

Written evidence submitted by Spotlight on Corruption

Background

Spotlight on Corruption is an anti-corruption charity that shines a light on the UK's role in corruption at home and abroad. We want to see a society with strong, transparent and accountable institutions which ensure corruption is not tolerated and democracy flourishes both in the UK and globally. To achieve this, we highlight corruption and the harm it causes, and campaign to ensure the UK implements and enforces its anti-corruption and sanctions laws effectively and has strong systems in place to prevent corruption.

Over the past year we have monitored the enforcement of sanctions breaches and challenges to sanctions designations in the UK courts, based on our court monitoring program and enforcement expertise.

Summary

Our evidence focuses on the following issues:

- Current gaps in sanctions designations relating to Russia
- The UK's sanctions regimes' resilience in the face of legal challenges
- Seizing assets that are the proceeds of sanctions evasion
- Issues with the UK's sanctions licencing regime
- OFSI's enforcement record so far

Spotlight on Corruption Recommendations

In light of our evidence, we recommend that the government:

1. **Establish a cross-departmental task force to improve the coordination and coherence of sanctions implementation and enforcement** and unblock pathways for more proactive and effective information- and intelligence-sharing among key actors.
2. **Ensures that OFSI ramps up its civil enforcement efforts** to provide robust deterrence against sanctions evasion.
3. **Conduct a full review into blockages to criminal enforcement of sanctions evasion** as a route for confiscating the proceeds of sanctions evasion for return to Ukraine.
4. **Ensure greater transparency in the licensing and enforcement activity by OFSI** to enable Parliament and the public to assess how effectively sanctions are being enforced and implemented. This should include the publication of regular updates on licensing data, including disaggregated data that reflects the number, value and category of applications submitted, pending, granted and refused.
5. **Commission an independent review of the licensing regime** to assess licensing capacity, strategy, and decision-making processes. This review should examine the extent to which the licensing regime manages to balance the need to prevent undue disruption to UK business and the risk of undermining sanctions designations through overly generous or lax licensing decisions.
6. **Review whether the UK should have tighter controls on the payment of legal fees from frozen funds**, including requiring fees be paid in the first instance from non-frozen funds, and imposing stricter hourly fees caps based on legal aid rates.

A. Whether financial sanctions instituted by the UK on Russia, are complete and effective in terms of the entities that have been designated, and the entities which have to comply with the rules?

1. The global sanctions response to Russia's full-scale invasion of Ukraine has been unprecedented, with the UK government acting swiftly to impose sweeping sanctions on Russia. This has included targeting the networks of patronage that prop up Putin's regime and the sectors of strategic importance for resourcing Russia's war. Two years on from the full-scale invasion:
 - a. More than 1700 individuals have been designated,¹ including 130 so-called 'oligarchs' whose combined net worth was around £145 billion at the time of the invasion;²

¹ <https://assets.publishing.service.gov.uk/media/65e6f20c3f69457ff103608e/Russia.pdf>

² <https://www.gov.uk/government/publications/ofsi-annual-reviews/ofsi-annual-review-2022-to-2023->

- b. Almost 300 entities are subject to sanctions,³ with measures covering 90% of the Russian banking sector;⁴
- c. £22.7 billion worth of assets has been reported as frozen in the UK, and an estimated £33 billion in Russian central bank assets has been immobilised.⁵

Gaps in sanctions designations

2. While the UK has sanctioned a large number of individuals and entities, significant gaps remain. The recent death of renowned anti-corruption campaigner Alexei Navalny has placed renewed focus on the '*Navalny list*' compiled by his Anti-Corruption Foundation (ACF). Now amounting to 7943 individuals, the ACF recommends they all be subject to international sanctions for "*participating in the criminal war against Ukraine*", "*supporting Russian aggression*", or "*aiding the Putin regime*". According to the latest available data, the UK has sanctioned just 1170 of the 7943 individuals on the list, or 14%.⁶
3. Meanwhile, the Ukrainian government's '*War and Sanctions*' database, which claims to be the biggest global database on Russian politically exposed persons and on sanctions imposed on Russian individuals and companies following Russia's attack on Ukraine, indicates that a significant number of individuals and entities have been sanctioned by the UK's allies, but not the UK.⁷ There are, for example, 2899 entities sanctioned by the US but not the UK, and 623 sanctioned by the EU but not the UK. Regarding individual sanctions, there are 721 people who have been sanctioned by the US but not the UK, and 587 by the EU but not the UK. This data suggests that there is still, over two years on from Russia's full-scale invasion of Ukraine, much work for the UK government and its allies to do in order to ensure its sanctions lists are aligned with its allies and targets are not overlooked.

