



European Affairs Committee

Corrected oral evidence: Implications of Russia's invasion of Ukraine for UK-EU relations

Tuesday 24 October 2023

4.05 pm

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Members present: Lord Ricketts (The Chair); Baroness Anelay of St Johns; Lord Hannay of Chiswick; Lord Jay of Ewelme; Lord Lamont of Lerwick; Baroness Nicholson of Winterbourne; Baroness Scott of Needham Market; Viscount Trenchard; Lord Wood of Anfield.

Evidence Session No. 4

Heard in Public

Questions 42 - 54

Witnesses

I: Tom Keatinge, Director, Centre for Financial Crime and Security Studies, Royal United Services Institute (RUSI); Maya Lester KC, Brick Court Chambers; Neil Whiley, Director, Sanctions and Export Controls, UK Finance.

Examination of witnesses

Tom Keatinge, Maya Lester and Neil Whiley.

Q42 The Chair: A very warm welcome to the European Affairs Committee of the House of Lords. We are continuing our inquiry into the implications of Russia's invasion of Ukraine for UK-EU relations. We are delighted to be spending this afternoon on the issue of sanctions and to have with us three real experts, two in person at the moment, Maya Lester KC and Tom Keatinge from RUSI, with Neil Whiley from UK Finance to join us shortly.

To start us off, perhaps each of you might say a word about your own background and your expertise in the sanctions area, and then go on to give us a broad overview of how you think the sanctions co-ordination has been working between the UK and the EU in the context of Ukraine and sanctions on Russia and Belarus in particular. Maya Lester, would you like to start?

Maya Lester: Thank you very much to the committee for inviting me. It is a great pleasure. I am a barrister, as you know. I have made my expertise in the area of sanctions that, since Russia invaded Ukraine, has exploded as an area of law, as you can probably imagine. I started doing sanctions work via the European courts (I am an EU practitioner) principally since around 2009-10.

As a self-employed practitioner, I am now very fortunate to be able to act for all different sides. I advise and act in litigation for private companies, individuals, charities and NGOs, but also people seeking to challenge sanctions designations and the Foreign Commonwealth and Development Office defending them, but obviously not in the same case. That gives me perhaps an unusual perspective on all sides.

Tom Keatinge: I am the director of the financial crime and security studies programme at RUSI, which I started in 2014. The first piece of live television I did representing RUSI was to talk about Russia sanctions in 2014, and one thing that might come out in the conversation today is how that post-2014 experience of the UK being at the EU sanctions table has informed what has happened since 2022.

The programme follows quite closely different sanctions regimes around the world. We ran a task force on the UK's post-Brexit sanctions policy in 2019-20 because it was clear that the UK was going to need a policy. We can discuss the extent to which that policy has or has not emerged in the subsequent years.

Q43 The Chair: Would you like to say a word about how you see the current state of co-operation? Then we will explore it in much more detail.

Tom Keatinge: I have had the opportunity to visit the British embassy in Brussels. This is my perception, but I would say the sanctions division is one of the few areas of the British embassy in Brussels where you do not sense Brexit. There is extremely close working co-operation. Indeed, in

the 2019 political declaration, as part of Brexit, there are a couple of paragraphs that essentially acknowledge that the UK will pursue an independent sanctions policy but that there should be close consultation, co-operation and sharing of information. All of that has been evident in what has happened since February 2022. Of course, there are areas of divergence. There are listings that the EU has that the UK does not, and vice versa. However, as someone who spends lots of time hearing people comment on the lack of co-operation between the UK and the EU on—I do not know—organised immigration crime and the like, I must say that the sanctions arena is one of bonhomie.

Maya Lester: I do not disagree with any of that. I had an opportunity to look at some of the evidence already given to this committee very much to the same effect, that there is close co-operation.

I just wanted to add a word by way of background. It is worth recalling that originally—in the pre-Brexit preparation for Brexit taking legal effect—there was an extraordinarily difficult task for the Government to try to carry over the whole of EU sanctions into domestic UK law. I say that because the intention was very much to continue EU sanctions in the UK post Brexit and that is what happened, under absolutely enormous pressure. We then had a new legal regime, the Sanctions and Anti-Money Laundering Act 2018, and 35 sanctions regimes drafted into regulations, with all the evidence for the thousands of people listed reviewed by the Foreign and Commonwealth Office and turned into UK legal powers.

Of course, once we have new UK legal powers, they permit the UK to diverge from that close co-ordination where it is considered to be in the UK's foreign policy interests to do so. One of the issues I hope we will come on to today are those differences, which I would suggest are not a lack of co-operation and co-ordination but a choice by the United Kingdom sometimes to diverge from what the EU has done.

It is also worth saying that when it comes to Russia, which is obviously the principal focus of this inquiry, the restrictions imposed by the US, EU and UK are very broadly similar. Roughly speaking, those three jurisdictions have done the same thing when it comes both to targeted restrictions and others, but there are some quite important key differences.

It may be that that close co-operation and co-ordination on Russia sanctions has a shelf life because it seems at the moment that there is indication from some EU member states, notably Hungary, Slovakia and others, that they may not be willing to go much further when it comes to EU sanctions on Russia. Of course, the UK does not have to co-ordinate with the EU and so we could see a future in which the UK goes further where the EU has not done so.

Finally, there is an attempt, as Tom said, to have similar sanctions designations; that is, the list of people and companies who are the targets of asset-freezing measures and travel bans. However, it is also worth pointing out that, given the enormous political pressure on the

Government here to put in place as many sanctions designations as possible in an incredibly short period of time, and to keep increasing those, the Government have a new power—known as the urgent procedure—to designate people in the UK simply because the EU has designated them—or indeed the US, Canada or Australia. We had a vast number of sanctions imposed extremely quickly, relying on the work of the EU and others, and there were then a maximum of 112 days for the Government to decide whether to turn those into UK listings. That is an ultra version of co-operation, I suppose.

The Chair: Very good. Pursuing the same theme, Lord Hannay.

Q44 **Lord Hannay of Chiswick:** May I start with you, Tom Keatinge? For the purpose of the record, I take that when you referred to the British embassy in Brussels you meant the British mission to the EU.

Tom Keatinge: I did.

Lord Hannay of Chiswick: Thank you. I thought my old outfit was being misnamed, unless the embassy has suddenly sprung into extra life.

Could both of you now look again at this issue of devising, co-ordinating and co-operating on sanctions with a forward look, not a backward look? The backward look you gave us in your first answer but I think the forward look is more important. It ought to cover also the growing evidence that third countries which are not imposing sanctions are being used quite successfully as conduits for evading sanctions and that has become more and more a feature. Therefore, do you think that the whole system could be or should be developed further and, if so, in what ways it could be developed further to make it more effective?

Tom Keatinge: If you will allow me a short run-up, obviously over the last 18 or so months—certainly the first 12 months—there was a full-tilt attempt to bring as many sanctions forward as possible. Over the course of this year, one of the main priorities of the UK, the EU and the US has been this issue of circumvention that you mention.

I would point to the fact that the British government representative, the EU representative, David O’Sullivan, and US government representatives regularly travel together to those countries to have conversations with them about ensuring that they understand what it is we are trying to achieve with the sanctions on Russia. Right there is a very evident example of co-operation: representatives of these three units are travelling together.

