing set of risks. One aspect that makes UK sanctions particularly hard is the provisions on 'indirect ownership

and control', which can make it risky to deal with counterparties that has even informal, unwritten relationships with a DP.

International co-ordination

Few cheered the UK's decision, post-Brexit, to loosen its ties with the EU on sanctions; some speculated that it would bring us closer to the US instead, though this has not yet come to pass.

Instead, so far, the UK's course has proven different to its allies, though often subtly so; as the urgent designation procedure has shown, it remains keen to demonstrate a large degree of solidarity, especially on Russia.

For UK businesses and their customers, the emerging reality is of prudent industries rushing not only to comply with all regulatory regimes in sight, but also to 'de-risk' from Russia-connected business, causing collateral damage to many with no ties to or love for its government and little sign of looking forward to a post-conflict, or post-Putin, world.

What to expect in 2023 and beyond

Last year's legislative agenda conflated sanctions with tackling economic crime, but without too much explicit thinking about how they might be connected. With governments around the world publicly musing about how sanctioned Russian assets might ultimately be forfeited (Canada being the controversial pioneer so far), the FCDO making more use of its cyber and anti-corruption sanctions regimes and the NCA's CKC tackling both corruption and sanctions-busting, there is clearly more here to be explored.

It may yet be too radical to contemplate such a broad legislative change that the assets of DPs, PCRs and/or the Russian state are treated in the same way as criminal or terrorist property, which would clearly have human rights implications. But the CKC is already starting to look to civil recovery under the [Proceeds of Crime Act 2002 \(POCA 2002\)](#) as a route to forfeiture of Russian 'oligarch' assets, as are its equivalents in other jurisdictions.

Meanwhile, civil society, courts, legislators and enforcement agencies are starting to look at both human rights sanctions and [POCA 2002](#) as potential routes to tackle corporate profits from global problems such as modern slavery and ecocide and linking it to reforms of corporate liability for economic crime. In time, the Ukraine conflict may spur some very creative changes to the way we think about economic crime, the kinds of 'specified activity' targeted by sanctions and the role of UK businesses in tackling both of them.

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