Legal challenges to UK sanctions

4. UK sanctions imposed under its Russia sanctions regime have proven resilient in the face of legal challenges, with the courts refusing each challenge so far. This highlights the government's broad powers and wide discretion to impose sanctions, and should encourage a more assertive approach to both closing remaining gaps in designations and ensuring robust sanctions enforcement. Major cases heard in the courts so far include:

March 2023	Belarussian tech company Synesis " <i>fell a long way short</i> " of overturning sanctions imposed for its provision of surveillance software to Lukashenko's regime, in what was the first court review under the Sanctions and Anti-Money Laundering Act 2018 in relation to one of the UK's autonomous sanctions
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³ <https://assets.publishing.service.gov.uk/media/65e6f20c3f69457ff103608e/Russia.pdf>

⁴ <https://www.gov.uk/government/publications/ofsi-annual-reviews/ofsi-annual-review-2022-to-2023-strengthening-our-sanctions>

⁵ <https://www.gov.uk/government/publications/ofsi-annual-reviews/ofsi-annual-review-2022-to-2023-strengthening-our-sanctions>

⁶ <https://sanctions.acf.international/instruction/>, data accurate as of 19 March 2024.

⁷ <https://sanctions.nazk.gov.ua/en/about/>, data accurate as of 19 March 2024.

	regimes. ⁸
June 2023	The Russian professional racing driver Nikita Mazepin was denied interim relief from sanctions for the purpose of negotiating a return to Formula 1 racing, with the High Court finding such interim relief would risk “ <i>watering down</i> ” the sanctions regime. ⁹
July 2023 and February 2024	Russian businessman Sergei Naumenko lost successive challenges to the government’s decision to detain his luxury superyacht without designating him, with the Court of Appeal ruling that his direct and indirect links to Russia reflect the “ <i>broad and deep impact</i> ” that Parliament intended through the sanctions regime. ¹⁰
	
October 2023	Russian billionaire Mikhail Fridman lost his court challenge against the government’s refusal to permit further payments for the management, services and staff at his Highgate mansion in addition to the already “ <i>authorised sums which run into several millions</i> ”. ¹¹
February 2024	The Russian-born British citizen Anzhelika Khan lost her bid to overturn sanctions after the High Court decided her designation “ <i>does not fall foul of the fair balance test</i> ”, noting the “ <i>hundreds of millions of pounds in gifts</i> ” received from her husband German Khan, who amassed his \$7.5 billion fortune through business and investment in Russia as the co-founder of Alfa Group and LetterOne. ¹²

B. Whether assets frozen as part of the UK’s financial sanctions on Russia should be confiscated, and whether there are legal precedents for such a move?

5. The question of how the UK and its allies can legally confiscate assets frozen under financial sanctions’ regimes is a thorny one and is not within the area of Spotlight’s expertise. However, we would like to draw the attention of the Committee to the weaknesses with the UK’s use of existing means to confiscate assets that result from criminal sanctions evasion. Although the confiscation of such assets is unlikely to generate significant sums when compared to the scale of the resources needed to rebuild Ukraine after the war, it is notable that other allies such as the US, have moved ahead of the UK in using confiscation of the proceeds of sanctions evasion

⁸ <https://caselaw.nationalarchives.gov.uk/ewhc/admin/2023/541>

⁹ <https://caselaw.nationalarchives.gov.uk/ewhc/admin/2023/1777>

¹¹ <https://caselaw.nationalarchives.gov.uk/ewhc/admin/2023/2657>

¹² <https://caselaw.nationalarchives.gov.uk/ewhc/admin/2024/361>

as a means to return assets to Ukraine. This has sent an important symbolic message and provided real deterrence against wider sanctions evasion.

