HOUSE OF COMMONS

# Foreign Affairs Committee

## Oral evidence: Responding to illicit and emerging finance, HC 168

Tuesday 18 October 2022

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Watch the meeting

Members present: Alicia Kearns (Chair); Chris Bryant; Liam Byrne; Neil Coyle; Stewart Malcolm McDonald; Bob Seely; Henry Smith; Royston Smith; Graham Stringer.

Questions 1 - 48

### Witnesses

I: Oliver Windridge, Senior Adviser at The Sentry; and Maria Nizzero, Research Fellow, Centre for Financial Crime and Security Studies, RUSI.

II: Adam M Smith, Partner at Gibson, Dunn and Crutcher LLP.

Written evidence from witnesses:

https://committees.parliament.uk/writtenevidence/107151/html/

https://committees.parliament.uk/writtenevidence/107104/html/

# Examination of witnesses

Witnesses: Oliver Windridge and Maria Nizzero.

Q1 **Chair:** Welcome to the meeting of the Foreign Affairs Committee on illicit finance. I would be very grateful if our two guests could introduce themselves.

***Maria Nizzero:*** I am Maria Nizzero, a research fellow at the Centre for Financial Crime and Security Studies of the Royal United Services Institute.

***Oliver Windridge:*** My name is Oliver Windridge. I am a senior adviser at The Sentry.

Q2 **Liam Byrne:** Maria, can I kick off with your perspective on whether you think that sanctions policy is something that the whole of Government now contributes to, or is it still bedevilled by a bit of a silo mentality?

***Maria Nizzero:*** Can you reframe the question? Do you mean in terms of illicit finance or the responsibility of finance?

**Liam Byrne:** Sanctions policy and illicit finance are the two things we are interested in.

***Maria Nizzero:*** It depends on what is the ultimate goal of sanctions. When we talk about anti-corruption sanctions, then potentially the reason illicit finance is the focus is, when we talk about geographic sanctions, that is a foreign policy goal, which might serve in the fight against illicit finance but less than, for instance, anti-corruption sanctions.

Q3 **Liam Byrne:** When you look at the way the UK Government operationalises this, do you think it is something that all Government Departments are now pulling effectively towards?

***Maria Nizzero:*** Generally speaking, the whole response of the UK to illicit finance has been definitely fragmented and unco-ordinated. Not exclusively in the matter of sanctions but when talking about how different Departments—Treasury, Home Office, FCDO—all approach the issue of illicit finance, it is unco-ordinated. It is fragmented. All Departments do tackle paths of what is a very multifaceted problem, but they all work in silos.

There is very difficult communication between each Department. At the same time, we are talking about a framework, which is the economy crime framework in the UK, that is fragmented. It has multiple agencies all working on the issue—multiple regulators and multiple supervisors. In comparison to other countries, such as the United States, who have adopted a more whole-of-a-system approach, I would not say that the UK has done the same.

Q4 **Liam Byrne:** What are the consequences of that fragmentation?

***Maria Nizzero:*** An unco-ordinated response to illicit finance means that we might try to tackle the issue from one side while you have criminals

and dirty money coming from the other. Therefore, we are leaving one side exposed where we are focusing exclusively on one matter. To bring back the issue of sanctions, we have been focusing potentially too much on sanctioning individuals while, on the other hand, there were other types of reform, such as Companies House reform, that would have been much more beneficial in the fight against illicit finance.

What happens is that while we focus exclusively on one matter without thinking of the bigger context, and without having all agencies working on the bigger context, your response is going to be targeted but not as effective as if it was a whole-of-a-system approach.

Q5 **Liam Byrne:** Is the implication of that that there are bad guys who are getting away with things because we do not have our act together?

***Maria Nizzero:*** Basically, yes.

**Liam Byrne:** That is quite a shocking statement—a shocking analysis.

***Maria Nizzero:*** For a long time—I would say over the past 20 years—every scandal, money laundering scandal, illicit finance scandal that you have seen has seen London and the UK as part of it. Whether it was as a destination country—and I am talking about real estate purchases, art, lawyers and professional enablers in general that are helping dirty money coming into our country—but also as a transition country. Therefore, money coming and leaving, affecting the security and the economic stability of other countries as well. Yes, the UK has had a dirty money problem for a long time because of a lack of co-ordinated response.

Q6 **Liam Byrne:** Given we are one of the world's great financial centres, surely there was a responsibility on us to put in place a best-in-class response that may have deterred this kind of crime?

***Maria Nizzero:*** Absolutely. My research has highlighted how, time and time again, international partners are feeling that there is a sort of holier than thou attitude from the UK, pointing the finger at vulnerabilities in other countries, without necessarily coming clean and being honest and trying to fix the vulnerabilities at home, while its response to illicit finance should be aiming at the two: tackling domestic vulnerabilities while also keeping an eye out internationally.

Q7 **Liam Byrne:** Government have obviously made quite a substantial number of changes this year because of the response that was needed to the Ukraine war. Do you think that we have now successfully tackled the fragmentation that you describe?

***Maria Nizzero:*** I would not say this. One example is the fact that the FCDO is currently not fully integrated in such a response, which is staggering to me. Given the transnational element of illicit finance, the fact that the Foreign Office is not included in most of the talks—both domestically but also in international forums where they see the participation of the UK—is quite indicative of how we are still far from having that sort of co-ordinated response.

Q8 **Liam Byrne:** Despite all the reports and all the books, despite being months into this war and despite all the sanctions we have issued, we still do not have our act together?

***Maria Nizzero:*** We have made some progress; I do not want to be completely negative. The reforms that we saw in the Economic Crime Plan 1 were welcome. The same ones that are being discussed right now in the Economic Crime Plan 2 are also welcome, Companies House reform being one of the main ones. The work on sanctions has also been welcomed. Oliver can talk more about those.

In terms of what the FCDO has been doing, the fact that we have SOCnet under the umbrella of the FCDO and that we have illicit finance leads from the FCDO in global financial centres such as Singapore, Hong Kong or the UAE, definitely has helped. There is more to do because the issue was very big and we have just recently started to understand the proper impact on national and international security and also in our economy.

Q9 **Liam Byrne:** Given that fragmentation and progress, how easy is it for bad people to circumnavigate our sanctions policy and our defences against illicit finance?

***Maria Nizzero:*** In terms of circumnavigating sanction policies, I might leave the answer to Mr Windridge, but generally speaking the UK still has a lot of vulnerabilities that we need to tackle. Mostly I would focus on what we are working on right now, which is Companies House reform, but there are other things, once we are finished with that, where we definitely need to go more integral—for instance, lawyers and accountants. There are also supervisors: how well are the professional enablers supervised? The art market is another element that I would focus my attention on. Therefore, there are still vulnerabilities. We are slowly getting there. The problem starts with having the leadership and the accountability, which have so far been lacking.

Q10 **Liam Byrne:** Why do you think, after all this time, after all this evidence, it is still not good enough?

