Office of Financial
Sanctions Implementation
HM Treasury

MONETARY PENALTIES FOR BREACHES OF FINANCIAL SANCTIONS

Guidance

Preface

Monetary penalties for financial sanctions breaches

The Policing and Crime Act 2017 ('the 2017 Act') creates powers for HM Treasury to impose monetary penalties for breaches of financial sanctions. The Office of Financial Sanctions Implementation (OFSI) is the part of the Treasury that applies these powers. This guidance sets out what the powers are, how OFSI will use them, and your rights if it imposes a monetary penalty on you.

We have issued this guidance in line with s.149 (1) of the 2017 Act, which states:

> *The Treasury must issue guidance as to—*
>
> *(a) the circumstances in which it may consider it appropriate to impose a monetary penalty under section 146 or 148, and*
>
> *(b) how it will determine the amount of the penalty.*

In this guidance you will find:

- an explanation of the powers given to the Treasury in the 2017 Act
- a summary of our compliance and enforcement approach
- an overview of how we will assess whether to apply a monetary penalty, and what we will take into account
- an overview of the process that will decide the level of penalty
- an explanation of how we will impose a penalty, including timescales at each stage and your rights of review and appeal

From time to time OFSI will review this guidance in response to feedback and as we learn from using these powers. The guidance applies from April 2017 and we plan to review it next in March 2018.

Office of Financial Sanctions Implementation

HM Treasury

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Contents

		Page
Chapter 1	Introduction	5
Chapter 2	Our compliance and enforcement approach	9
Chapter 3	Case assessment	11
Chapter 4	The penalty process	17
Chapter 5	Procedure for imposing a penalty	21
Chapter 6	The right of ministerial review	23
Chapter 7	Right of appeal	27
Chapter 8	Paying a penalty	29
Chapter 9	Publication of penalty details	31

1 Introduction

Part 1: Introduction

1.1 This section sets out some basic information about financial sanctions, the power to impose monetary penalties, and to whom the power can apply.

What are financial sanctions?

1.2 Financial sanctions are an important part of foreign policy, and support national security. They help to maintain the integrity of and confidence in the UK financial services sector. Generally, they are imposed in order to:

- coerce a regime, or individuals within a regime, into changing their behaviour or aspects of it ('offending behaviour'), by increasing the cost on them to such an extent that they decide to cease the offending behaviour
- constrain a target by trying to deny them access to key resources needed to continue their offending behaviour, including the financing of terrorism or nuclear proliferation
- signal disapproval of a target as a way of stigmatising and potentially isolating them, or as a way of sending broader political messages to international or domestic constituencies
- protect the value of assets that have been misappropriated from a country, until they can be repatriated

1.3 The most common types of financial sanctions currently in use or used in recent years are as follows:

- targeted asset freezes, which are usually applied to named individuals, entities and bodies, restricting their access to and ability to use funds and economic resources.
- restrictions on a wide variety of financial markets and services. These can apply to named individuals, entities and bodies, to specified groups or to entire sectors. To date they have taken the form of investment bans; restrictions on access to capital markets; directions to cease banking relationships and activities; requirements to notify or seek authorisation before certain payments are made or received; and restrictions on provision of financial, insurance, brokering, advisory services or other financial assistance.
- directions to cease all business of a specified type with a specific person, group, sector territory or country.

1.4 You can find guidance on financial sanctions on the OFSI gov.uk page, here:

https://www.gov.uk/government/publications/financial-sanctions-faqs

1.5 References to 'a person' throughout this guidance include natural people, as well as entities and bodies of any type. References to a 'designated person' are to persons who are subject to an asset freeze, and references to the 'listing' of a person means their inclusion on the list of designated persons. You can find the consolidated list of financial sanctions targets here:

https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets

Powers given to HM Treasury to impose penalties for financial sanctions breaches

1.6 Breaches of financial sanctions are criminal offences, punishable upon conviction by up to 7 years in prison. There are both civil and criminal enforcement options to remedy breaches of financial sanctions. Law enforcement agencies may consider prosecution for breaches of financial sanctions. The monetary penalties regime created by the 2017 Act provides an alternative to criminal prosecution for breaches of financial sanctions legislation. OFSI is the part of the Treasury that imposes these monetary penalties.

1.7 The powers to impose a monetary penalty, and the limits on the level of penalty, are created by s.146 of the 2017 Act:

> *146 Power to impose monetary penalties*
>
> *(1) The Treasury may impose a monetary penalty on a person if it is satisfied, on the balance of probabilities, that—*
>
> > *(a) the person has breached a prohibition, or failed to comply with an obligation, that is imposed by or under financial sanctions legislation,*
> >
> > *and*
> >
> > *(b) the person knew, or had reasonable cause to suspect, that the person was in breach of the prohibition or (as the case may be) had failed to comply with the obligation.*
>
> *(2) The amount of the penalty is to be such amount as the Treasury may determine but it may not exceed the permitted maximum.*
>
> *(3) In a case where the breach or failure relates to particular funds or economic resources and it is possible to estimate the value of the funds or economic resources, the permitted maximum is the greater of—*
>
> > *(a) £1,000,000, and*
> >
> > *(b) 50% of the estimated value of the funds or resources.*
>
> *(4) In any other case, the permitted maximum is £1,000,000.*

1.8 The 2017 Act also increased the maximum sentence for criminal prosecutions from 2 to 7 years' imprisonment and brings financial sanctions into the scope of Deferred Prosecution Agreements and Serious Crime Prevention Orders. These changes are not discussed in this document. The full text of the legislation is available at:

http://www.legislation.gov.uk/ukpga/2017/3/contents/enacted/data.htm

1.9 All financial sanctions breaches come within the scope of OFSI's powers to impose monetary penalties, if they meet the criteria described in this guidance.