The other thing I would point to is that a lot of what you hear about sanctions related to Russia is articulated as “G7”. There are G7 co-ordination efforts on certain areas—an increasing number of areas—related to sanctions on Russia.

From conversations we have had with policymakers in the United States, you get the sense that on occasion they hang back from being more heavy-handed on sanctions because they want to ensure that co-

ordination across the Atlantic remains intact. The matter of appearing co-ordinated and co-operating is in the forefront of the minds of those three—I keep wanting to say “Governments” but I recognise that the EU is not a Government—sanctioning entities.

Now, there is a point that Maya mentioned, which is that there may well start to be divergence as sanctions fatigue begins to set in. Obviously, the EU acts as a consensus organisation and therefore there may well be things that the majority want to do but are unable to do because of spoiler nations. We might start to see evidence of co-operation and co-ordination between the UK and the US, as we saw in the case of the US designating individuals in Cyprus who were alleged to be supporting Usmanov. We may see that type of co-operation, where the EU cannot quite get there on certain elements but the US and the UK work together to back up what the EU has been unable to do.

There is a long way to go in co-operation and co-ordination. I think we will see much more of it, as it relates to Russia, as we continue. Looking forward, I feel quite positive that that picture will remain one of collaboration.

Maya Lester: Just a brief addition: I think Tom is right that the G7 has been key as the grouping of countries that have been driving forward policy on Russia sanctions. It is certainly true that the G7 has recently been making statements about making sanctions “evasion”, “circumvention”— words like that—a priority for enforcement across G7 states because of, as you say, the recognition that not all countries are enforcing the sanctions imposed by the US, EU and UK, and therefore Russia has been able to continue to support its economy and, indeed, prosecute the war.

I am in the happy position of being a lawyer and not a policy person, and so I would not presume to answer this question. But the question I suppose that this poses is: is that something that can be avoided—third countries that simply do not sign up to the sanction regimes imposed by western nations, as President Putin would have it? This has been enormously to the benefit of China, India and many other countries which are happily trading with Russia.

It is worth considering that sanctions on a power as powerful as Russia—a country and economy the size of Russia—with the aim being to stop a war, are a test for the use of sanctions that we have not seen before; in other words, we are trying to sanction an economy that can pivot to other countries that do not support western sanctions and we asking sanctions to do something enormously difficult, namely, to stop a war. This is sometimes seen as the great test of sanctions. There have been a lot of sanctions rolled out at the cost of or instead of diplomacy, certainly at the beginning of the war. That is a question about the effectiveness of the whole regime.

Lord Hannay of Chiswick: I honestly do not think there is anyone who believes that sanctions on their own can stop the war. Clearly, military

equipment being provided to Ukraine and so on plays a huge role and so sanctions are only part of the picture. That would be my personal view.

Could I ask you to consider, if the European Union continues to have difficulties in agreeing new sanctions and applying existing ones, to what extent a closer structured relationship with the UK would give an added, quite powerful voice in the internal EU discussions, where there are, after all, plenty of other countries that are of the same view as we are?

Tom Keatinge: At RUSI we are lucky enough to have a grant that allows us to audit how EU member states are getting on with implementing EU sanctions against Russia. One thing that we noted in an early visit to one country was the UK going to visit it and help it with developing its implementation structure.

It is important to recognise that before February 2022, the majority of EU member states had never had to do much work related to implementing sanctions because people in faraway countries did not have assets in—to pick a country—Poland, and implementation had not been something that had troubled them. It had troubled large financial centres such as the UK but few member states. The result was that their capacity to deal with the deluge of sanctions that came forward after February 2022 was very low. We found in a number of countries we visited that they recognise and acknowledge the support that they have had from the UK in advancing their capability to implement sanctions. That is point one.

Point two is that it is clear that it is not just policymakers' support that these countries have been receiving. The UK is clearly providing quite extensive information. In a way, that is no surprise because if you talked to people in the EU about what they were going to miss the most after Brexit from a sanctions perspective, there were two things: the bandwidth, expertise and experience of the Foreign Office on designing sanctions, and the intelligence and information that the UK brought to the table to support and underpin designations. Informally, that appears to some degree to be continuing.

In direct answer to your question, I think the UK has a tremendous role to play in supporting countries with which it has close relationships in the EU, to ensure that they develop or continue to develop the capacity to implement sanctions as effectively as possible.

Q45 **Lord Lamont of Lerwick:** The sanctions introduced since the invasion of Ukraine have been the first major test of the UK's post-Brexit sanctions regime. How effectively has this operated and what improvements do you think could be made? Perhaps Maya first.

Maya Lester: Overall, there is a very well thought-through and effective legal framework for the imposition of sanctions. In a sense, the UK benefited from its time as an EU member state, when it could learn from its experience with EU sanctions and improve on that with its own domestic legal framework. There are some areas where the new UK powers have worked very effectively and been beneficial.

One is that, of course—as we have been hearing—the EU has to act unanimously. The UK can be much nimbler and swifter from a policy perspective in imposing and strengthening sanctions.

Secondly—and this is a very significant development—the ability of the Government to permit, or license, transactions that would otherwise be prohibited is far more effective in the UK now than in the EU system. There is now a power in the Sanctions Act to publish what are called general licences; in other words, whole categories of conduct and transaction that the Treasury can say are permitted, without having to flood them with individual licence applications. For reasons I have never quite understood, there is no power in EU member states to grant general licences. There is in the US. The ability to grant general licences is a big improvement.

Another area where I think the UK framework is preferable to the EU's is that there is more guidance available. In the EU system, partly because the implementation and penalising of sanctions breaches is a matter for member states rather than the EU, there has been very little by way of guidance on the meaning of some really quite complex provisions and almost no response by the Council of Ministers—who are, after all, the Foreign Ministers of the EU member states—to questions about what some of these provisions mean. The only clarification mechanism is national courts referring questions to the Court of Justice. As you can imagine, that is not an efficient or cost-effective way of clarifying anything.

In the UK, the Government now have statutory duties to give guidance and there is much more helpful guidance than there was. I think there is also a better administrative system; in other words, the decision-making process for reviewing designations and the decision-making documents are much more fulsome and helpful.

That is my list of the most obvious pros. The other part of your question was: are there any potential problems with the regime as it is playing out so far? There are a few. I will try to keep this brief.

First, I think it is fair to say that both the Treasury and the Foreign, Commonwealth and Development Office have been absolutely swamped with inquiries, licence applications and all sorts of queries, because the pace of imposition and changes to Russia sanctions has been extraordinary and unprecedented. I cannot emphasise that enough. That has led to a system that is not working very efficiently.

There has been a huge influx of additional personnel to work at OFSI—the part of the Treasury that deals with sanctions—and indeed the FCDO, but we are not seeing an increase in the speed of decision-making yet. Obviously, a lot of those people newly taken on do not have the expertise or history yet to be able to operate as effectively. I think that is a result of the pace of change.

Secondly and relatedly, the speed at which these legal restrictions have been imposed and increased is showing; in many areas there is a lack of clarity about what the rules mean and, therefore, the need for swift guidance and clarification, which, for reasons I have already canvassed, is not readily forthcoming.