***Maria Nizzero:*** One response that I always give is that, for a long time the UK has adopted this approach of being global Britain, open for business. The problem is that we have believed for a long time that any type of business means good business. That is not true. There is good business and bad business, and most of the time if dirty money comes into the country it is not bringing anything aside from affecting our economic growth, affecting our way of life and also undermining the life of normal citizens. It is an actual epidemic right now.

I think we have had that attitude of believing that, by increasing transparency and adding protections, we would have undermined the UK economy. This is not the case. If anything, it has undermined our security.

Q11 **Liam Byrne:** It is almost like an ideological mindset problem

***Maria Nizzero:*** I would say so, yes.

Q12 **Bob Seely:** I want to ask a quick follow-up. You mentioned lawyers. How do they help illicit finance? Is it just obvious? There are different facets. Is it the fact that they control the flow of money, they legalise that flow of money? Surely, it is the finance houses that do that? Are you talking about the way that lawyers try to shut out campaigners using lawfare—intimidating journalists and such like? What is the role of lawyers specifically in the illicit finance that you can see?

***Maria Nizzero:*** First, not all lawyers are bad, not all lawyers are working for kleptocrats or criminals. It is basically everything that you have described so far. One element that has been very important recently is active financial measures, so the way that you have these malign actors using what are completely legal tools, meaning professional services by lawyers or libel suits, to pursue their anti-democratic goals—the fact that some of these lawyers have accepted money to, for instance, silence journalists. This is one of the many ways in which they have put their services to the wrong use.

***Oliver Windridge:*** I think Maria is completely right. The UK has been on a journey since Brexit in terms of the UK's use and implementation of sanctions regimes. One of the areas where lawyers are becoming more and more au fait and are frankly earning lots of money is through advisory services around sanctions—obviously not evasion of sanctions, but how sanctions can affect a person in the UK and what can and cannot be sanctionable conduct.

There is an ongoing need to be able to address this sort of emerging industry around sanctions advice and how that will fit into the UK's approach to this.

Q13 **Bob Seely:** Just a follow-up, with potentially quite a brief answer if you could, only because I want to try to make this as simple as possible not only for myself but for other people to understand. Maria and Oliver, if you are unhappy with the structure, what would you do with it and how would you make it clearer so that we are more institutionally able—the point that Liam was building on—to tackle illicit finance flows through London? What would a better structure, a better system, look like?

***Oliver Windridge:*** From a sanctions point of view—and this Committee has already done good work on reporting on this—we are in a fragmented state, and that has not been addressed around the way sanctions are imposed in this country. As you know, the FCDO issues designations, and it is then for the Treasury through OFSI to implement the financial sanctions.

I think we need a unified force, something like you would have in the US, where we have one body that is both issuing sanctions and then following up on them. I do not know about the internals but, from my discussions with Foreign Office officials, there is a chasm there—I will put it that way—between when the sanctions go out the door and when they are implemented. That would be something I would do straightaway.

Very briefly, the other thing I would do is look to improve, and where possible increase the amount of, the information that is provided when designations are made, in terms of the ability for de-listing. If sanctions are supposed to be behavioural change policy at all—you are trying to get people to change their behaviour—you have to be able to provide a clear road map to how they are going to do that. If you do that, I think it is a double-edged sword—it has two effects. First, it becomes clearer to the designated individual how they can have those sanctions removed. It also has a secondary effect of making very clear to individuals who are currently not being sanctioned the kind of action that can be used by the UK Government moving forward. I will leave it there.

Q14 **Chair:** Can I take you back to your first point about that chasm? Why do you think they haven't tackled this? If they recognise that that would have been the better model to pursue, what do they claim is in their way to stop them doing that better model?

***Oliver Windridge:*** I certainly would not want to speak for either the FCDO or OFSI. Clearly, a decision was made that it would be within the Treasury's remit to look at the implementation of sanctions. I think that goes back to historical issues around how the Treasury has dealt with implementation before Brexit. Frankly, all I have heard is an ongoing concern among various people within the civil service as well as civil society that there continues to be a lack of co-ordination between those two Departments. I don't know why.

**Bob Seely:** Which two Departments, sorry?

***Oliver Windridge:*** The OFSI and FCDO sanctions teams. I have had it explained to me that when the sanction goes out the door, it is an OFSI matter. I sort of understand that, but I do not understand why there cannot be more co-ordination between those two Departments. FCDO staff who may be listening will roll their eyes at this, but I always say to people, "The work begins when sanction designations happen. It is not the other way round." Then they will say, "Well, it takes ages to get these things." I understand that, but once a designation happens is when the hard work begins. With that, we need more co-ordination between the two. I would also add the National Crime Agency, who are obviously, as I understand it, involved in looking at sanctions evasion and seizing assets. There needs to be a more codified approach to those three.

Q15 **Bob Seely:** You are looking at sanctions? Maria, you are looking at illicit finance?

***Maria Nizzero:*** Illicit finance is our—

**Bob Seely:** How would you structure the system better, putting it in simple ways to understand?

***Maria Nizzero:*** Three key words: refocus, rethink and resource. First, refocus: you need to understand what is the ultimate goal of what you are trying to achieve. Talking about sanctions, it has not been clear whether it is geographic sanctions or anti-corruption sanctions. On other things that we are doing, why are we doing Companies House reform?

Why are we pushing for specific changes in legislation? So first of all, it is about being clear.

Secondly, it means auditing the toolbox of mechanisms that we have. As the UK, we do have a lot of mechanisms. Legislation is often very good. The problem is that it is not implemented properly, or we simply do not use all the mechanisms that are at our disposal. My suggestion would be to just use the mechanisms. See which ones are working and see which ones are not, and then work on rethinking how to solve the challenges—the mechanisms that are not working at present.

Thirdly, there is resourcing. I often say, especially when talking about asset recovery, that most of the times it is not for a lack of legislation; it is more for a lack of resources and specialism within our enforcement agencies.

Q16 **Bob Seely:** Are you making a negative comparison between the UK and, for example, Italy, which has had years of experience and anti-Mafia? Obviously, you have a bigger Mafia problem than we have but, arguably, you tackle it in a more ruthless way because you have to follow these things through? Would that be fair comment?

**Chair:** If I may just add to that: I would be interested, given your expertise on the Mafia, to know what we have not learned from tackling organised crime that we should be learning when we are looking at what is, again, organised crime?

***Maria Nizzero:*** When we talk about racketeering legislation—it is not exclusively in Italy but also in the United States, and South Africa is another good example of racketeering—there is an understanding of the social impact and the security impacts that these Mafia groups have. Most of the time, when you look at the legislation, there is that social danger element that is not really present in the UK—rightly so because, as you said, the Mafia is not as present, for instance, in the UK, or as present as the Italian-American Mafia in the United States.