What do 'breached a prohibition' or 'failed to comply with an obligation' mean?

1.10 OFSI provides guidance on prohibitions in section 3 of our **Financial Sanctions: Guidance**, which you can find here:

https://www.gov.uk/government/publications/financial-sanctions-faqs

1.11 Please read that guidance for a fuller explanation; you should not rely solely on the summary below.

Summary

1.12 You are prohibited from carrying out certain activities or behaving in a certain way if financial sanctions apply. This will depend on the exact terms of the EU or UK legislation that imposes the financial sanctions in any given situation.

1.13 To understand exactly what is prohibited, you should always refer to the up-to-date version of the law imposing the specific financial sanctions that apply in your case to understand exactly what is prohibited. OFSI construes prohibitions widely, as do courts and other member states.

1.14 If the financial sanction takes the form of an asset freeze, it is generally prohibited to:

- deal with the funds or economic resources belonging to or owned, held or controlled by a designated person
- make funds or economic resources available, directly or indirectly, to, or for the benefit of, a designated person, or
- engage in actions that directly or indirectly circumvent the financial sanctions

1.15 Financial sanctions also contain some positive obligations which apply to, amongst others, regulated financial services providers. For example, they are required to notify HM Treasury if they have dealings with a designated person or if they suspect that financial sanctions are being breached. Failure to comply with such an obligation is an offence.

1.16 When OFSI has licensed an activity, the licence may be subject to conditions and reporting requirements. It is an offence not to abide by them or not to take any actions that the licence requires. This is because the licence does not authorise any activity incompatible with its conditions.

1.17 OFSI also has information-requesting powers. Depending on the legislation concerned, these may include powers to establish the extent of funds and economic resources owned, held or controlled by or on behalf of a designated person; to monitor compliance or detect evasion; or to obtain evidence of the commission of an offence. It is an offence not to comply with a requirement to provide information or an OFSI request for information.

On whom may a penalty be imposed?

1.18 A penalty may be imposed on 'a person' – a body of any type, or an individual. In addition, section 148(1) of the 2017 Act says:

> *If a monetary penalty is payable under section 146 by a body, the Treasury may also impose a monetary penalty on an officer of the body if it is satisfied, on the balance of probabilities, that the breach or failure in respect of which the monetary penalty is payable by the body—*
>
> *(a) took place with the consent or connivance of the officer, or*
>
> *(b) was attributable to any neglect on the part of the officer.*

1.19 This means separate penalties could be imposed on a legal entity and the officers who run it. If so, the OSFI will consider the imposition and level of penalty on an officer of a body separately from that of the corporate body.

1.20 Section 148(2) sets out who may be considered an 'officer' in this context.

> *'officer of a body' means—*

(a) in relation to a body corporate, a director, manager, secretary or other similar officer of the body or a person purporting to act in any such capacity;

(b) in relation to a partnership, a partner or a person purporting to act as a partner;

(c) in relation to an unincorporated body other than a partnership, a person who is concerned in the management or control of the body or purports to act in the capacity of a person so concerned.

1.21 It is also possible for OSFI to impose a penalty on one person involved in a case and for another to be prosecuted criminally. OFSI will not normally impose a penalty on any person who has already been prosecuted.

2 Our compliance and enforcement approach

2.1 How OFSI assesses breaches when deciding whether to impose a monetary penalty is informed by our overall approach to financial sanctions compliance. This approach covers the whole lifecycle of compliance. So we take a holistic approach to ensuring compliance with the regime, rather than simply waiting until the law is broken and responding to the breach.

2.2 Our approach is summarised by our compliance and enforcement model: **promote, enable, respond, change**:

- we will promote compliance, publicising financial sanctions and engaging with the private sector
    - an effective compliance approach promotes compliance by reaching the right audiences, through multiple channels, with messages they respond to
- we will enable compliance by making it easier to comply, and providing customers with guidance and alerts to help them fulfil their own compliance responsibilities
    - an effective compliance approach enables cost-effective compliance, makes it easy to comply and minimises by design the opportunities for non-compliance
- we will respond to non-compliance by intervening to disrupt attempted breaches and by tackling breaches effectively
    - an effective compliance approach responds to non-compliance consistently, proportionately, transparently and effectively, taking into account the full facts of the case, and learns from experience to continuously improve our response
- we do these things to change behaviour, directly preventing future non-compliance by the individual and more widely through the impact of compliance and enforcement action

2.3 Having an overall strategic approach helps us design our operational policies and processes in a consistent way. It also enables us to test how well they meet our strategic objectives.

