

Alert | Export Controls & Economic Sanctions



1 July 2022

OFSI Fines UK Company for Financial Sanctions Breach

The UK Office of Financial Sanctions Implementation (OFSI) announced on 28 June that it imposed a £15,000 penalty on UK company Tracerco Limited for breaching financial sanctions. Tracerco was found to have made funds available for the benefit of a designated person in breach of financial sanctions on Syria.

Tracerco provides measuring products and services to the oil and gas industry and made two payments totaling £2,956.43 to designated entity Syrian Arab Airlines (SAA) between May 2017 and August 2018 for flights to take an employee home. Tracerco booked the flights through a United Arab Emirates travel agency and then refunded the agency for the flights.

Tracerco voluntarily disclosed the breach which resulted in a 50% reduction of the possible monetary penalty, in line with OFSI's published enforcement guidance. OFSI can respond to a potential breach in several ways, including issuing a formal warning; if a regulated professional or body, referring them to their relevant regulator to improve compliance processes; publishing information relating to the breach, if it is considered to be in the public interest; imposing a monetary penalty; or, in the "most serious" of instances, referring the matter to the relevant law enforcement agency, the National Crime Agency. The array of measures available to OFSI highlights the significance of ensuring appropriately assessed and full sanctions related compliance policies and procedures are in place. In circumstances where a potential

violation is identified, the existence of such policies and procedures will be a valuable factor in any discussions with OFSI.

OFSI's recently updated guidance emphasises the value of voluntary disclosures which can reduce fines by up to 50% for those who give "prompt and complete" voluntary disclosure of a breach of financial sanctions. Where a person or entity makes a voluntary disclosure and the potential violation falls within the "most serious" bracket, OFSI retains a discretion to reduce any monetary penalty by 30%. When determining the level of reduction, OFSI will take into account various factors that might mitigate the penalty, including: whether all transactions in a related series of breaches were voluntarily disclosed; whether disclosure is complete and all evidence relating to the facts of the breach have been truthfully stated; the extent of co-operation throughout OFSI's investigation; and the timing of the disclosure and whether any action from OFSI prompted the disclosure.

Significance

This is the first financial penalty the UK has imposed since 25 June 2021 and serves as a reminder that financial sanctions breaches are possible when funds flow through a third-party intermediary, in this instance a travel agency. The case highlights the necessity of appropriate policies and procedures, including effective due diligence and screening of counter parties and others that persons and organisations ought to ensure are in place; reliance on a third party conducting its own due diligence is insufficient, more so if the third party is not a UK company and is therefore not required to comply with UK financial sanctions.

In addition, it is notable that the amount Tracerco paid to SAA, less than £3,000, is relatively low and much lower than the £15,000 penalty OFSI imposed on the company, even after the 50% reduction for the voluntary disclosure.

Furthermore, OFSI was satisfied that Tracerco knew or had reasonable cause to suspect it was in breach of the financial sanctions regulations. However, for breaches that occur after 15 June 2022, OFSI can impose civil monetary penalties simply because a person has breached the financial sanctions regime. As a strict liability offence, OFSI is no longer required to prove that a person had knowledge or reasonable cause to suspect they were in breach of financial sanctions; however, it remains a factor for OFSI when considering what enforcement action it may take and monetary penalties it may choose to pursue.

OFSI considered that Tracerco's breaches were of an indirect nature, were not deliberate and were of a low value to be mitigating factors. OFSI also took into account that it had no previous interactions with Tracerco regarding breaches of financial sanctions. It also considered the steps its parent company took to improve the group's compliance function after the breaches had been reported and its full cooperation with OFSI throughout its investigation.

Out of Time

The original disclosure made by Johnson Matthey on behalf of Tracerco detailed four payments made over four years. Only two of the four payments were actionable, however, as the first two were made prior to the commencement of OFSI's powers to impose monetary penalties, under section 146 of the Policing and Crime Act 2017 (which came into force on 1 April 2017). As detailed in the report from OFSI, and consistent with the recently published updated guidance on monetary penalties, these inactionable payments were "*taken into account as being part of a pattern of breaches by Tracerco which was an aggravating factor.*" Other than the date of enforcement of the relevant regulation, there is nothing within the guidance, regulations or implementing legislation that prescribes a limitation period for

actionable violations of the UK sanctions regime. The Tracerco case confirms that pre-regulation violations, however, are aggravating factors for the purpose of assessing the seriousness of the offence and the value of a monetary penalty.

In certain cases, however, where OFSI refers an investigation to a law enforcement agency (the National Crime Agency), there is a statutory limitation imposed on “*summary only*” criminal offences.¹ The relevant regulations require that proceedings for an offence which is triable summarily only may be brought within 12 months, beginning with the date on which sufficient evidence to justify the proceedings comes to the prosecutor’s knowledge. In any event, summary only proceedings must be brought within three years after the commission of the offence.

Conclusion

OFSI has, since January 2019, imposed only seven penalties for breaches of financial sanctions, and it has not been quick to act. Tracerco made its voluntary disclosure on 9 January 2020, and the penalty was imposed on 19 May 2022, nearly two and a half years later. Anecdotally, this time period is consistent with U.S. sanctions enforcement case timelines from report to imposition of penalty (particularly through COVID-19 work disruptions and office closures). As a result of the recent updates and expansions to the sanctions regime following Russia’s invasion of Ukraine and the measures OFSI recently has taken which emphasise enforcement, OFSI’s enforcement activity and penalties may increase over the coming months and years. That said, a 30 June 2022 Foreign Affairs Select Committee report calls for a “substantial increase in funding and expert resourcing” for the National Crime Agency, Serious Fraud Office and other agencies responsible for enforcement. The report concludes that “without the necessary means the enforcement agencies are toothless.” It remains to be seen whether sufficient resources will be allotted to speed up enforcement, but it could mean more enforcement cases are pursued generally.

According to OFSI’s Annual Report, in the financial year 2020 to 2021 OFSI considered 132 reports of potential financial sanctions breaches, not all of which will be deemed breaches following an investigation. However, the slow increase in self reporting (99 in 2018/2019) indicates OFSI’s campaign has increased awareness and led to better-established compliance procedures.

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¹ *Summary only* offences are criminal offences considered of lower severity, tried only in the magistrates’ court and have a term of imprisonment limitation of 12 months.

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