However, we do have, as the UK, a problem with kleptocracy—we do have a problem with dirty money, generally speaking. Therefore, there should be a shift in understanding, and that understanding needs to see dirty money as an issue of national security and as a danger to society as a whole.

I welcome, for instance, the inclusion in the integrated review of illicit finance. The integrated review mentions illicit finance but it should go much deeper. We talk about how much we are spending on defence, but how much are we spending on resourcing our enforcement agencies? That is what changes. That is the difference with Italy and the United States. Potentially, the FBI is very well resourced. The difference is that they understand the impact of the threat and they resource it properly.

Then we can talk about specialism and about how well, for instance, Italian officers in the Guardia di Finanza, which is the main body, and how well the NCA or some sort of supervisor body are trained. But the

problem is at the beginning: we do not understand how important it is to resource these agencies.

Q17 **Stewart Malcolm McDonald:** You have kind of answered the question I was about to ask you, which was: has the Government clearly articulated its policy aims in the sanctions regime? Would it be fair to say you think that they have not?

***Oliver Windridge:*** The UK Government have been on a journey post Brexit that they did not have to deal with before. When the UK was part of the European Union we were a leading light in the use of sanctions—restrictive measures as they are known in the EU. Therefore, the UK has been on a journey in terms of use of autonomous sanctions regimes. We had some before but we have a lot more now.

The concern for me is that the UK Government have yet to properly embed their sanctions policy within the illicit finance approach. Where they have done that, they have tended to focus on the second word, which is "finance", and not on the first word, which is "illicit". We have often thought of illicit finance and sanctions as being an issue of cleaning up the City, protecting banks. That is part of it. However, I do not think we have got to the place yet where we have taken a holistic view of illicit finance, which is to look at countries where kleptocracies exist, where state theft is the order of the day, and at how that not only affects our ability to be a financial centre but the UK's ability to be a global player, and emboldens those countries' leaders to target individuals, target journalists and invade countries.

***Maria Nizzero:*** If I may add to that, it is very important to establish what is the ultimate goal. What are we trying to achieve with sanctions? I am talking about both anti-corruption sanctions and Russia-related sanctions because so far the conversation has been, especially when related to the oligarchs and the kleptocrats, quite mixed. I think that we have to understand what the ultimate goal is with sanctions. Sanctions are a temporary measure. They are a political tool and they are aimed—originally at least that is the way they were devised—at changing behaviour.

Therefore, how do sanctions fit within the wider strategy of illicit finance? How do they interact with other mechanisms that we have within the arsenal going against national corruption and illicit finance? For instance, how does SAMLA interact with the Proceeds of Crime Act? How does it interact with the UK Bribery Act. Sanctions are potentially a first step but they are not the solution to illicit finance. You do not target a kleptocrat with sanctions and the idea is, "Once I have sanctioned them, I can do whatever I want with those assets." That has not been clear and it needs a proper reframing of the conversation.

Q18 **Stewart Malcolm McDonald:** The Government are this enormous organisation with several different Departments, non-Government agencies and all the rest of it. What sense do you get of the Government and all their different agencies and Departments co-ordinating well and

singing from the same song sheet? Do you get the sense that they are all trying to deliver on the same policy objectives? Where does that manifest itself positively? Where is there work to be done?

***Oliver Windridge:*** Two points. First, I have seen an emergence of illicit finance teams within various Departments of Government, which I think we would not have seen a few years ago. There is an illicit finance team within various Departments, so I think that is encouraging.

Again, to the point I was trying to make about cleaning up the City, the absence of the FCDO in a lot of these meetings is slightly concerning. We have a global bank of knowledge on any single country. In my work with The Sentry, where we targeted specific countries, we are not expecting other Government Department members to be experts on South Sudan, Sudan or the Central African Republic, but what we do know is that there are some global experts on South Sudan, Sudan and Central African Republic within the Foreign Office.

To me, what we need to do is ensure that, if we are going to look at illicit finance as an international problem—as an international security problem, a finance problem and all of this—we need to ensure that we are using the assets that we have in the UK within the Foreign Office and moving them, or having them available to, various Departments, because in that way we are using resourcing. We do not have a huge amount of resourcing, but in that way we use it in the best way possible.

***Maria Nizzero:*** If I may add to this, including the FCDO—absolutely, yes. The FCDO can provide an enhanced understanding of the threat. That is not exclusively with their original leads, but more generally they are seeing how illicit finance takes place in different countries. So there is enhanced understanding of the threat.

Secondly, generally speaking, there is engagement with our international partners. They are the diplomatic bodies. It would be quite natural for them to play that role much more actively than they have been doing so far. Generally speaking, they could also play a much bigger role in terms of co-ordination with other Departments within HMG. I would love to see the FCDO more present in domestic forums. When we talk about the Economic Crime Plan 2, for instance, where has the FCDO been? Honestly, I have not seen it, and I have participated in all the workshops. So it is about domestic forums, but also international forums—helping other Departments, such as Treasury, in front of national and international bodies such as the Financial Action Task Force.

Those are two things that help. Creating the co-ordinated response I was talking about at the beginning is the thing that helps the whole-of-system approach that we were discussing.

Q19 **Henry Smith:** In your view, how could adopting a network approach to sanctions on kleptocrats and corrupt actors have improved the impact of those sanctions? Are there any examples of jurisdictions where that has worked particularly well?

***Oliver Windridge:*** In my view, with the work that I do at The Sentry, particularly around corruption and kleptocracy, a network approach to sanctions is absolutely essential. What we are talking about is, rather than targeting one individual, which may have some impact, go after the entire team—go after the entire group that support and implement these kleptocracies. I think this is something that the UK needs to look very carefully at.

The advantages are clearly that you are trying, in some ways, almost to mimic the kleptocracy itself—the network of individuals and enablers who are required to run it. You are going after those individuals and those entities as well. You are trying to have maximum impact—the biggest bang for your buck.

The problems with it are pretty obvious. It is a lot of work. Speak to somebody in the US Treasury in OFAC, which deals with sanctions in the US, and they will tell you how much work it is to put together a network-style approach to kleptocracy and corruption sanctions.

But it does, hopefully, provide the biggest impact, and I will give you an example—I have done my homework, so I have it in front of me and I can be brief. I think it is an example that I probably put in the evidence. The Israeli businessman, Dan Gertler, was intimately involved in the mining industry in the Democratic Republic of Congo under the former President, Joseph Kabila, and this is what the US did in terms of sanctioning: it did not just sanction him as somebody involved in serious or grand corruption. In December 2017, it sanctioned Dan Gertler, but it also sanctioned one other associate of his, so an enabler of his—a business associate. Then, 19 companies were sanctioned on the same day—19 companies that were owned by or involved with Dan Gertler. In June 2018, the US then sanctioned 14 more companies—as more information and more leads were received, the US added another 14 companies. Then, in December 2021, it sanctioned another associate and then another 12 companies.