2.4 This approach informs how we assess cases and decide monetary penalties (respond), ensuring that our processes maintain the credibility of financial sanctions by enforcing them proportionately and effectively. It also informs how we will publish details of penalties we impose (promote). Doing so deters future non-compliance in the penalised individual. It also enables others to learn from the case and shows we will act robustly against serious breaches (change).

2.5 We have designed our case-assessment and penalty-decision processes in this context. Operating them effectively will mean we provide a better service for the private sector and help ensure that financial sanctions are properly understood, implemented and enforced. The next two parts give guidance on these processes.

3 Case assessment

3.1 This section gives a summary of how OFSI assesses potential breaches of financial sanctions. It does not set out the complete case assessment process that OFSI will use. However, it does provide a detailed overview of the process, and will help you understand what we consider when we assess a potential breach of financial sanctions.

Overview

3.2 OFSI can respond to a breach of financial sanctions in several ways, depending on the case. The steps we could take in response to a breach include:

- issuing correspondence requiring details of how a party proposes to improve their compliance practices
- referring regulated professionals or bodies to their relevant professional body or regulator in order to improve their compliance with financial sanctions
- imposing a monetary penalty
- referring the case to law enforcement agencies for criminal investigation and potential prosecution

Section 146(1) of the 2017 Act says:

> *(1) The Treasury may impose a monetary penalty on a person if it is satisfied, on the balance of probabilities, that—*
>
> *(a) the person has breached a prohibition, or failed to comply with an obligation, that is imposed by or under financial sanctions legislation,*
>
> *and*
>
> *(b) the person knew, or had reasonable cause to suspect, that the person was in breach of the prohibition or (as the case may be) had failed to comply with the obligation.*

3.3 'Balance of probabilities' is the civil standard of proof and means it is more likely than not that something has happened. We will not be seeking to prove the facts beyond reasonable doubt (the criminal standard), but to make a judgement on whether it is more likely than not that they are true.

3.4 Reasonable cause to suspect refers to an objective test that asks whether there were factual circumstances from which an honest and reasonable person should have inferred knowledge or formed the suspicion that the conduct amounted to a breach of sanctions.

Establishing whether there is a breach and "knowledge" or "reasonable cause to suspect"

3.5 OFSI will seek to establish whether there is a breach of a prohibition or a failure to comply with an obligation. If there is not, we will close the case. We see a few cases like this, often where individuals have taken a cautious approach to their responsibilities or might have been confusing their sanctions obligations with responsibilities under different national sanctions regimes.

3.6 A breach does not have to occur within UK borders for OFSI's authority to be engaged. To come within OFSI's enforcement of sanctions, there has to be a connection to the UK, which we

call a UK nexus. This is not a new concept, and neither this guidance nor the 2017 Act extends or alters the reach of UK financial sanctions.

3.7 A UK nexus might be created by such things as a UK company working overseas, transactions using clearing services in the UK, actions by a local subsidiary of a UK company (depending on the governance), action taking place overseas but directed from within the UK, or financial products or insurance bought on UK markets but held or used overseas. These examples are not exhaustive or definitive – whether or not there is a UK nexus will depend on the facts in the case.

3.8 We will not artificially bring something within UK authority that does not clearly and naturally come under it. Some breaches of financial sanctions do involve complicated structures or relationships, where a genuine UK nexus exists but is not immediately apparent. In every case, we will consider the facts to see whether the potential breach comes within our authority.

3.9 If we come across breaches of financial sanctions in another jurisdiction, we may use our information-sharing powers to pass details to relevant authorities if this is appropriate and possible under UK law.

3.10 If we conclude that the person did not know and did not have reasonable cause to suspect they were in breach, we cannot impose a monetary penalty. However, we may be able to take other action that would respond effectively to the matter, such as requesting information on how the person intends to improve compliance in the future.

Being fair and proportionate in our assessment

3.11 We will treat each suspected breach on its own merits. We will assess the facts to decide on an outcome that is fair, proportionate and best enforces the regime.

3.12 We may take a number of factors into account when assessing a case. We will consider each factor by referring to our strategy, policy, guidance and processes, and to the specific facts of the case. We may also seek legal advice, and advice from law enforcement agencies.

3.13 To ensure our response is proportionate, we will assess overall how severe or serious the breach is and the conduct of the individuals involved. Broadly, the more aggravating factors we see, the more likely we are to impose a monetary penalty. The more serious the breach, and the worse the conduct of the individuals, the higher any penalty is likely to be.

3.14 Mitigating factors may reduce a penalty we impose or lead us not to take enforcement action. We will take mitigating factors into account when deciding how to proceed with a case. However, with some breaches we will normally always impose a penalty or refer the matter for criminal investigation.

Case factors

3.15 OFSI will take several factors into account that will aggravate or mitigate when determining the facts and how seriously OFSI view a case. These include the following:

Direct provision of funds or economic resources to a designated person

3.16 Individuals subject to financial sanctions should be aware that financial sanctions apply to them. To enable others to know which individuals and companies are targets of financial sanctions, OFSI maintains a consolidated list of persons to whom financial sanctions apply. The list enables anyone to know whether an individual they are dealing with is a designated person. We are likely to treat a case that directly and openly involves a designated person more seriously than one that is a breach of financial sanctions but does not make funds or economic resources available to a designated person.