There are a lot of perplexed people in the business community—you will hear, I am sure, from Neil Whiley about the financial services sector—operating in an area of great legal uncertainty, and this is uncertainty on key points. I will give just one example so that we are not here all night, but it is a significant and recent example. Another I think we will come on to are the legal services restrictions.

A key question in the United Kingdom that is surprisingly still unclear is who is subject to sanctions. As you know, there are lists of people and companies who are targeted for asset-freezing restrictions and travel bans, but those same restrictions apply not only to the names expressly listed, which you will find on all the sanctions-screening tools, but also to companies owned or controlled by those people. Those companies are not listed by the Government; it is for you to take legal advice and decide whether a company is controlled by a designated person or not. The US has a different system where it worries only about ownership and not about control for this purpose. The EU has a control test but it is different from the UK one.

The UK has made the test very broad. A company is controlled by a designated person if it is reasonable to expect that that person can achieve the result that the company's affairs are conducted in accordance with their wishes; in other words, if that person can basically call the shots when it comes to controlling that company. As you can imagine, that question is extremely difficult to answer and it is a very subjective one.

Because the UK has on its sanctions list President Putin and, of course, a lot of government ministers and prominent state actors in Russia, the question arises: does that mean that they are to be regarded as calling the shots in relation to the whole Russian economy, or in relation to state-owned companies, in which case what does "state-owned" mean? You can imagine the list of questions that arise every time the question is asked, "Who is sanctioned?"

This has come to the attention of the courts very recently and the High Court and the Court of Appeal reached completely different results on this question. The High Court said, trying to limit this, that simply because of the political position of President Putin and other government ministers who are sanctioned, it does not mean that everything underneath them—all state companies and ministries—is taken to be automatically sanctioned. The Court of Appeal said that is what the regulations say and it is not for the judges to rewrite them—the Government need to go and think about it. Just to complicate things, it said that is what lawyers call "*obiter dictum*". It was not strictly a binding part of their judgment but the judges said it anyway.

There was further uncertainty and chaos in the market as a result of this. The Government then put out a statement a few days later saying, "This is not what we meant. We try to list controlled entities by name where we can". That is an important area of complete legal uncertainty and an area where legal certainty is pretty important, particularly since one of the decisions the UK has made that is different from the EU is to impose strict liability for sanctions breach; in other words, there is no mental element required for someone to breach sanctions. You may have done all your due diligence and work in trying to find out whether a company is in fact owned or controlled but, if you are wrong about it, it is a strict liability offence.

I am sorry to be long-winded about it. That is just one example of many areas of real uncertainty.

The Chair: It is important. Thank you. I will take the opportunity to welcome Neil Whiley to our table. We have embarked on the evidence session, Neil, but we are very happy for you to join in as of now. Welcome.

Neil Whiley: My sincere apologies for being late.

The Chair: Do not worry. Tom, do you want to add to that? I am conscious that we have a lot of other ground to cover.

Tom Keatinge: I will be very brief. The UK had begun to try to demonstrate an independent sanctions regime before February 2022 by bringing forward its global human rights regime and its anti-corruption regime. When Dominic Raab was Foreign Secretary there was a lot of talk about using sanctions to demonstrate British values and the like. Obviously, that got completely swept to one side by the deluge of work that was required as a result of the Russia sanctions. We are now waiting to see "UK independent sanctions regime 2.0" emerge from all the work that has been going on on Russia. Frankly, notwithstanding the valid points that Maya makes, from our perspective the jury is still out.

Lord Lamont of Lerwick: I will just go back to what Maya said. According to the bio that was submitted to the committee, "She"—that is you—"has argued the UK's post-Brexit sanctions regime is now more effective than that of the EU". I think this was based on something called Edward Fennell's Legal Diary. Do you recognise that as a description of your views?

Maya Lester: I think that is referring to a seminar in which I made a number of the points that I made at the outset, in answer to your question; in other words, there are areas—such as guidance, licensing and so on—where the UK's legal powers are much more flexible and effective. I would certainly stand by that but I am also highlighting that it is not a perfect system. There are good things and less good things.

Lord Lamont of Lerwick: Thank you.

Q46 **Lord Jay of Ewelme:** You have already covered some of the ground I

wanted to ask about. Tom Keatinge talked earlier on about the very close consultation and co-operation between the UK and the EU over sanctions, but you have also talked about there being differences. Could you say a little bit more about what has accounted for the differences between the UK, the US and the EU, and whether those differences matter? That is the point I am finding it slightly difficult to get a grip on. It is not altogether surprising, it seems to me, that there are differences, but is it affecting the efficiency of the whole sanctions system?

Maya Lester: It is certainly adding to the cost of compliance enormously because everyone needs to know about multiple different sanctions regimes, and I expect the financial sector is particularly in the firing line there. It matters from that perspective.

Does it matter for the effectiveness of sanctions? My view is that, broadly, those three important jurisdictions have very roughly the same restrictions. I do not think it is true to say that there is a massive perceived exploitation of the differences, in terms of people going to the EU to take advantage of a slightly different form of restriction.

The differences are certainly due first to different foreign policy decision-making in the interests of that country, but also the different legal traditions and legal systems of the three jurisdictions.

Tom Keatinge: If I may add: and different degrees to which their economy is connected with the sanctions target. If you recall, in the early days of the full-scale invasion of Ukraine by Russia the UK was at the forefront, because the focus was on the low-hanging fruit of oligarchs and financial services—levers that were easy to pull. As we have got further into this, the more complex issues have started to be grappled with. For example, particularly in the EU, they are still debating the extent to which the diamond trade should be subject to sanction. That is not something the UK has much of a dog in the fight on, but the Belgians certainly do. That has also changed the dynamic to some extent.

I would say that in a perfect world we would be aligned but parochial judgments lead that not to be the case, and where there are gaps there will be opportunities for evasion, certainly.

Lord Jay of Ewelme: Mr Whiley, time for you to open the batting.

Neil Whiley: Thank you. One thing that I would point out is that we will never get harmonisation across the regimes because they sit on legal frameworks that differ. For international companies it is always tricky when prohibitions are not announced at the same time, when the targets differ and when those targets are listed at different times, because it creates asymmetry and it leads to asset flight windows that can be exploited by those who we are trying to target. If person A is listed in the EU a week before they are listed in the UK that gives them a week to get their assets out of the UK, and vice versa.

Lord Jay of Ewelme: Do you get a sense that the three entities—the UK, EU and US—are well aware of this and are doing their best to

minimise these differences?

Neil Whiley: That was probably one of the drivers behind the urgent procedure that the UK brought in back in March 2021, where we can list EU, US, Australian and Canadian listings for 56 days before we need to meet our evidential threshold. I think the UK has been trying. We are the only ones that I am aware of that do that. If anything, our list should be aligned with more people rather than fewer, but they are not all aligned with each other, which does cause problems.

The Chair: To be clear, those 56 days prevent asset flight before the evidential threshold is reached, is that right?

Neil Whiley: Not necessarily. We saw that with an individual Canada listed back in May, long before the UK listed, and there was a significant period—weeks—before the UK listed that individual. I know from members that there have been asset freezes on zero-balance accounts where the liquid assets have gone.

Tom Keatinge: If you go back to the time when that was introduced—I have to say I colloquially called it “the copy and paste provision”—it was at a point where, if you remember, the UK was struggling to keep up and get the packages through the FCDO at a fast enough pace. It was a very smart piece of thinking by whoever thought of that idea.