In that example, action over four or five years amounted to about 50 different companies as and when they became available. I would say that is the gold standard, as far as I know, of this network approach. That is the kind of action that you can take. If you take that kind of action, it is a lot of work. It is hard to do, but you then start to see a dramatic impact on that sort of case.

Q20 **Henry Smith:** Just as a brief follow-up to that. Do you think the reason the UK Government have perhaps been reticent on the issue of sanctions is that complexity and the burden of the work, which a jurisdiction like the United States frankly has more resource to do?

***Oliver Windridge:*** I think it comes down to the issue of resourcing that we have talked about and probably some sort of policy within the FCDO sanctions; that kind of action takes away resourcing—not just people, but resourcing from other counties, other regions, where other corruption work could happen. It is sort of resourcing in multiple ways. I also think,

when you do this kind of action, you expose yourself to a much greater litigation risk. All of a sudden you have these other individuals, these other companies, who may well want to challenge it and, as we know in the UK, we have a different system to the US in terms of the ability to appeal.

Q21 **Bob Seely:** That is important. You are basically saying lawyers have more clout to take on Government here. Why?

***Oliver Windridge:*** As I understand it, SAMLA—the primary legislation—has built-in appellate. You can appeal to the Minister once you have been designated, and then you have an automatic right of appeal to the High Court. The US does not have that same system. As I understand it, and I am happy to be corrected, it is very difficult to appeal or challenge a US sanctions designation, over and above that you have the wrong Oliver Windridge.

Q22 **Bob Seely:** I thought it was a question that, if we use the House of Commons to say, "We are sanctioning Mr Dispatch Box, and these are the reasons why," it becomes more difficult for them to challenge it, because the Government would repeatedly use privilege to do so. Is this a bit of a marginal issue, or am I missing something?

***Oliver Windridge:*** I think that is absolutely right. There is a place for parliamentarians to be absolutely calling these issues out. The way that SAMLA has been built—

**Bob Seely:** The Government are calling these issues out.

***Oliver Windridge:*** Sorry, Government are calling this out. I do not think it is a bad thing to have automatic rights of appeal to challenge your sanctions designations in this country. There are reasons why we have that—and good reasons—but it does mean that the litigation or the ability to challenge your sanctions designation in this country is clearer and, essentially, goes externally—you then have a High Court judge making a decision. That is a good thing, to have an independent judge making a decision, but it also means that the Foreign Office then loses a bit of control as to how it can protect and how it can go about litigating cases, because an independent judge will be ruling on these cases.

Q23 **Liam Byrne:** Can I just follow up one issue that has come up a little? It is that crime fighters will often say that part of the challenge is that evidence is offshore in jurisdictions that are hard to access or are not co-operative, and that gets in the way of bringing successful sanctions or prosecutions. Is there a way in which we can begin creating onshore offences—for example, a failure to disclose something—that can then begin to open up a civil route, not just to freezing assets but to seizing assets? How do we get around some of these legal dilemmas?

***Maria Nizzero:*** First of all, it is very important to make a very clear distinction on what sanctions can and cannot do. Sanctions can freeze assets; they cannot lead to seizure or permanent confiscation. When we talk about seizing and confiscating, we are talking about completely separate legal proceedings that need to be human rights-compliant, due

process-compliant and rule of law-compliant, which we all love in this country. What sanctions can do is highlight an issue.

More specifically, anti-corruption sanctions block more assets and more dirty money from coming into the country. If we want to move from freeze to seize, we need to look not at SAMLA, but at the Proceeds of Crime Act, which is our asset recovery bible. In terms of what we can debate, yes, dealing with the proceeds of kleptocracy is complicated, even for the most advanced jurisdictions out there—I am not saying there is a country that is doing well in going after the proceeds of kleptocracy—but some countries are doing better than others, and it all comes down to understanding the issue.

For instance, the Italians are very good in asset recovery because they have seen organised crime as a matter of national security, as a danger to society. Going after assets that may be undermining security interests is what allows them to stretch not the law but certainly the understanding of what an asset can be and what unlawful conduct could be.

Q24 **Liam Byrne:** Are we taking it as seriously as the Italians at the moment in this country?

***Maria Nizzero:*** I am Italian, so I do not know. Are you taking me seriously?

***Oliver Windridge:*** Can I just add something to that? That is a very good question in terms of what more we can do. Of course, as well as freezing assets, what sanctions do is create this potential criminal liability around sanctions evasion and this is what we are seeing a lot of thinking and a lot of writing around—as we increase the number of sanctions we have, the evasion of sanctions, not just those who assist, or try to assist, in the moving of assets.

With sanctions, at least in theory, we do create this additional layer of criminal liability around evasion of sanctions. This is another route that the US and the EU, in particular, are really keen at the moment to try to understand—what sanctions trigger this potential evasion? How can we use that as a way to go about seizing assets rather than just freezing them?

***Maria Nizzero:*** If I may add to that, this is a solution post sanctions, so it is post designation. It does not deal with the bigger matter of kleptocracy or illicit finance. It deals with assets that have been used to evade the sanctions themselves. So, in terms of recoverable property, it is going to be very limited. It is a route that the US has been following and pushing for and that we should be looking at. However, it is not the answer to the bigger issue that most of the individuals who are currently placed on, for instance, Russia-related sanctions should have had their assets confiscated a long time ago.

Then again, we are talking about an issue that is not sanctions-related but is proceeds of crime-related, which is much more complex legally than placing sanctions. We come back to the matter that sanctions are a

political decision; they are a temporary measure. It is very easy to place somebody on a sanction list. It cannot be brought in evidence in court, so, if I were to build an asset recovery case, that sanction designation is basically useless.

Q25 **Stewart Malcolm McDonald:** Can I ask for your opinion on a broader issue? A few weeks ago, myself, Bob and Liam were in Ukraine, and our counterparts would like the UK, the EU and the US to bring forward sanctions on members of United Russia, which is Putin's political party, which I think—I am sure Bob will correct me if I get this wrong—is somewhere between 4 million and 6 million people. What do you think of that idea? On the face of it, I can see the attraction of that. However, how do you do that with so many people, and would it actually do much in practice? I want your opinion at a very surface level on it.

***Oliver Windridge:*** The idea of sanctioning 4 million to 6 million people based on their political party membership—

Q26 **Stewart Malcolm McDonald:** Would it be easier to proscribe United Russia in the UK, for example?

***Oliver Windridge:*** We always talk about the use of targeted, smart sanctions and pinpoint, laser-focused sanctions.

**Stewart Malcolm McDonald:** That does not sound focused.

***Oliver Windridge:*** It does not sound overly focused to me; it does not sound particularly targeted. It would be a strong statement, it would be a strong message; sometimes sanctions are a messaging tool, and sometimes that can be the appropriate thing to do. I am not sure if it is necessarily the most appropriate thing to do in that case. I would also just imagine the headache of trying to implement those sanctions in any meaningful way.