Circumvention of sanctions

3.17 A person will usually also commit an offence when they intentionally participate in activities knowing that the object or effect of them is (directly or indirectly):

- to circumvent any of the prohibitions, or
- to enable or facilitate the contravention of any such prohibition or requirement

OFSI takes circumvention very seriously because it attacks the integrity of the financial system and damages public confidence in the foreign policy and national security objectives that the sanctions regimes support. We will normally impose a monetary penalty if the case is not prosecuted criminally.

Value of the breach

3.18 OFSI will consider the value of the breach (which may be estimated). A high-value breach is generally more likely to result in enforcement action. However, OFSI realises there are circumstances involving lower-value breaches where enforcement action is also justified – for example, if the action was a calculated and deliberate flouting of sanctions.

Harm or risk of harm to the sanction regime's objectives

3.19 We will make an assessment of the harm, or the risk of harm, done to the sanction regime's objectives. Those objectives are set out in the relevant regulation, which describes what activities the regime aims to prevent or encourage – for example, to guard against nuclear proliferation. The greater the risk of harm to the regime's objectives, the more seriously we are likely to regard a case.

Knowledge of sanctions and compliance systems

3.20 Everyone must ensure they follow the law, and ignorance of the law is no defence. But it is also true that some businesses have more in-depth knowledge of sanctions and better-developed compliance systems and processes than others, because of the kind of work they do. Businesses should make their own assessment of what is reasonable and necessary for their particular circumstances. When we consider a case, we believe it is reasonable to take account of the level of actual or expected knowledge and the extent of relevant ways of complying.

3.21 Regulated professionals should meet regulatory and professional standards. We may consider their failure to do so an aggravating factor.

3.22 We wish to encourage strong compliance cultures. If a person or entity simply falls below a high standard, we will consider whether or not it is proportionate to impose a penalty if that is the only distinguishing factor in a case. This is particularly true when the company has acted swiftly to remedy the cause of the breach. However, we may still impose a penalty if other factors are stronger.

Behaviour

3.23 We will consider how each party in a case has behaved. Individuals may display different behaviour over time and several types of behaviour in a particular case. We have divided behaviours into several broad categories that we believe reflect compliance in the financial sanctions regime. Doing so enables us to ensure we respond appropriately to similar behaviour in different situations.

3.24 We will consider, for example, whether the breach seems to be deliberate; whether there is evidence of neglect or a failure to take reasonable care; whether there has been a systems and

control failure or an incorrect legal interpretation; whether the person seems unaware of their responsibilities; or whether there has simply been a mistake.

3.25 It is possible for a mistake to cause a breach of financial sanctions legislation, for example making funds available to a designated person. Without the knowledge that the action would be a breach or any reasonable cause to suspect this, the matter would not meet the legal standard for a penalty.

Failure to apply for a licence; breach of licence terms

3.26 We license certain uses of frozen funds under derogations present in the financial sanctions legislation. It is prohibited to do things that require a licence without one. Once we have given a licence, monetary penalties may also apply to breaches of licence conditions.

Professional facilitation

3.27 Facilitation of a financial sanctions breach is a form of circumvention (see paragraph 3.17). Individuals who act on behalf of or provide advice to others as part of their job may be considered professional facilitators. They should ensure they act within the law while representing their client. Simply discovering a potential breach when acting for a client does not automatically make a professional facilitator party to it, but they may become so if their subsequent actions amount to collusion in the breach. Potential breaches should be reported to OFSI.

Repeated, persistent or extended breaches

3.28 Repeated, persistent or extended breaches by the same person will tend to result in us taking more serious action. This is particularly true when the individual seems unresponsive to or seems to ignore what we tell them and makes further breaches of financial sanctions. We will also tend to view multiple breaches extended over time as being more serious in total, even if they are individually of low value or relative seriousness.

Reporting of breaches to OSFI

3.29 Breaches of financial sanctions must be reported to OFSI. A number of reporting issues affect how we deal with a case, as explained below.

Voluntary disclosure, materially complete disclosure and good faith

3.30 We expect all disclosures to be materially complete on all relevant factors that evidence the facts of a breach of financial sanctions, and to truthfully state these facts in good faith. If evidence later emerges that a disclosure was not materially complete for any reasons except a mistake or new facts emerging, or was made in bad faith, we will take this very seriously. In particular, if we discover that parties have dealt with us in bad faith and if the case is not criminally prosecuted, we will normally impose a monetary penalty.

3.31 We regard voluntary disclosure of a breach of financial sanctions by a person who has committed a breach as a mitigating factor when we assess the case. It will also have real effect on any subsequent decision to apply a penalty. If multiple parties are involved in a breach, we expect voluntary disclosure from each. We will consider the facts and timing of each disclosure individually to determine whether it is appropriate to consider it voluntary in this context. The mere fact that another party has disclosed first will not necessarily lead to the conclusion that later disclosure has any lesser value. However, we will not consider disclosure a mitigating factor if it seems to have been prompted or forced on the person by the fact that OFSI is assessing a case. If we have used our information powers to require provision of information about a breach, we do not consider that disclosure to be voluntary.