The question that has come up subsequently is: if you have that provision, one of our allies adds somebody to their sanctions list and we do not copy and paste, why? It opened up some questions, certainly for people like us, to try to understand how this copy and paste provision really works. Ultimately, it works only if you think that with the 56 days’ grace we can do the necessary analysis to get to the relevant UK threshold. If we do not think we have a chance of getting to that threshold we are not going to copy and paste because at the end of the 56 days the person goes free, essentially.

Q47 **Lord Wood of Anfield:** I would like to ask you about the Wagner Group and in particular why it is so difficult for the UK to bring sanctions successfully against targets connected to the Wagner Group. The Foreign Affairs Committee recently showed that the EU and the United States have had more success than the UK. Can you perhaps explain why that is and what might need to change for the outcome to change on that? Maybe Maya could start from a legal point of view.

Maya Lester: This is probably principally one to ask the Government—I am assuming you are taking evidence from them—because they may know the answer.

The Chair: We will, yes.

Maya Lester: Certainly, I saw that report describing sanctions on the Wagner Group as being “underwhelming”. I do not know if that is fair. I know that there were a number of designations under Libya and other sanctions regimes of the Wagner Group before Russia designations. I also

know that, perhaps partly in response to that criticism, the Wagner Group is now designated as a terrorist organisation under the Terrorism Act. That happened after the comments of the committee—that was in September of this year—and that is a very significant set of restrictions, far more significant and restrictive. It may be that that problem is, as it were, less of a problem.

More generally—and I am hoping we will come to this; I think we will—I do not think there is a general problem of under-sanctioning in the United Kingdom. As we will come on to discuss, the criteria for getting people and companies on to sanctions lists are extremely broad and the legal thresholds are very low. If that question is a more general one, I would not regard that as a particularly problematic area.

The Chair: Thank you. Who else would like to pick up the Wagner ball?

Tom Keatinge: It is worth recalling that Treasury gave Prigozhin, I believe, a licence to pursue a British journalist with frozen funds. I do not think we were at pace on Wagner as we should have been but, as Maya says, the point is probably moot now because the Government have proscribed Wagner.

Q48 **Baroness Scott of Needham Market:** My question is for Ms Lester. I wanted to ask about the quite large number of legal challenges against listing and automatic relisting in the Court of Justice of the EU. It seems to be many fewer than the UK. I do not have any information about America. Can you comment about that process and what is causing it to look ripe for legal challenge?

Maya Lester: Certainly. It is right to say that historically there were a large number of cases brought in the European Court in Luxembourg that resulted in people and companies either coming off sanctions lists or the court saying there was insufficient evidence. That, I think, principally is because back then—"back then" being around 2010, and most but not all of these cases were about Iran-targeted sanctions—the criteria for getting people onto sanctions lists were much narrower than they now are.

It used to be the case both in the EU and to some extent in the US that you had to show that somebody was, for example, providing support for nuclear proliferation or financing for the Syrian Government. The EU authorities found that a difficult thing to evidence because it was based on conduct. The European Court said, in effect, "If you are going to impose such far-reaching measures on people and companies you need some evidence to support the listings". Therefore, many particularly Iranian and other high-profile banks and companies were de-listed by the court and that was a controversial thing.

Since then the EU has greatly widened the listing criteria, no doubt partly in order to try to make its listings more robust. There has been a general shift away from what could be called conduct-based criteria to what has become known as status-based criteria. It is much easier to show that

somebody is, say, a Minister in a Government, associated with the Government or a prominent businessperson, because that does not involve showing any misconduct on their part; it simply involves showing that they fall within a certain category. I am talking not just about Russia here but all the different sanctions regimes: Syria, Iran and so on. I think that is a general trend.

In the case of Russia, the criteria for somebody to be added to a sanctions list—and I am talking here about the EU and the UK—are incredibly broad. I am not making a judgment about whether this is a good or bad thing but it is very striking how easy it is to satisfy the listing criteria.

For example—and take note, if you will, that one often reads of these lists as being full of oligarchs, kleptocrats and Putin cronies—it is enough to be on a sanctions list in the EU if you are a businessperson involved in an economic sector providing a substantial source of revenue to the Russian Government. Just being a businessperson operating in a sector that has provided a great source of revenue, not you yourself having provided it, is enough. Alternatively, being a leading businessperson operating in Russia or their immediate family member is enough to get you on an EU sanctions list.

In the case of the UK, the criteria are even broader than the EU sanctions because in the UK, if you are, or have been in the past, involved in carrying on business in a sector of strategic significance to the Government of Russia, you can be sanctioned. You will be an involved person for UK sanctions purposes. If you are a family member of someone on the list—“family member” includes nieces, nephews and grandchildren—you can be sanctioned as being associated with one of those businesspeople.

Of course, this means, in my view at least, fewer successful de-listing challenges by people on the EU list. There have been some. We have started to see a few EU challenges. Obviously, the Russia regimes are relatively new and the court process is frustratingly slow in Luxembourg, but basically the court has rejected most of the cases that have happened so far and upheld the listings on these very broad criteria. There were two successful cases where, because the EU relied on past positions—people who were directors of companies or in other positions—and had not explained why they were still listed, they were removed, and one family member won her case, which resulted in the EU legislating to add family members as being a criterion.

If the premise of the question is that it is desirable to avoid successful de-listing applications, that I understand, but if you take into account the very broad listing criteria and the very low evidential threshold—reasonable grounds to suspect that someone was a businessman, for example—the question is: what role does one want the court to have?

In the UK we do not know the answer to your question because there has been really only one case so far where the courts have reached a

conclusion about a Russia listing. In that case, the case of Eugene Shvidler, which is on its way to the Court of Appeal now, it is fair to say that the court was extremely deferential to the Government's judgment on whether those criteria were fulfilled and whether it was proportionate for somebody who was associated with Abramovich and formerly a non-executive director of EVRAZ to be listed. That is going to the Court of Appeal now and we will see. I think that will dictate a lot of the approach to the subsequent cases.

I should say that I am, as I said, in the fortunate position of being instructed—though perhaps never again after today—by the Government as well as against, and so I am not making a judgment on these issues. I hope I am just highlighting some of the potential problems that arise.

The Chair: Thank you very much indeed. Baroness Blackstone, who is a member of the committee, would have been asking the next question. She is involved in the debate on Israel/Gaza and so Lord Jay has kindly agreed to pursue it.

Q49 Lord Jay of Ewelme: We are moving on to the effectiveness and enforcement of sanctions, on which you have already touched. We have been rather struck that previous witnesses have expressed some concerns to the committee about the effectiveness and the enforcement of the sanctions that have been imposed since the Russian invasion of Ukraine. Do you think that was right and do you have the same concerns? I am not talking here—going back to where we were earlier on—about whether they could have stopped the war, but could they be more effective than they have been so far?

Tom Keatinge: The simple answer is yes, they could be more effective in the way in which they are implemented. As I indicated earlier, the visits we have made to a large percentage of EU member states indicate that in some cases they recognised that they were not going to be able to implement the sanctions from the very start, and that was fine; instead, they would focus on the areas where they felt they could implement sanctions, such as financial services.