**Chair:** Get the membership.

**Stewart Malcolm McDonald:** It would be a job recruitment exercise for the FCO, if nothing else.

***Oliver Windridge:*** We keep going back to resources. Even if you were going to try to do 1% of that, it would take away the resources. As a statement—as messaging—it might be powerful, but as a practical matter we may need to think about it.

Q27 **Stewart Malcolm McDonald:** If you decide to do it on messaging, it is easier to proscribe the organisation, surely.

***Oliver Windridge:*** Precisely. That has happened on a number of occasions, yes. That may be a way of getting that kind of messaging across.

Q28 **Chair:** Are there any points that you wanted to make to us today or key points that we have not asked you about or allowed you to raise?

***Maria Nizzero:*** I would say it all comes down to being clearer about the goal and what we are trying to achieve: what is the purpose of sanctions? Where do sanctions fit within the wider framework against illicit finance, and do we want to include them in a much wider response to illicit finance?

It all comes down to being very clear and honest about vulnerabilities, about our own deficiencies. It is also about being open to devising new mechanisms, and potentially not seeing sanctions as a one-size-fits-all solution, because sanctions are very quick. I know that they are one of the tools that are more easily at someone's disposal. However, they do not fix the wider issue. They are just one tiny tool in a much wider arsenal.

***Oliver Windridge:*** The only thing that I wanted to discuss is this. The UK now has an anti-corruption sanctions regime. It is on the books. It is available to be used. We have to seriously look at the way that that regime has been implemented and used over the last 18 months. As you will know, we have had a total of 27 designations since the regime launched, and 22 of those happened on the day it launched, so in the last 18 months we have had 13 designations.

There are reasons for that. Russia has taken precedence, and we know that is the case. However, we need to look carefully at how the UK and the Government are using the tools they already have, as well as potentially widening the scope of the anti-corruption regime as well.

**Chair:** Thank you both ever so much. That was some really interesting testimony. I will pause and suspend us for a few minutes.

## Examination of witness

Witness: Adam M Smith.

Q29 **Chair:** Welcome to the second sitting of the Foreign Affairs Committee today. Could you kindly introduce yourself, Adam?

***Adam Smith:*** Of course. Nice to be here. My name is Adam Smith. I am a partner at the international law firm of Gibson Dunn & Crutcher in Washington DC. I am a former sanctions official in the US Government at the Treasury Department and at the White House.

Q30 **Chair:** Thank you ever so much for joining us. My first question is, as a former US official on sanctions, what were your great frustrations when it came to the UK and close allies in terms of our approach to sanctions, and what did you wish you could hold us to account on that you could now do?

***Adam Smith:*** It is a great question. To be fair, and not just to curry favour, the UK was always a very close ally of the US in the sanctions world. I spent a lot of time in London. This was pre Brexit and pre OFSI, and so in some respects the challenge we had was just that: it was a pre-OFSI UK. There really was no mailbox with respect to sanctions issues

writ large. That has in some respects been solved by the creation of OFSI and the empowerment of OFSI, so some of those frustrations do not exist anymore.

Oliver mentioned some of the challenges with respect to enforcement, and concerns about second-day sanctions. What happens with litigation? What happens with enforcement? There was and continues to be some concern, not necessarily with respect to targeting of sanctions but, rather, what happens after that—where the targets come from, how you enforce sanctions and how you think about unwinding sanctions.

There is less co-ordination on a globalised basis between the US and others, and in fact between others and others, without even dealing with the US. Of course, there are many other sanctions players now, so that frustration still very much exists.

Q31 **Liam Byrne:** One of the real scandals of this year has been the revelations about the sheer extent of Russian money, for example, that has been allowed to settle and stick to things here in London. Was it widely known in the US that London was an important capital for bad people to export money from countries like Russia?

***Adam Smith:*** Yes, I think that is fair to say. It is widely known that London was. Perhaps just as much, or in a slightly different way, elements of the UK offshore, be it the Channel Islands, the Caymans, BVI and the Isle of Man are very well known—certainly in my world—as places where the rules were perhaps not as strict as they should be, or could be, and allowed activities that perhaps should not have been happening.

Q32 **Liam Byrne:** What is your perspective on how the UK allowed itself to get into that position?

***Adam Smith:*** In some respects, it was a function—and, to be fair, the US is not innocent here; you could look at jurisdictions like Delaware, Nevada or South Dakota, that in some respects are easier to move money into and out of as well.

But there is a positive side to it and a negative side to it. The positive side, of course, is that countries like the UK and the US, which are paragons of capitalism, both in the negative sense and the positive sense, do want to allow the free flow of funds into and out of the country. That promotes wealth and allows protection of assets in ways that some countries do not allow. I do think there is a positive component about why not just Russians, but people from all over the world, have come to London or to the US for those purposes. At the end of the day, there was then an extreme version of this, whereby people were not asking enough questions about where money was coming from or who was being injured by the money that was being put into real estate in Kensington and otherwise. So, yes, that is part of the problem.

It certainly started with a benign—if not positive—understanding about the importance of having a free flow of funds and having protection of contracts or what-not, which happens in London, which might not happen

in other jurisdictions that people are coming in from. Yet it can then get perverted at the extreme if you are not careful. In some cases, that is what happened in the UK. Again, it was not just in the UK, and I do not mean to put the UK only in the target here—I do think other jurisdictions, including parts of the United States, have much to answer for in that regard.

Q33 **Liam Byrne:** Now that we are rather wiser, do you think there is a clear way in which we should be specifying the objectives of our sanctioning strategy and policy?

***Adam Smith:*** Sorry, I missed the last bit. Sanctions and what policy?

**Liam Byrne:** We have just been hearing about the importance of being clear about the purpose of a sanctioning strategy and policy. If you were writing recommendations for the UK Government now and you wanted to specify precisely what the objective of policy should be, what are the kinds of things that you would suggest?

***Adam Smith:*** You mean with respect to kleptocracy in particular, or more generally?

**Liam Byrne:** With respect to kleptocracy.

***Adam Smith:*** It is a great question, because there is a challenge, and the challenge is that you are not only dealing with illegalities but sometimes legalities. What I mean by that is that sometimes people collect money in dubious ways that are 100% legal in the jurisdiction in which they collected that money, and may be legal in jurisdictions like the UK or the US, whereas other times it is a complete pilfering situation. In some respects that is the challenge—to figure out exactly how to make that assessment.

We are having the challenge now on a transatlantic basis with kleptocracy and with the targeting of oligarchs, and trying to figure out the purpose. From a US perspective, just to give you an example, the oligarchs are not really being sanctioned—at least not directly—because of corruption or kleptocracy. They are being sanctioned in many respects, and oftentimes explicitly, because of supposed close ties with the Kremlin and the Putin Administration. That is a very different understanding about why you would sanction somebody. It is also true that they are oligarchs and that, in some cases, there is kleptocracy behind their gains, but that is not really the purpose.