3.32 Voluntary disclosures may be supplemented by additional facts without detriment, as long as we do not think the person is acting only because they have decided to reveal something they had hidden after it has been discovered through other means.

3.33 We recognise that some documents are protected by legal professional privilege. An offence is only committed where a person fails to produce a document 'without reasonable excuse'. We consider that relying on legal professional privilege could be such a reasonable excuse not to disclose a document.

3.34 We expect breaches to be disclosed in a timely fashion, as soon as reasonably practicable after discovery of the breach. What this means will differ in each case. There is no conflict between timeliness and material completeness. It is reasonable for you to take some time to assess the nature and extent of the breach, or seek legal advice, but this should not delay an effective response to the breach. In practice, it is better to contact us early to inform us of a breach or potential breach. If you make an early disclosure with partial information on the basis that you are still working out the facts and will make a further disclosure shortly, OFSI will be happy to support this approach.

3.35 We are happy to consider marginal issues, particular circumstances, conflicts or any other issue around voluntary disclosure as part of a person's representations.

Failure to provide information on financial sanctions breaches

3.36 Failure to provide information on breaches can be a criminal offence in its own right. In some circumstances, financial sanctions legislation requires financial services providers to give information. In others HM Treasury, through OFSI, may have used statutory powers to require the provision of information. In both cases, failure to provide the information may be an offence. We may therefore impose a monetary penalty for not providing information when required to do so.

Public interest

3.37 As part of our assessment of a case, OFSI will consider the public interest. This can cover a wide range of issues. There is, for example, a public interest in justice being seen to be done, and the fair and consistent application of the law by officials. There is also a public interest in ensuring that public resources are used wisely and not spent on minor or trivial matters, not using powers in ways that the public would regard as extreme, and ensuring that we take a common-sense approach to each case.

3.38 In some instances, even if the bare facts seem to warrant a monetary penalty or a reference for criminal investigation, we may choose not to do so in the public interest. This may involve assessing the importance of the case, what actions have already been taken, and whether it is appropriate to use the resources of the government to respond effectively to the breach.

3.39 In other instances we may choose to take more serious action than the value of the breach appears to warrant. This is particularly likely if the integrity of financial sanctions or law seems to be threatened, or confidence in them needs to be maintained.

Other relevant factors

3.40 We reserve the right to consider any factor in a case if it is material and relevant. This enables us to consider new situations and ensure all the facts receive due attention.

3.41 OFSI follows the government's strategy for sanctions. OFSI's overall approach to financial sanctions breaches will always follow this strategy, as it is set from time to time.

3.42 Some sectors are affected by financial sanctions in ways that require specialist knowledge of the sector to assess. We will always consider specific circumstances when assessing the facts of a case, and may take specialist advice to ensure we understand the situation correctly. We may also ask for more information from those involved.

Assessment outcome

3.43 When we have assessed the case, we will take a decision on the conduct of each person involved. If that conduct meets the standard for imposing a monetary penalty, we will also consider the seriousness of the case. We will classify all cases that meet this standard as 'serious' or 'most serious'.

3.44 Every case that meets the criteria for a monetary penalty is by definition serious. But it is also true that some cases are clearly much more serious that the majority. It is appropriate to be able to make this distinction as part of our consideration of the facts. OFSI uses the terms 'serious' and 'most serious' to make this distinction.

3.45 'Most serious' -type cases may involve a very high value, blatant flouting of the law, or severe or lasting damage to the purposes of the sanctions regime. OFSI will decide this based on the facts of the case. The most serious cases are likely to attract a higher penalty level. It will generally be obvious why we regard a case as 'most serious', but we will explain this to the person we intend to penalise and when we publish a case summary (if we do). This distinction also affects the reduction of penalty that voluntary disclosure brings, described at chapter 4.

Revisions to case-assessment process

3.46 OFSI wants to be a learning organisation. From time to time we will review our case-assessment process and may change or improve it based on our experience. We will publish changes to our process before implementing them, in the same detail as in this guidance. We will assess each case using the case-assessment guidelines current when we discover or are informed of a breach.

4 The penalty process

4.1 OFSI's penalty-decision process consists of three parts:

1 penalty threshold

2 baseline penalty matrix

3 penalty recommendation

Penalty threshold

4.2 The penalty threshold is reached if our case assessment results in the following outcomes:

- the case meets the tests in s.147 (1) of the Policing and Crime Act; that is, on the balance of probabilities, there has been a breach and the person committing it knew or had reasonable cause to suspect they were committing a breach

4.3 Then, one or more of the following:

- the breach has involved funds or economic resources being made available directly to a designated person. The financial sanctions regimes are designed to prevent this
- there is evidence of circumvention. By making arrangements to circumvent the law, a person not only breaches the law but attacks the integrity of the system
- without the above factors being present, OSFI believe that a monetary penalty is appropriate and proportionate
- a person has not complied with a requirement to provide information

4.4 If the penalty threshold is reached, we may impose a penalty. In some circumstances we have discretion not to do so.

Baseline penalty matrix

4.5 Generally, OFSI will impose a level of penalty that is clearly and consistently related to our view of the impact of the case and the value of the breach (which may be estimated).