It is in the DNA of financial services to implement sanctions in the way that it is not in the DNA of small and medium-sized enterprises that have not had to deal with sanctions before, so 2023 has been about trying to move from a low level of implementation to a higher level of implementation and thus perhaps make the sanctions more effective.

The same applies to the UK. The UK's economy has a higher percentage of industry experienced with sanctions—the financial sector that Neil will talk about—and perhaps sanctions have been implemented more effectively in the UK as a result of that.

On enforcement, frankly, I do not think enforcement exists in the sanctions dictionary in Europe right now. It is not something that we are seeing much evidence of at all. If you speak to individuals in Brussels, I think they will say that the word of this year, 2023, has been

"circumvention", which we talked about earlier on, and going to visit third countries. I would not mind betting that the word of 2024 will be "enforcement". We have issued these sanctions, we are running out of ideas as to what to sanction next and we are perhaps running out of consensus to bring forward new packages, so let us make sure that the sanctions we have in place already are being properly implemented and, where they are not, that we are taking enforcement action.

Lord Jay of Ewelme: Thank you. Neil Whiley, do you agree with that?

Neil Whiley: One thing I would point out is that with enforcement there is always a lag. If a misdemeanour happens today, it would typically be in more than two years' time that we would see enforcement action take effect. They are not quick pieces of court time to get through. Even at the civil layer, it does not go through very quickly.

In terms of effectiveness, as Tom said, yes, there is always room for improvement in everything. We go back to the collaborative methods and mind that we need. For the UK, we need to make sure that we involve all the industries that are involved in helping to stop sanctions, particularly the circumvention that Tom mentioned.

The biggest problem that we have is the size of the Russian economy. It has many, many trading partners around the world that are not subjecting it to sanctions and this gives it an open back door to start trading elsewhere. This is why we have seen Governments going to third countries to try to encourage them to behave in a more neutral manner rather than looking like they are pro-Russia.

Tom Keatinge: I agree that there is lag, but if you travel around Europe and ask European banks and companies, "When it comes to enforcement fears, who do you fear?" they will say, "The United States". They will not say, "Our local enforcement agency". They will not say, "OFSI in the UK". Yes, lag is true, but despite the lag you would hope that people were concerned about being enforced against by their national competent authority and that is not evident.

The Chair: Thank you. We will come on to financial services right away but first Lord Lamont and Lord Hannay wanted a quick follow-up.

Lord Lamont of Lerwick: I want to ask about one reported circumvention and that is the transport of Russian oil by uninsured vessels. There have been reports in the *Financial Times* that the Russians have developed a large fleet that is not insured, and that this has allowed a large proportion of oil trade from Russia and a large part of its exports to be transported where they would otherwise have fallen foul of sanctions.

The Chair: Lord Hannay, did you want to put your supplementary as well? Then they can choose.

Lord Hannay of Chiswick: Could you throw any light at all on the extent to which enforcement is dependent almost entirely on member

states—this is in the EU, not here, because here the question does not arise—or to what extent it depends on the effectiveness and ability of the central institutions: the Commission, the Council, the External Action Service and so on?

The Chair: Oil and capabilities within the EU. Who would like to take that on?

Tom Keatinge: On that question, enforcement is a member state competence. The EU institutions will cheerlead and cajole but ultimately it is a competence of the member state. The Parliament is currently debating the criminalisation of sanctions evasion. Obviously, the EU can help but ultimately it is the responsibility of the member state.

The Chair: On the evasion of oil sanctions?

Neil Whiley: I can speak to the oil. The UK has a complete prohibition on Russian oil. To assist third world countries to still receive the oil that they need, the oil price cap measure was brought in last December and the refined products one followed in February. This allows UK companies that are prohibited from dealing in Russian oil to deal in Russian oil as long as it is bought below the cap, which for crude is \$60 per barrel. This is for shippers, insurers, financiers, exporters, pilots, or whoever may be involved in that.

The problem that we have is when the Russians use fleets that do not have any nexus to the UK, the European Union or the US. It is very difficult for us to sanction those, although we have seen the US target a couple of vessels recently that have been seen to be used to transport Russian oil above cap price. That is slightly out of our jurisdiction and therefore we have to think a bit more carefully about the circumvention methods that Tom mentioned earlier and how we can close those loopholes. We should not have uninsured tankers full of oil on the open sea. That is not good for anybody. We need to make sure that maritime law is respected, that international commerce is respected and that we can impact Russian revenues where we have that lever to do so.

Tom Keatinge: If I could add one small point on that: this is a very good example of where sanctions are not a static occurrence; in other words, you issue the sanctions and the target shapeshifts. One thing that we need to ensure we continue to co-operate on is what the Americans refer to as sanctions maintenance. As the target shapeshifts you need to track that; otherwise, you target a whole load of people over here, they shift over here and suddenly your sanctions are worth nothing any more. Collectively, as allies of Ukraine, we should be investing in this capability to ensure that our sanctions remain relevant and the Russians do not move away from the spotlight, which you bring forward an example of.

The Chair: Thank you. Viscount Trenchard has a question on financial services.

Q50 **Viscount Trenchard:** We have already touched on this. I would like to

ask Mr Whiley first: you worked for three banks in this area before you joined UK Finance. You said that financial services are in the DNA of sanctions. You also said just now that enforcement is a competence of member states, but financial services are, I think, a shared competence of members states and the Union as we see the role, the influence and powers of the EBA and ESMA expanding gradually. Of course, there is a financial service involved in any movement of a sanctioned good. Could you say how effective the financial services sector has been in enforcing sanctions, and how effective it has been compared with its counterparts in the EU and US?

Neil Whiley: Financial services are the gatekeeper. They are the last chance we have to stop a breach of sanctions. However, for many of the prohibitions that we have in place, they are right at the end and they are just facilitating. For example, if we look at the Russia prohibitions, 80% of them are trade-based and less than 10% are purely financial. However, financial services are the oil in the machine that allows that trade to happen and to continue. They have a lot of visibility but not always the deep information that is required to make a difference.

This is where we get back to the collaboration. We need oil and gas, the shippers and the insurers to be part of the conversation because they have access to specialist information that the financial services do not have. They can help put that jigsaw together so that between us we have a much clearer picture of what is going on. It gives us a stronger position with which to make sure that our implementation is robust.

That is across the globe. It does not matter whether it is the US, the European Union or the UK; collaborative effort across the industries in that jurisdiction is required.

The Chair: Would anyone else like to comment on financial services?

Tom Keatinge: I will return to something that I referred to earlier on but I will be more explicit. One of the countries that we had the opportunity to visit in our survey of how EU member states are getting on implementing sanctions is France. France told us very clearly that its initial strategy was to rely almost entirely on the banks to implement and enforce sanctions implementation on industry because—as you rightly point out—the banks will be the ones processing transactions that might be connected with trade that should be prohibited. Over time they have then engaged with industry but the banks definitely took the brunt.

The other thing I would point out is a popular word in all of this: “de-risking”. As a bank, you may decide that, although a business probably is okay to process the payment for, you do not want to run the risk of inadvertently processing a payment that is connected with trade with Russia. We have seen situations where individuals and businesses have lost their bank accounts or had their bank account services disrupted because of that fear. That is a constant challenge for banks in the sanctions arena, not just related to Russia.