To step back, one of the things that we need to be thinking about when we are thinking about sanctions—to put the cart before the horse, in a way—is the end of sanctions rather than the beginning. Sanctions, as the prior panel said quite correctly, are not a punitive tool, or at least they are not supposed to be. They are supposed to be a behaviour-change tool. They are supposed to be a tool that encourages and incentivises changed behaviour. Therefore, what I think we need to figure out is: what is the behaviour that we are trying to incentivise and what is the negative behaviour that we are trying to prevent? With respect to

kleptocracy, the evident one is that we need to prevent people from stealing, pilfering and taking money away from their own countries, their own people and so on. How that standard is rendered is difficult, as I said, because some jurisdictions, of course, allow pilfering as a matter of state law, whereas others do not. That is the challenge that we need to think through.

Q34 **Liam Byrne:** Excellent. That is very helpful. If you have a Government like ours, who are professing to want to see a rules-based order around the world, then some of the most important rules in any given country are to pay your taxes. At the moment we may well be allowing kleptocrats to effectively defund their states by smuggling out money and not paying taxes, for example.

***Adam Smith:*** That is exactly right. Of course, there are some jurisdictions that do not have taxes—parts of the Middle East, for example, and the Gulf do not have taxes—and so there is this interesting question in that regard. If you have an oligarch that is decamping to parts of the Gulf, for example, yes, they are taking money out of Russia and that is a problem, but they are not expected to, nor do they have to, pay taxes in their new jurisdiction. Again, it is this interesting overlay of our moral understanding of where money should go and the legal understanding of where money needs to go, which is different on a jurisdiction-by-jurisdiction basis. It may be rather different—and, we may even find, anathema—in certain jurisdictions. I think that is fair to say, and I think we could identify them if we wanted to.

Q35 **Bob Seely:** I will jump in on that. You raise a very interesting question about no questions being asked. Why were no questions being asked, or why were not enough questions being asked? Was it because the politicians had basically, back in 2010, or indeed under New Labour, said, "We love people who are stinking, filthy rich," and that was reiterated by Cameron and Osborne, who was then the Chancellor? Is it because of the financial power that the oligarchs and other people brought with them to the law firms and the banks, who then said to the political classes in this country, "This industry is too big to turn down and these geographical locations are just too interesting financially for us"? Was it a laissez-faire culture?

I am aware that the United States is not perfect either on this, but do you have an opinion, just watching from a distance, on why the UK did not ask the questions it did not, and why we got ourselves into all sorts of ethical messes with Russian money, the use of lawfare, and the flow of billions of pounds of cash to these tax havens? What was the reason?

***Adam Smith:*** I am going to give you a very lawyerly answer: I think it is all of the above, to be perfectly honest. In my understanding, one of the challenges—again, I am not a UK lawyer, but obviously I have been spending a lot of time in the UK and thinking about this—is that in many cases there was very little that you could point to that said that what they were doing—"they" being the helper class, the lawyers, the bankers and so on—was illegal. It may well have been unethical but it is not clear

to me that the law had caught up. The US is the same way with respect to beneficial ownership, for example.

It is not clear to me that any of it was illegal at the time, or at least lots of it. Some of it may well have been—I do not mean to suggest that it was all completely above board—but there are ways to move and skirt the rules, to abide by them by the letter if not by the spirit, and move forward in that regard. I do think there was a lot of it.

At the end of the day, systems like those in the UK and the US, which are open political systems that allow participation by private sector actors and what-not, can be subject to capture by moneyed interests. I certainly think there is a piece of that as well. You certainly see it on election financing in the US—you saw what happened in the 2000 election, which was part of that—and I think the same thing is true in the UK.

Q36 **Bob Seely:** What you are making reference to, if I understand it—correct me if I am wrong—is the initial flow of privatisation in the 1990s in Russia. Talking to people like Bill Browder, all this stuff was technically legal although it was criminal in almost any meaningful sense, apart from the fact it did not seem to break any laws, and if it did break laws they were laws that were not then prosecuted in that jurisdiction. It was very difficult to prove that it was illicit finance in any meaningful sense of being drugs money etc.

Was that the same in the 2000s and was that the same as well in the last 10 years, in the sense that this money may have been unhealthy, may have been very unethical, but was never strictly illegal?

***Adam Smith:*** It starts from there. If you think about "from the source of crime", you need to have an initial criminal act in order for there to be a source of crime or criminal proceeds. If there was not an initial criminal act—and if you look at the list of oligarchs that the US put together, the Forbes list, the vast majority of them—not all of them but the vast majority—got there because of, directly or indirectly, that initial privatisation. All of the energy magnates, mining magnates, transport magnates and so on, all of them, one way or another, came into their riches in the 1990s.

Then they built their money over time and they managed to invest in the US or in the UK quite substantially. In some respects, they even expatriated themselves and their funds so that they were British. Some of them became very established members of the British community and the US community as well. At some point it just becomes a very odd sort of question. Yes, it is problematic, where that money came from, and yet what is the problem? This is now 20 years or 30 years hence. How do we call someone out for something they did perfectly legally, because they were buddies with Yeltsin or otherwise, and who has now made a lot of money?

Q37 **Bob Seely:** Do you think the basic problem is that this money has created an unhealthy culture in both our countries, or is it the fact that these people have done the bidding of a regime which has become

steadily, increasingly authoritarian and sort of fascistic? Is it a political problem, is it an economic problem or is it a criminal problem?

***Adam Smith:*** It depends on the oligarch. I do think there are some oligarchs who, exactly as you said, have remained close with Putin and have continued to do his bidding both economically and politically. Yet there are some others who have very much removed themselves from that environment, and then it is just their money. There is no difference, really, between them and their money and their interests, and any other wealthy person who may want to weigh in.

Q38 **Bob Seely:** Are there specific oligarchs who you think are closer to Putin who are worth while just noting? Do you have an opinion on which ones they are?

***Adam Smith:*** There are some, and most of them have now been sanctioned by everybody—the UK, the EU and the US. Frankly, a good way to think about it is to think about those who continue to either live in Russia or have significant economic assets in Russia. Obviously, Russia is a jurisdiction in which if you are not close with Putin—as you found out with Yukos 10 years ago—you cannot keep your money. Those sorts of oligarchs, the ones who continue to have significant assets that are tied up in Russia, I would argue are the ones more likely to be much more tied to Putin than those who have basically established themselves independently, so to speak, from Putin, in places like London, New York and elsewhere through Europe, of which there are many as well.

Q39 **Liam Byrne:** A few minutes ago you talked about one of the risks of having an open political system and vulnerability to money coming in. You said you had seen that happen in the US in 2000, and then you said that you had seen it happen in the UK. Can you describe the channels by which some of this money comes into politics and just give us a sense of what you fear it does?