4.6 OFSI values voluntary disclosure. Co-operation is a sign of good faith and makes enforcing the law simpler, easier, quicker and more effective. Voluntary disclosure may be a mitigating factor in our assessment of the case. It may also reduce the level of penalty we impose.

4.7 The baseline penalty matrix therefore encourages prompt and complete voluntary disclosure of the facts of the case. It also seeks to ensure that the most serious cases receive a higher penalty.

How this works

4.8 OFSI will first work out the statutory maximum penalty it could impose. This will be the greater of £1 million or 50% of the value of the breach. Within this maximum, the OFSI will then decide what level of penalty is reasonable and proportionate, based on our view of the seriousness of the case. This could still be the permitted maximum if that is reasonable and proportionate, and could be any amount between the maximum and zero.

- 'reasonable' means an ordinary reasonable person would regard the proposed penalty as appropriate to the offence

- ‘proportionate’ means there is a clear relationship between the value of the proposed penalty and both the value of the breach (if known) and how seriously the breach undermined the sanctions regime. So it must be neither an insufficient nor excessive response

4.9 This creates a baseline penalty level to which the following penalty matrix applies. We will make up to a 50% reduction in the final penalty amount to a person who gives a prompt and complete voluntary disclosure of a breach of financial sanctions. The maximum of 50% will apply to ‘serious’ cases. If we assess a case as ‘most serious’, we may make reductions of up to 30% for voluntary disclosure.

4.10 This makes clear the premium we place on voluntary disclosure, and that there may be a benefit to voluntary disclosure even in the most serious cases.

4.11 A person has automatic access to the voluntary disclosure reduction once they affirm that their voluntary disclosure is materially complete. If they decline to do so, we will normally treat the case as if no voluntary disclosure had been made, and apply the appropriate penalty.

4.12 The penalty matrix is therefore as follows:

Chart 4.A: Penalty matrix

		Seriousness	
		Serious	Most serious
Voluntary disclosure	Yes	Baseline penalty minus voluntary disclosure reduction of 50%	Baseline penalty minus voluntary disclosure reduction of up to 30%
	No	No voluntary disclosure reduction.	No voluntary disclosure reduction. Penalty likely to be higher than ‘serious’ cases.

Penalty recommendation

4.13 The penalty process therefore follows this approach:

- determine the value of the breach
- determine the maximum penalty: the possible penalty is based on the value of the breach (£1million or 50%, whichever is higher)

- apply the seriousness determination: either 'serious' or 'most serious', depending on the facts
- determine the baseline: this is also based on the facts of the case and what level of penalty under the relevant maximum would be reasonable and proportionate
- determine if a reduction applies: either yes, or no. If yes, apply the relevant percentage reduction to the baseline

This creates a penalty recommendation.

4.14 The penalty is a recommendation rather than a decision at this stage because the person on whom OFSI intends to impose a penalty has a right to make representations (see Chapter 5), which could change OFSI's view on whether a penalty should be imposed, or how much should be imposed. As a matter of good practice, the person who takes the final decision after representations will u be different from the person who made the penalty recommendation.

Penalties for information offences

4.15 EU law obliges everyone to provide information on financial sanctions breaches to the national competent authority (in the UK, HM Treasury, whose functions are carried out by OFSI). Not doing so is a breach of EU law[1]. OFSI will treat not providing information on breaches as an aggravating factor in a case.

4.16 For 'relevant institutions' defined by UK law, not providing information on breaches of financial sanctions may be a criminal offence. This offence is created by UK regulations, so it comes within the scope of OFSI's powers to apply monetary penalties.

4.17 OFSI issues licences for the use of frozen assets under certain derogations from EU law. We often set reporting requirements in licences. If a person fails to comply with reporting requirements in an OFSI licence, it may be an offence and we may issue a penalty.

4.18 OFSI also has broad powers to require information from anyone, and it may be a criminal offence in its own right not to provide it. We may issue a penalty if, for example, OFSI has specifically demanded information that has not been provided, or our demand for information has been refused, particularly when this seems to be with the intention of frustrating our proper case assessment.

4.19 OFSI will impose a level of penalty that reflects the seriousness of the failure to provide information. We may impose a penalty for information offences relating to a breach as well as the penalty for the breach itself. They will be imposed separately to show clearly that there are penalties for different offences.

4.20 If we impose a penalty for information offences, we will use the process described above.

Discretion not to impose a penalty

4.21 To ensure fair treatment of all on whom we impose a penalty, we will normally follow the above process in each case. However, we reserve the right not to impose a penalty in certain circumstances. These may vary, but will generally include the following:

[1] On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

- imposing the penalty would have no meaningful effect – for example, the value of the penalty is so low it would neither deter offending nor provide restitution for the wrongdoing
- imposing the penalty would be perverse – for example, the tests for a penalty are met but there is clear evidence that the offence arose from improper coercion
- it is not in the public interest to impose a penalty

5 Procedure for imposing a penalty

5.1 Section 147 of the 2017 Act sets out the steps that HM Treasury must take to impose a penalty, the rights that a person has to make representations and seek a ministerial review, and the right to appeal the decision to the tribunals. This section explains the processes involved.