Neil Whiley: To add to that: it is not so much the risk. The banks can manage the risk. As Maya mentioned earlier, it is the cost of compliance, which can make it not commercial to be involved in a particular market. When the cost of compliance outweighs the business benefit, that is when they will exit.

The Chair: Thank you very much. May I ask one supplementary on a linked area in a way, legal services, perhaps to Maya? Recalling that in June the Government introduced fresh sanctions designed to restrict the Russians—or certainly sanctioned individuals—from accessing UK legal advice, do you think that those restrictions achieve the objective, which was stated by the Government to be to prevent Russian businesses and individuals “benefiting economically from the UK’s world-leading legal expertise”? How do they compare with similar restrictions in the EU and perhaps the US?

Maya Lester: Thank you. I think that description of the purpose is an extract from a speech made in the House of Lords—

The Chair: Where better?

Maya Lester: —but extracted in a paper that was very helpfully circulated by Spotlight on Corruption. I do not think that is an accurate account of the purpose of the legal services prohibition, with the greatest respect to Spotlight on Corruption, which does excellent work. I think it would be useful simply to outline what has happened here, which is another area that I would characterise as an area of great and avoidable uncertainty, a bit like the ownership and control issue that I described earlier.

The US has an offence of facilitation; US persons cannot legally facilitate transactions that would be prohibited by US sanctions law if they were conducted by a US person. What the UK was trying to do—and the Government have made this very clear in Parliament—is copy over that idea of facilitation into the UK. That is the policy. There is already an offence in the UK of circumvention, a criminal offence of circumventing sanctions. That stops a UK person from helping UK persons to circumvent sanctions, but—the Government thought—perhaps not non-UK persons. My understanding is that they were trying to make sure that they had the power to do so, and to do something very similar to the US.

Unfortunately, what the Government did not do, with great respect, is consult on the wording of the regulations that they put out. The EU, nine months before the UK enacted the prohibition, had prohibited just legal advisory services to the Russian Government or companies established in Russia. That was a much simpler prohibition but it also expressly carved out—as the EU made clear in guidance—rights of defence for people subject to sanctions and also, very importantly, advice on compliance with sanctions law.

What the Government did in July of this year—and they have now very frankly and helpfully admitted that this was too wide—was enact

regulations that prevent UK lawyers from providing legal advisory services in relation to certain financial or trade activity that would be prohibited under the UK sanctions regime if the activity were done by a UK person or was taking place in the UK.

The reason that language is problematic—and I realise that the detail is probably not for now—is that this seemed to prohibit the giving of compliance advice on sanctions, with different sanctions regimes. You have heard the background of very complex, ever-changing, rather vague and difficult-to-understand legal prohibitions. There was outcry among law firms, because it seemed to be the case that they would be committing a criminal offence if they advised clients on what sanctions meant.

The US offence does not prohibit advising on compliance and nor does the EU. The Law Society has a parliamentary briefing on this saying that the problem here is that you simply will not be allowed to advise on compliance. I would assume that even Spotlight on Corruption would think it was a good thing in rule of law terms for people to be advised on what sanctions mean, and also a very common and difficult question: how to ensure that people are lawfully conducting business and not breaching sanctions? This seemed to be criminalising providing advice on compliance.

In Parliament, the Government then said that what they had intended to do was what the US has done, the facilitation offence. Ministers, both in the House of Commons and the House of Lords, said that the purpose of sanctions was not as expressed by Spotlight, but was to make it illegal for anyone working in the UK and British nationals abroad to advise on or facilitate commercial activities that would not be sanctioned by the UK Government if they involved a British national or were taking place in the UK. They said it was not the purpose of these regulations to prevent compliance advice.

Therefore, since the Government accepted that was a possible reading of the regulations, they put out—in close consultation with the Law Society—a General Licence that permits that work to take place. The Government accept that this is not a perfect solution for various reasons I will not go into but, as I understand it, they are now looking into amending the legal services regulations to make sure it is made clear that compliance advice is not prohibited.

I say that this was avoidable because it was avoidable. My view here is that in this area there is an enormous private sector in the UK which, day in and day out, is trying its best to comply with sanctions, very complicated rules, and are offering its services for free to the Government, particularly the Treasury. We have had a number of instances where complex sanctions provisions have been put out, seemingly without a great deal of expertise on the relevant, very niche area. A good example is that trust services provisions could have benefited from consultation with people who are great experts in trusts. The same is true of some of the financial prohibitions.

My view is that a simple consultation on the wording could have avoided months of trying to unscramble the fault afterwards. One problem is that I think lawyers in this area are seen not just by Spotlight on Corruption, but including by it, as enablers and facilitators of sanctions breaches. We have seen that language used in Parliament as well. I think that is very unhelpful. Perhaps I would say that, but my experience is that the legal community is really trying to advise people how to make these very complicated sanctions work, and it is not helpful to be told that we are enablers. I think a little bit more co-operation and actually use of private resource would be helpful.

Can I just add a couple of points on what else Spotlight on Corruption has said to this committee, because, with respect, there are three respects in which I think it is incorrect? First, it is wrong to say that the EU ban prohibited a much narrower category. I think that it is wrong in the way it characterises the EU ban. Secondly, it talks about a judgment of the Court of Appeal, which I mentioned earlier, on the issue of ownership and control. Spotlight on Corruption says that that judgment has basically said that designated sanctioned people have carte blanche to litigate in the UK, and there is a sort of free-for-all for designated people to use UK courts. The implication is that lawyers get rich from doing that. That is really not right.

The Mints judgment, to which Spotlight on Corruption refers, is a claim in which banks were claiming against alleged fraudsters. This is a 2019 claim, so pre-sanctions. The claim was that the defendants had entered into various agreements to replace valuable bank loans with worthless bonds. The defendants in the case said, "Well, the claimants cannot pursue these proceedings against us because they are sanctioned and they should not be allowed to pursue these claims". The court very sensibly said that the Sanctions Act does not stop a sanctioned person bringing civil proceedings or indeed the court giving a judgment. OFSI will have to license any relevant transactions, but we do not in the UK have outlaws and people who are simply not permitted access to court. That seems to me to be unobjectionable.

The final point Spotlight on Corruption made was to suggest that there is no limit on what UK lawyers can charge in legal fees for sanctions work and that they are getting rich, whereas in the US that is not the case; the US places tight limits. I am afraid that is simply factually inaccurate. The US has a General Licence to permit lawyers to act for US designated persons and to report when they do so, including the amount of money that they are paid.

The same thing is now true here. Because the Treasury was so swamped with applications from law firms saying, "I want to give some advice. I want to present someone", it very sensibly issued a general licence saying, "You can do work for designated people, but only if you are charging reasonable fees", and "reasonable fees" are construed tightly as reasonable fees. I am sure many lawyers would like them to be less reasonable, but the Treasury requires reporting on quantum and will

certainly object where someone is charging what it regards as an unreasonable fee.

I just wanted to correct those three points and would be very happy to enter into a dialogue on those.

The Chair: That is extremely helpful. Thank you very much for a very full answer to have on the record. Much appreciated. Lord Liddle is another member who is stuck in their debate and unable to be with us, and so Lord Wood has kindly agreed to ask his question.