***Adam Smith:*** The US has been incredibly open, ever since the 1970s, with respect to allowing money in politics, and it is quite upsetting. There is a very famous case—Buckley *v.* Valeo—from the Supreme Court back then that basically said that political donations are a form of speech, which, of course—from a US perspective, freedom of speech is sacrosanct—allows almost unlimited amounts of funds. Then you add that to various litigation that gave rise to super PACs and dark money in the past 10 or 15 years, and you have just had an avalanche of funds that have come in. The way the money comes in is fairly evidenced. You do not know whose money it is because, from a US perspective, you do not need to always share that if it is a PAC, but broadly speaking it comes in through all sorts of sources.

Then you, almost by definition, have corruption, because it is so expensive to run for an election. Unless you are independently wealthy, which some people are—many people are not—there is obviously some payment that needs to happen. I am not suggesting that there is a clear quid pro quo, but businessmen who are putting money into the system are not doing it because they are necessarily altruistic. There is obviously

assessment of some benefit for them to do so. That is a real risk. Campaign finance reform is a big issue in the US, of course, but, because of the constitutional issues and the fairly right-leaning Supreme Court now, I am not particularly hopeful that any of that will happen.

Of course, the other piece of this that we are seeing in the US—and we saw this in the past couple of presidential elections—is untied funding as well; in other words, not funding for a particular candidate but rather funding for issues. Often, this leads to disinformation issues and real discombobulation in the system, again because the system is so open and so fluid. You can give money and put an ad on TV or on the internet on anything for any reason, really, with very few limitations. The fact that there is a free flow of funds in, I think, makes it very straightforward to influence if you wanted to.

Q40 **Liam Byrne:** You said that you feared the UK had similar vulnerabilities.

***Adam Smith:*** I do. My understanding—again, I am not a UK lawyer—with respect to the funding of the parties, for example, is that there have been significant funders who are oligarchs or other wealthy individuals. I do not know enough about whether there was a quid pro quo or otherwise there, but clearly they have the same incentives that rich people do in the US or elsewhere. They are not necessarily going to do this merely because they are altruistic or because they took a shine to some leader versus another.

My understanding—and I understand that some of this is quite controversial—is that the funding of the Conservatives and Labour over the past several election cycles has been somewhat challenging because of this influx of funds. I am concerned that the UK is getting the same players.

Q41 **Liam Byrne:** You say they are not altruistic. What are they seeking?

***Adam Smith:*** People with lots of economic interests have significant policy interests and regulatory interests as well, so one could only imagine that they are interested in those sorts of interests. From the US side, long-standing corporate investment in campaigns has given rise, directly or indirectly, to favourable regulatory regimes or favourable regulatory structures for different jurisdictions and for different sorts of corporate actors. I would imagine that this is something that is happening in every democracy, to be perfectly honest, but especially ones that allow significant flows of funds in.

Q42 **Stewart Malcolm McDonald:** Can I come to the issue of disapplying sanctions? Could you talk a bit about the importance of international agreement on disapplying sanctions and what could be the consequence of not getting proper agreement on disapplying sanctions?

***Adam Smith:*** You mean removing?

**Stewart Malcolm McDonald:** Yes.

***Adam Smith:*** It is a great question because, to be honest, the US—as I think you said in the prior session—is a very sophisticated player in sanctions, but if there is one area in which it is not sophisticated I would argue it is in this: the delisting component.

It is certainly possible to challenge—I know Oliver mentioned it, and he was 100% right about the challenges—but the more formalised delisting process is absolutely critical. At the end of the day, sanctions are not supposed to be punitive. They are supposed to lead to behavioural changes. That is the goal of sanctions as a legal matter. In the US, it is explicit, and I think in the EU and the UK it is as well. If that were not the case, of course, it would then become proceeds of crime, the actual seizure, and penalisation of people, rather than changing their behaviour.

In terms of getting the off-ramp right, in the oligarch case, for example, it is not clear to me what the off-ramp is. These oligarchs are still oligarchs and they are still going to be Russian, certainly by birth, and maybe by some sort of affectation. It is not clear to me what you need to do in order to get them off the list. If you do not get it right, how do you demonstrate the effectiveness of sanctions? It is important to think about that. You always want to figure out, on an after-action basis, whether this tool has worked or not.

If you do not get it right from a multilateral perspective, the same problem happens as if you do not get it right when you initially put sanctions into place. Sanctions are only as effective as the weakest link. If you are sanctioned in the UK and in the EU but not the US, that makes the UK and the EU measures that much weaker. Similarly, if you are sanctioned in those three jurisdictions, the three principal ones, and then one of them decides to take you off the list, the effectiveness of that take-off—in other words, the benefit of having changed your behaviour—is also limited, because you are still encumbered in London, Brussels, Frankfurt and so on, even if you are now off the list in New York.

That is absolutely critical, especially in the kleptocracy space when you are dealing with funds that flow. Interestingly, kleptocracy reminds me a lot of what I would argue is the most successful sanctions programme the US has, which no one ever thinks about, and that is the narcotics trafficking programme. The counter-narcotics programme is the most successful, and the reason it is successful, the demonstration of that success, is not that there are no illegal drugs in the US anymore—that is unfortunately not the case—but, rather, that the number of people who go on the list and then come off the list is significant. In fact, a significantly greater number of people come off the list in the narcotics programme than any other programme, because they have demonstrated that they have changed their behaviour and changed their stripes. There has been quite a lot of success. You can point to different cartels that have been worn down by sanctions, where people have basically turned tail and decided that they want to live straight and narrow.

I think that is what we would be hoping for in the kleptocracy space as well, but you would need everybody on board so that they understand

what the behaviour change is that they need and they are comfortable when they have seen it so that they can then remove people.

Q43 **Stewart Malcolm McDonald:** One of the other problems we have is around opaque company structures. For example, I am a Scottish Member of Parliament and we have Scottish limited partnerships. I could take you to an address in Edinburgh that has about 500 companies listed to that one address, and the chances are that at that address nobody has even walked through the door for several years. In circumstances like that, how can you ensure that sanctions are effective?

***Adam Smith:*** It is a great question, and again the US is not immune to this—Delaware, Nevada, the Dakotas and so on. That issue—the Byzantine structures—is absolutely critical. In fact, one of the interesting pieces that the UK and the EU do that the US does not do—which I think is powerful but a pain, to be honest, and challenging to implement—is dealing with the UBO, the ultimate beneficial ownership issue. On the US side, the way the ultimate beneficial ownership works from a sanctions perspective is they need to have demonstrated 50% or more ownership of an underlying asset for that asset to be sanctioned. If Adam Smith is sanctioned, anything I own 50% or more of is also sanctioned in the same way. In the EU and the UK, that exists but there is also a presumption of control and a control test. That means that, if Adam Smith owns 10% of something in the US, there is no question—it is not sanctioned. However, in the UK and the EU, there is an assessment of whether or not Adam Smith may still control that. If he does, that is sanctioned as well. It is very smart and, I think, reflects reality, but it is very difficult to implement, as you might imagine.