5.2 Before imposing a monetary penalty on a person the Treasury must inform the person of its intention to do so. We will normally do so in writing. OFSI will:

- explain the reasons for imposing the penalty
- specify the penalty amount and how it has been calculated
- explain that the person is entitled to make representations, and specify how long they have to do so

5.3 OFSI will explain the reasons for the penalty by summarising our case assessment in enough detail to justify why it is appropriate and to allow the person to make meaningful representations.

Making representations

5.4 OFSI wants the process of making representations to be fair, proportionate and effective. A person may make representations about any relevant matters. These may include (for example) matters of law, the facts of the case, our interpretation of the facts, how we have followed our processes, and whether the penalty is fair and proportionate. You may also make representations on the effect that publication of the imposition of a penalty would have on you or your company (or both).

5.5 We may consider but disregard representations that are irrelevant. If we disregard a representation, we will explain why in our response.

5.6 Representations must be in writing and in a format that:

- summarises each point that the person wishes OFSI to take into account
- explains why these points are relevant
- explains how the person expects these points to affect our case decision or penalty level
- evidences any assertions of fact
- provides copies of supporting documents as required, with relevant sections highlighted as appropriate

5.7 OFSI does not consider it unreasonable to require representations in writing. It is not generally onerous for a person to set out in writing, clearly and briefly, their main points and the evidence we should consider. Consequently OFSI will not normally accept requests to make representations in person, but will consider any offer to do so. If a party feels that they are disadvantaged by being unable to make representations in person then they may make an application to OFSI stating their reasons, and we will take this into account.

5.8 Representations may be made by the person penalised or a properly appointed representative or agent. OFSI will usually require written evidence that a representative or agent

has been properly appointed before we will communicate with them about the person's affairs. Generally a letter signed by the person appointing the agent will be sufficient. OFSI is happy to discuss other forms of evidence or any particular needs a person may have.

5.9 OFSI will not normally consider representations by a third party unless they form part of the representations made by the person penalised or their agent; that is, they come under the cover of the person's representations. This ensures we take into account only representations the person wishes us to.

5.10 The person has 28 calendar days to make written representations from the date of our initial letter. We will not normally accept late representations. Persons or their representatives may ask us to extend this period and must provide evidence that it is reasonable to do so. We have discretion whether or not to accept the request, but will not unreasonably reject it.

5.11 If no representations are made within this period, the penalty is finalised and becomes payable. We will issue a written notice stating the penalty amount and how payment should be made.

5.12 If representations are made, we will consider them and review both the case assessment and the penalty level in the light of them. Potential outcomes include reaffirming our decision to impose a penalty, changing the proposed penalty amount, or deciding not to impose a penalty.

5.13 OFSI will normally consider and respond to representations within 28 calendar days after the final date of the period for making representations. However, we may extend the period if this is necessary to ensure a fair assessment of the representations. We will inform the person of any extension and estimate when we expect to be able to respond.

5.14 OFSI will write to the person or their representative with our final assessment, taking into account the representations. The penalty becomes payable at this stage. If the assessment means we still intend to impose a penalty, our letter will include advice on the person's right to seek a review, as set out in Chapter 6.

6 The right of ministerial review

6.1 Section 147 of the 2017 Act states at sections 3 to 6:

> *(3) If (having considered any representations), the Treasury decides to impose the penalty, the Treasury must—*
>
> > *(a) inform the person of its decision,*
> >
> > *(b) explain that the person is entitled to seek a review by a Minister of the Crown, and*
> >
> > *(c) specify the period within which the person must inform the Treasury that the person wishes to seek such a review.*
>
> *(4) If the person seeks a review, 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.
>
> *(5) A review under subsection (4) must be carried out by the Minister personally.*
>
> *(6) If on a review under subsection (4) the Minister decides to uphold the Treasury's decision to impose the penalty and its amount, or to uphold the Treasury's decision to impose the penalty but to substitute a different amount, the person may appeal (on any ground) to the upper tribunal.*
>
> *(7) On an appeal under subsection 6, the upper tribunal may quash the Minister's decision and if it does so may—*
>
> > *(a) quash the Treasury's decision to impose the penalty;*
> >
> > *(b) uphold that decision but substitute a different amount for the amount determined by the Treasury (or, in a case where the Minister substituted a different amount, by the Minister).*
>
> *(8) In this section, "Minister of the Crown" means the holder of an office in Her Majesty's Government in the United Kingdom.*

Process for ministerial review

6.2 OFSI will inform the person of our final decision to impose a penalty in writing. In the same letter we will explain their entitlement to a ministerial review of the decision.

6.3 The person will normally have 28 calendar days from the date of our letter to inform the Treasury that they want a review. This request must be in writing via OFSI.

6.4 The request must include:

- a statement that the person is using their right under s.147 of the Policing and Crime Act 2017 to seek a ministerial review of a monetary penalty for breaching financial sanctions regulations, and
- a summary of why they seek the review

6.5 The ministerial review will not normally be a way of introducing new material, and no further material is required from the person. It reviews the decisions OFSI have taken based on the material we have used to assess the case, after the person has had an opportunity to introduce any material they wish to at the representations stage.