Q51 **Lord Wood of Anfield:** I want to ask you about one possible improvement to the sanctions regime, which is to do with the idea of providing an off ramp for those currently on the sanctions register if they meet certain conditions. How feasible do you think this is? How desirable do you think it is? What would have to happen for this to come about if you think it is either feasible or desirable? We will start with Neil this time.

Neil Whiley: Sanctions are always set as a coercive measure and their primary aim is to change the egregious behaviour of the target to bring them back into the international community, so they should have that off ramp. We have seen really good examples where there has been good agreement on, "If you rein your behaviour in a little, we will ease some of the sanctions". We saw that with Libya and with Iran via the JCPOA.

I think part of the problem we have with Russia at the moment is that it is all stick. I do not see any carrot for Russia to change its behaviour. Perhaps it is early days and perhaps the behaviour is so egregious that we do not want to be offering a carrot just yet.

I think, if you look at the underlying spirit and heart of what sanctions are there for, the aim of sanctions is to change behaviour, so you do need that off ramp.

Lord Wood of Anfield: Do Tom or Maya want to add anything?

Tom Keatinge: I would draw the committee's attention to a 2021 sanctions strategy review by the US Treasury. It is a very short document, fortunately. In that, it talks about the importance of reversibility of sanctions for some of the reasons that Neil mentioned.

As related to the Russia sanctions, there are obviously a lot of different possible off ramps. It depends on who you are talking about—for whom are you trying to build an off ramp? We have seen in the UK—floated by the Foreign Office back in June during the Ukraine Recovery Conference here, and also mentioned in a public address by a Treasury official a couple of weeks ago—the possibility that those individuals who are subject to sanction, and by this, I think, they are referring to the shorthand "oligarchs", could make voluntary contributions or donations, I think the FCDO said at the time, in return for some sanctions relief or something like that; I forget the exact wording.

That has not got anywhere. I have spoken to officials in many other allied countries of Ukraine, including people in the President's office in Kyiv, and some people are outraged by the thought. Other people see it as a practical way of raising money for reconstruction because we are unlikely to be able to confiscate those assets off these people anytime soon. It is a live debate. It is also a live rail, I think, because clearly people being able to buy themselves off the sanctions list is a pretty abhorrent thought, but there is a practical issue around that that might be appealing.

Ultimately, for these individuals, if there is no off ramp that they can control, they are simply waiting for decisions to be made in the Kremlin to end the brutal war.

Maya Lester: I welcome the question on off ramps. I agree with Neil that so far government policy has been more stick than carrot in this field. What do we mean by that? As I said earlier, the threshold for people being added to sanctions lists is a very low evidential threshold. The criteria for people being added to lists are very broad. One of the changes in the UK regime compared with the EU regime, is that UK sanctions do not sunset. EU sanctions have to be reconsidered and reviewed every six months. The UK went from annual reviews to triannual reviews to no reviews. The position now is that somebody's inclusion on a sanctions list arises for ministerial review only if that designated person brings something to the Government's attention and says, "I would like you to review my designation". They can do that a second time only if something significant has changed. So there is not a regular reviewing of the lists that goes on.

When somebody is added to a sanctions list, what is not said is, "You are on the sanctions list for this reason. We are trying to achieve X, and if you do Y, and therefore we achieve the policy goal that we are trying to achieve, then you may have an opportunity to be de-listed". Bearing in mind the width of those criteria—and just to remind you that you have been in the past involved in carrying on business in a significant sector of the Russian economy—there is not necessarily any connection between people on sanctions lists and President Putin's war policy in Russia. That is necessarily so, because simply saying you were a businessperson in a certain sector might be enough to get you listed.

There is certainly frustration on the part of some designated people, who feel that there is a lack of engagement with government on what it is they might be able to offer and have those sorts of off-ramp conversations. As Tom has said, it may well be that that is changing. It was actually Giles Thompson, the director of OFSI, who said two weeks ago that there will be a new voluntary route to seek removal from a sanctions list and that the Government are now willing to enter into discussions with people on lists if they will agree voluntarily to release frozen assets in the UK to fund the reconstruction of Ukraine and other actions, such as denouncing the war. That followed from a new purpose

for sanctions being added to the statutory regulations in June; namely, to promote the payment of compensation by Russia to Ukraine.

It will be very interesting to see what the Government say to this committee about this potential new off ramp. It seems to me to be an extremely welcome development and it could be a real opportunity for the Government to show that these sanctions are having a concrete impact, and that what is always said about sanctions—namely, as Neil said, that they are designed to coerce behaviour change and actually incentivise a different kind of conduct—actually has some meat to it. However, I think it is worth considering the problem here, because some people on these lists have family in Russia it is problematic, and the Government have recognised this. There may be real security issues with requiring people to denounce the war publicly, which is what the OFSI director has said.

If you consider those wide listing criteria, if somebody is listed because of a position they used to hold in a company, might they not see, as the price of their freedom, an enormous payment for the reconstruction of Ukraine as not particularly related to the reasons for them being added to sanctions lists and so query whether those payments are always going to be seen as something appropriate, doable, or right in each case?

Finally, the EU has no off ramp apart from the European Court. This is an area, again, of real opportunity for the UK. The EU does not really have any administrative process. If you write on behalf of a designated person to the European Council, it is highly unlikely that you will get any substantive reply at all.

Interestingly, the US does have an off ramp—Task Force KleptoCapture, as it is called—at the Department of Justice. It is there partly to look at what assets can be seized in a criminal process in the US, but it will also have discussions with designated people, as will OFAC and the Treasury, about creative possibilities for things people could do to be off-ramped.

I think the EU Justice Committee previously recommended this many years ago: there is one excellent precedent for an off-ramp process, which is that the UN has an Ombudsperson for one of its sanctions lists; namely, the al-Qaeda/Taliban sanctions list. That Ombudsperson role has been held by some very eminent judges and others. What I commend about that process, which does not otherwise exist in the EU or in the UK at all, is that the ombudsperson's sole role is to review in detail, with interviews, the evidence for somebody being just on that one sanctions list. They go in-depth into the evidence, they will interview designated people, and they will make a proposal to the UN Security Council as to whether or not to de-list.

The EU and the UK have absolutely nothing like that, and one has to have sympathy with the Government, given how swamped they are with all areas of sanctions. At some point, it seems to me, there might be a case for a similar sort of process here.

The Chair: Thank you. I am conscious we still have three questions and really only about 10 more minutes, so we will have to get fairly concentrated.

Lord Hannay of Chiswick: Can I please just ask one question?

The Chair: Just very briefly, please.

Lord Hannay of Chiswick: Yes, very briefly. Surely there is a fundamental difference between the sanctions being imposed on Russia—which is an autocratic state, which is in more and more central control and which has invaded its neighbour—and those applied, for example, to Iran about its nuclear programme or to China about the treatment of the Uighurs. You can see the off-ramp case in the latter two much more clearly than the former, can you not?

Maya Lester: I think it depends whether you are talking about an off ramp for the regime as a whole or an off ramp to try to incentivise designated people.

Lord Hannay of Chiswick: Is there any difference?