In some respects, that is how you deal with the situation you just mentioned, which is the shorthand way of saying that the ultimate beneficial ownership of a company is really hard to tell because of the Byzantine structures—the offshore jurisdictions and onshore jurisdictions that are more than happy to play host to hundreds, dozens, or thousands of companies at a single address.

Q44 **Bob Seely:** A couple of quick questions. We have had some evidence that we have the importation of a lawfare culture in this country—I think you call them SLAPPs in the US—where data privacy is abused by rich oligarchs and the law firms that are servicing them, as well as libel, which is very different in our country to yours, and the right to privacy. Oligarchs are using these as a way to attack journalists, campaigners and so on. I take it you do not have that in quite the same way or you do not have the emphasis so much on libel laws, but SLAPPs are an American idea if I understand correctly.

***Adam Smith:*** That is right.

**Bob Seely:** Have you also had the importation of this culture of kompromat, private investigators and so on? The Russians are using them on each other, but we have also had some indications that we have had private investigators used on former MPs, journalists and

campaigners as well.

***Adam Smith:*** It is a very different system in that regard. There is significantly less concern about libel, for example, as you said, which of course is one of the core tools in the oligarch toolbox in the UK. Among lawyers, bankers and consultants, there are good apples and bad apples in the bunch everywhere in the world. I am not suggesting that there are not lawyers, bankers or consultants who work with or for unscrupulous characters, and that is certainly the case.

I do not think it is the same model, I really do not. What you have seen in the UK, at least according to reports and my visits to London, is that there are entire sectors, some law firms, significant lawyers or otherwise who do spend a lot of time—maybe a disproportionate amount of time—working with, for and on behalf of those characters. I do not know if you have the same thing in the US to the same degree, maybe because the scale is bigger and so, even though very large law firms may well take on some of these clients, it is not a huge portion of their business. That might be a piece of it.

I think you are right, though. The ability for them to leverage the law in challenging ways to challenge those who challenge them, which is what the libel laws are doing in the UK, just does not exist in the US to the same degree. You can get sued in the US, of course, but it is a slightly different model and the risks, I think, are lower in the US if you want to say, or accuse somebody of, something.

Q45 **Bob Seely:** It is specifically the model of law firms, effectively, using a legalised form of gangsterism to go out and threaten, to go and find the enemies of that oligarch and to go and threaten that person, make their lives uncomfortable, wear them down financially and try to destroy them financially because they cannot destroy them physically, certainly not yet, in places like the UK. They use that instead.

***Adam Smith:*** Indeed.

Q46 **Chair:** I have a quick question. The previous Foreign Secretary and current Prime Minister said, when she appeared before us, that she was considering how assets could be seized in order for them to be used for reparations. Now, obviously there are questions around that in terms of respecting the rule of law alongside having an asset recovery programme. What would be your view on that?

***Adam Smith:*** I actually spoke before the US Senate on this issue about a month ago, and exactly the same concerns were raised in the prior session: you are not dealing with sanctions in this context; you are dealing with proceeds of crime—well, from a US perspective, you are not dealing with sanctions; you are but with asset seizure. It is a completely different Department of Government—not just law, but Department of Government—that deals with that.

I am not suggesting that there is not some potential cathartic benefit of that model of taking ill-gotten gains from oligarchs or otherwise and

giving them to the Ukrainians. I am just suggesting that perhaps it is more cathartic than helpful. The reason for that is not just the legal issues, which I think are important to be aware of, because the rule of law is critical, but that the amounts that we are talking about are minuscule compared to what Ukraine is needing. I am not suggesting that $1 billion here or there does not add up—of course it does—but when you are dealing with the hundreds of billions of dollars, if not more, that Ukraine needs to rebuild, it is not clear to me that it is worth risking a rule-of-law system, which we have built up over centuries in both of our jurisdictions, to do that, unless there is very good reason and a very good structure to do so.

Now, I did argue before the Senate that there is a way to do it, and the catharsis may well be important both cathartically but also from a deterrence perspective. There may be a deterrent component here as well. If oligarchs and others were aware that their assets could not just be frozen but could potentially be seized, there may well be benefits in that regard. I do think there are legal strategies you can use, but they are challenging and it does require new law, or at least a new thinking of the law, in order to maintain our commitment to the rule of law.

Q47 **Liam Byrne:** Just to pursue this point, about 2.5 miles from where we are sitting here in the House of Commons there is a 59-metre yacht called the Phi, which is said to be owned by Vitaly Kochetkov. It is worth $45 million. It has been frozen. Indeed, a former Minister made a little video standing next to it to showcase it being frozen. To confiscate and sell that yacht, what kind of legal changes would we need to make?

***Adam Smith:*** I think in the prior session they spoke about it. What you need to figure out is the underlying illegality. From a US law perspective, the way that works is that you need to demonstrate that that asset is linked to an underlying illegality. What the US is doing, which I think the prior session said as well, is that it is cleverly, in some components of the US Department of Justice—which is the Department that deals with the seizure, versus Treasury, which deals with the sanctions piece—looking at the evasion of sanctions as a predicate offence that can lead to the seizure of assets linked to oligarchs.

Indeed, the seizure of the asset the Tango, which is a very large vessel that I believe was seized in Spain maybe three months ago now, has been proceeding through US courts through that model. The allegations in the indictment, which are public, were basically that the individual, in order to upkeep that asset—which of course was sanctioned because the individual was sanctioned and he owned that asset, following the 50% rule I mentioned earlier—was required to move funds through the United States, which was illegal because of sanctions.

Therefore, the predicate offence needed was just that—a violation of IEEPA. That is the underlying legal basis upon which sanctions are granted in the US—the International Emergency Economic Powers Act. If you violate IEEPA, that is a violation in and of itself. It is also a predicate offence to allow potential seizure on the basis of an underlying illegality. I

think that is the same model, if I am not mistaken, as in the Proceeds of Crime Act here.

I do not want to suggest we should not be creative—we need to be creative—but I am very cognisant of the concerns about behaving loosely with our commitment to the rule of law. In the UK and the EU, again as was mentioned in the prior panel, it is even more important because the risk of litigation is that much more real in the UK and the EU than it is in the US, from a sanctions perspective in particular.

Q48 **Chair:** I am afraid we are expecting votes, potentially, in four minutes' time, so I have a final question: is there anything we should have asked or any point you wanted to make that we did not enable you to?

***Adam Smith:*** No, I do not think so. The UK and the US announced yesterday continued co-ordination or increasing co-ordination between OFAC, which is the sanctions arm of the US, and OFSI in the UK. It is incredibly promising to see that. The more you can do from the Commons side to encourage that co-ordination, the sharing of best practice, the sharing of intelligence, the sharing of enforcement strategies, and of course the sharing of de-ramping or ramping-off sanctions, the better off we will all be and the more effective the sanctions programme will be.

**Chair:** That is very helpful. Thank you ever so much for your evidence today. It is very much appreciated. We are going to sign off now and head off for multiple votes.