6.6 Financial sanctions are currently dealt with by the Economic Secretary to the Treasury (EST), so the EST is the minister who will normally carry out the review. The EST may ask another minister to carry out the review (for example, in their absence). However, following the requirement at s.147 (5), any minister must carry out the review personally.

6.7 On receiving a review request, OFSI will prepare a report on the case for the minister that will explain the decisions we took and why. The report will be accompanied by all the material OFSI has about the breach, including any representations the person made.

6.8 To ensure a separation of decision-making and review, OFSI will not recommend a course of action to the minister. We will pass on the initial request and provide the report and material to the minister. The minister may question OFSI officials about the case.

6.9 HM Treasury will aim for most ministerial reviews to be concluded within 28 calendar days. However, this period may be extended if required.

6.10 After reviewing the case, the minister will make a decision. This may be that:

- the decision to impose the penalty and its amount is upheld
- the decision to impose the penalty is upheld, but a different amount is substituted
- the decision to impose the penalty is cancelled

This decision will be communicated in writing to the person.

6.11 Once the minister has decided to uphold a penalty, at the original or a different amount, the penalty is finalised and becomes payable.

How to make representations or request ministerial review

6.12 You must make both representations and requests for ministerial review in writing to:

Email:

OFSI@HMTreasury.gsi.gov.uk

Hard copies:

Office of Financial Sanctions Implementation

HM Treasury
Horse Guards Road
London
SW1A 2HQ

Procedural mistakes

6.13 It may be that OFSI mistakenly fails to fulfil part of this process within the requirements set in law or this guidance, and this is discovered during the process. If so, OFSI will always seek to remedy the mistake by returning the process to the point the mistake was made and progressing the case correctly from that point.

6.14 OFSI will not automatically cancel a penalty after issue simply because of a procedural mistake; but we will always review whether the mistake means we should reconsider the imposition of a penalty or its amount. This will help ensure a proper balance between the rights of a person on whom we impose a penalty and the public interest in ensuring the law is properly enforced.

7 Right of appeal

7.1 Section 147(6) of the 2017 Act allows a person, who has accessed their right of ministerial review, to then appeal (for any reason) to the upper tribunal.

7.2 Upper tribunal procedure is outside the scope of this guidance. It is not a process managed by HM Treasury. If a penalised person wishes to appeal, they will be informed of the procedure.

7.3 You can read the current upper tribunal guidance here:
https://www.gov.uk/government/publications/upper-tribunal-procedure-rules

7.4 During the appeal, the person who has been subject to a monetary penalty will have to produce sufficient evidence to convince the independent tribunal that a penalty should not have been imposed.

7.5 OFSI may expand this section to include more detail in later iterations of this guidance.

8 Paying a penalty

8.1 Once a monetary penalty becomes finalised and payable, OFSI will inform the person concerned how they should pay. Payment should be made with a reasonable time of the date the penalty has been imposed, and should not be unreasonably delayed. We are happy to discuss payment timing with persons subject to a penalty.

8.2 Section 146 (11) of the 2017 Act says: *Any monetary penalty payable under this section is recoverable by the Treasury as a civil debt.* HM Treasury will pursue non-payment of debt by appropriate means.

8.3 Section 146 (12) of the 2017 Act also says: *Any monetary penalty received by the Treasury by virtue of this section must be paid into the Consolidated Fund.* This means that the payment goes into the UK Exchequer's general funds for use by the government.

9 Publication of penalty details

9.1 Section 149(2) of the 2017 Act says:

> *The Treasury must, at such intervals as it considers appropriate, publish reports about the imposition of monetary penalties under section 146 or 148.*

9.2 OFSI will normally publish details of all monetary penalties it imposes, as a summary of the case. This helps to deter future non-compliance, and promotes increased awareness of good practice.

9.3 . This summary will set out the following:

- who the penalty has been imposed on – each person, company or entity
- the summary facts of the case, including breach type; sanctions regime; the regulation broken; and whether there was voluntary disclosure
- the GBP value of the breach, where this can be identified, and why OFSI imposed the monetary penalty
- the GBP penalty value imposed on each person
- compliance lessons OFSI wishes to highlight in this case, to help others avoid committing a similar breach
- other information required to give a true understanding of the case

9.4 We may draw attention to the imposition of a penalty through media relations, highlighting the case and the action we took.

9.5 We will not generally make public more than a summary of the case. To do so may increase the risk of financial sanctions contravention, particularly where a new technique has been used to circumvent the law. Any information not published may be exempt from release under the Freedom of Information Act 2000. We will review and consider any FOI request on its own merits.

9.6 There may be circumstances in which we decide that it is not appropriate or not in the public interest to publish a summary. Such circumstances may include where doing so has such an impact that a reasonable person would consider it disproportionate to do so. It is for the person to tell us (during representations) about any effect that publication of a report may have, and we will consider it at that point. We would normally expect to publish a summary, and the bar for not doing so will be high.

9.7 If we do not publish a summary, we will satisfy the requirement at section 149(2) by either publishing an anonymised report, or by including the case in statistical information and any aggregated reporting OFSI publishes.

Timing of publication

9.8 OFSI will not normally publish the case summary until after the final stage of the process described above has been completed. This could be at different stages in different cases, depending on whether persons subject to a penalty access their rights to ministerial review and subsequently appeal.