Maya Lester: There is a difference, yes, because what those regimes all have in common is that they draw up lists of names and legal bases on which they are considered justified to have all their assets frozen. In the case of each of those, I would have thought that providing an incentive for them to change their behaviour in line with UK foreign policy is a desirable thing in terms of showing that sanctions are working. Of course, the context and the purpose of the regime as a whole, and the circumstances in which that regime as a whole may be lifted, are entirely different.

Q52 **Baroness Anelay of St Johns:** I would like to ask a question relating to sanctioned assets, but I would like to move it away from the off-ramp proposal, which, of course, involves the agreement of the person who has been sanctioned. We are all aware that some Governments—and indeed parliamentarians here—have called for sanctioned assets to be used for the reconstruction of Ukraine, when it is feasible for reconstruction to take place. What is your view of the practicality of that, particularly from a legal point of view? Perhaps I might start with Maya Lester on that.

Maya Lester: I will defer to Tom on this because RUSI has put together a very good report on this issue. It is also worth knowing—you probably do already—that there is an excellent Commons briefing paper on the extent to which sanctioned assets can be used for reconstruction. All I will say about this is that the normal position in the UK is that one needs criminal conduct in order to seize as opposed to freeze assets. We have the POCA—proceeds of crime—regime, where that is warranted.

It seems to me to be problematic where the criteria are, as I have outlined them, being in a position of business or you are the grandchild of someone who was CEO of a company. Seizing assets in those circumstances seem to me to raise obvious difficulties in rule of law

terms.

Baroness Anelay of St Johns: Do you think those difficulties can be obviated by new legislation, rather than having to rely on something like—

Maya Lester: I will not say anything about that. The Government will no doubt be taking advice on issues of that kind.

Tom Keatinge: Obviously, an awful lot of time and effort has been spent on this this topic since February 2022. It does not feel to me as though in this country we are any closer to achieving that objective. There are some countries, such as Canada, which have brought forward quite punchy legislation, which is yet to be tested, but have certainly gone further than the UK so far.

It is worth recalling that when these oligarch individuals were put on the sanctions list in the early part of Russia's invasion of Ukraine, many of those names were names that people had been calling to see sanctioned under anti-corruption regimes, or whatever it might be, for a very long time. There is a history with some of those names, and I do not dispute the sanctioning of these individuals but the Government took the opportunity to catch up with things that had been called for for quite some time.

You may recall those Wild West-style posters that appeared on the FCDO website—"Gotcha, Deripaska", or whoever it was—and some rather flowery language coming out from the Foreign Secretary's office at the time as well. I think we have worked through that now. We are in a calmer period, and people are now trying to work out what to do, which is why this voluntary contribution route might actually end up being something worth looking at.

It is worth recalling that the total amount of assets confiscated so far from sanctioned individuals related to Russia regimes, through legal routes—and this is by the United States—is \$5.3 million. That is since sanctions were first put on some of these individuals in 2014. That is the return on effort we have had so far.

One thing I will say is: there are very great many more billions of dollars to be had from the central bank's assets. That is where I would recommend people focus their efforts because there is a much better return for Ukraine to be had by focusing there.

Neil Whiley: If I may just add one point to that: the ownership and control criteria cause a web of designations to reach out across the business environment, and not all of those frozen assets belong unconditionally to the designated person. If we go back to POCA, it is about recoverable funds, not just the whole pot of frozen assets that you could confiscate.

Q53 **Baroness Nicholson of Winterbourne:** Other future challenges that you identify as requiring co-operation between the EU, the UK and other

partners in regard to the sanctions regime against Russia and Belarus, it is difficult for some countries, as one can see in the EU particularly, when they are getting such a large amount of their oil from Russia. Do you feel that you are going to see any more difficulties with getting these sanctions implemented as time goes on?

Tom Keatinge: Without question, yes. We have the pesky intervention of elections and, of course, in some countries railing against sanctions has become a populist rallying cry. Who knows what would happen in the United States following its election late next year.

The community of allies of Ukraine are going to have to work hard at continuing co-operation and collaboration. As I said earlier on, it is not just a question of sanctioning more activities or sanctioning more individuals, it is about actually making sanctions work and the desire of countries to continue.

With everything that is going on in Israel, you can see how the focus on Ukraine has declined, how capacity in Governments has been moved to deal with that crisis. Unfortunately, history is not on our side. After 2014 there was not as much sanctions activity as there has been since 2022. Nonetheless, the energy behind those sanctions dissipated disappointingly quickly.

Baroness Nicholson of Winterbourne: Would you feel that the integration of the EU member states themselves is going to remain tight and co-ordinated? Already some countries would appear to be lapsing. One can understand why but, for example, elections the other day in the Czech Republic have given a very different idea. How do you see this working out? Do you think sanctions will go on for a very long time and will merely wither away and become less effective?

Tom Keatinge: There was a comment earlier about how the EU manages its financial services industry. The EU is in the process of establishing what it calls its Anti-Money Laundering Authority, which will try to unify some of the response to money laundering in the EU. In some parts, there are calls for an EU OFAC—that is the enforcement and sanctioning body in the United States—to try to move more to the EU level the whole sanctions issues and sanctions enforcement issue. If that gets traction, perhaps you will see a way of operating sanctions at an EU level rather than having to rely so intently on member states, but that is a long way down the road.

The UK can play a really important role in helping the EU stay the course. We need to continue to provide the evidence and support to countries that perhaps are wavering. I do not want to be patronising about this but the bottom line is that the UK at the EU sanctions table is something that most countries miss, and so we should take advantage of that.

Q54 **The Chair:** Thank you. Any further comment on that? We have held you back a long time, it is much appreciated.

One last thought: is there one lesson that you would recommend the

Government to learn from the experience of this unprecedented package of sanctions that has been implemented against Ukraine, for future use? Is there one thing, for any of you, that springs out of that that should be retained and built on in future sanctions regimes?

Tom Keatinge: It is the subject to this discussion: co-operation and collaboration. When it comes to sanctions, the UN Security Council is broken. We are not going to see global sanctions again any time soon. It is building sanctions alliances on files. For example, you see the Americans now working very closely with the Japanese and the South Koreans on North Korea. I think the lesson is to build alliances, because we are a middle power. We have a big lever, which is financial services. We can contribute to the sanctions ambitions of others. Keep doing that. Do not think it is just something worth doing in the context of war in Europe.

Neil Whiley: The mantra that I hear when I am in the Foreign Office is that sanctions is a team sport, and I would echo that. We need to engage with all industries to ensure that we have the right people at the right table for the right conversation because all industries have that specialist knowledge and, if we can replicate that internationally as a group of allied nations, we will have a much bigger impact on whoever the target is.

Maya Lester: Again, I am a lawyer and not a policy person, but one thing that strikes me is in all the rush and political pressure to sanction in the context of international crisis, the question I do not know the answer to is: how much are the pros and cons of sanctions weighed up in advance in a very real way? For example, in the case of Russia, there was obviously a great impact on energy bills, inflation, and so on. What one does not see, publicly at least, is the weighing up of the pros and the cons of sanctions. I think this is linked to our conversation about effectiveness and carrots and sticks.

If there is a lesson that I would want learned, it is just to make sure that in all the scarce resourcing, one does not lose sight of that in the sanctions rush.

The Chair: Thank you very much indeed on behalf of the whole committee. It has been a really interesting and rich session. Thank you very much indeed, all three of you. I declare the meeting formally over.