6. In December 2023, the government introduced new reporting requirements on persons designated under Russia sanctions to proactively disclose details about the nature, value and location of their UK assets.¹³ By placing responsibility for asset reporting on designated persons themselves, these measures significantly strengthen the government's ability to track frozen assets, identify discrepancies with reporting by firms, and detect sanctions evasion. The new measures are backed up by strict liability for non-compliance with bespoke thresholds for civil monetary penalties. These undoubtedly strengthen both the UK's civil and criminal sanctions enforcement powers and should provide the basis for possible civil and/or criminal investigations. **It is essential that the relevant government bodies, not least OFSI, make active use of this new power.**
7. While investigations into and prosecutions of sanctions evasion have been few and far between in the UK, the United States' success in this area represents a model the UK should seek to emulate. According to an overview of the enforcement actions it has taken in relation to Russia-related sanctions released to time with the 2-year anniversary of the full-scale invasion, the US authorities have charged more than 70 individuals for violating international sanctions and export controls in relation to Russia, and secured judgments to forfeit \$700 million of assets.¹⁴ \$5.4 million so far has actually been forfeited (from sanctioned Russian billionaire Konstantin Malofeyev) and the US authorities have confirmed these funds will be sent to Ukraine.¹⁵

C. The effectiveness of the work of the Office of Financial Sanctions Implementation (OFSI)

OFSI's licensing regime

8. The UK's sanctions licensing regime briefly came to the fore in early 2023 when it emerged that a controversial licence had been granted to the former mercenary leader of the Wagner Group, Yevgeny Prigozhin, to bring defamation proceedings in the UK against Bellingcat founder Eliot Higgins.¹⁶ While the government responded quickly to that scandal by bringing in new rules to prevent similar abuses in future, there are wider issues with the UK's licensing strategy that need addressing. In particular, **there is a real risk that the licensing regime could be undermining the effectiveness of financial sanctions against Russia.**¹⁷
9. OFSI has struggled to keep up with the vast increase in its workload, with capacity constraints driving its evolving licensing strategy. OSFI's general licensing powers may in some cases be used not just to clear backlogs and cut processing times following the sudden surge in licence applications, but also as a more permanent strategy to cope with the pressure of parties looking to manage – and mitigate – the disruption caused by sanctions.

¹³<https://ofsi.blog.gov.uk/2024/02/12/new-reporting-requirements-for-designated-persons-under-the-russia-regime/>; Regulation 17, <https://www.legislation.gov.uk/uksi/2023/1364/made>

¹⁴<https://www.justice.gov/opa/pr/task-force-kleptocapture-announces-array-new-charges-arrests-and-forfeiture-proceedings>

¹⁵ <https://www.rferl.org/a/malofeyev-russia-oligarch-finances-war-ukraine/32474096.html>

¹⁶ <https://www.opendemocracy.net/en/prigozhin-government-russia-ukraine-hack-libel-slap/>

¹⁷ <https://questions-statements.parliament.uk/written-statements/detail/2023-03-30/hcws700>

10. The general licence for the payment of legal fees¹⁸ signals “*business as usual*” for the bulk of permissible Russia-related legal services. This allows frozen funds to be run down as a result of generous cost caps that are out of step with the more restrictive approach of key allies. In the US, there is a general licence for legal services contained in Federal Regulations but this only gives authorisation for the payment of professional fees or reimbursement for expenses as long as such funds do not come from a “*blocked*” (frozen) account or originate in the US.¹⁹ The general rule in the US is that frozen funds may not be used to pay for legal services to designated persons, and even payment using non-frozen funds are subject to strict fee caps.
11. The UK general licence for legal fees administered by OFSI sets a very different point of departure by authorising up to £1 million to be used from frozen funds to pay for permissible legal services (if combining the pre- and post-designation limits of £500,000).²⁰ While there are reporting obligations under the General Licence for legal services, there is no advance scrutiny by OFSI of what legal services are being provided.
12. OFSI has issued guidance on what it considers “*reasonable*” legal fees, using the Supreme Court Cost Guidelines (SCCG) as a benchmark.²¹ Yet the General Licence for legal services sets upper limits that are higher than the SCCG hourly rates and exceed the fee caps in the US:²²
 - a. The lowest fee earners in the UK could potentially charge more than double – and experienced London solicitors more than eight times – the hourly rate set for US attorneys under OFAC guidance.²³ At the top end of the scale, English barristers could charge up to £1,500 per hour – 15 times more than US litigators.
 - b. The total amounts capped are even more striking as a contrast – the combined £1 million cap for pre- and post-designation legal work in the UK is 45 times more than the exceptional allowance in the US for complex and lengthy court proceedings.²⁴
13. **The lack of transparency around licensing criteria, processes and outcomes undermines public confidence in the licensing regime.** For example, the government has consistently refused to answer parliamentary questions about the source and quantum of funds that have been licensed by OFSI, such as the total value of specific licences granted for legal fees.²⁵ while the few cases that have come to public attention raise serious questions about the rigour and soundness of licensing decisions. There is also insufficient published guidance to inform

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https://assets.publishing.service.gov.uk/media/657c815d95bf6500107190da/Legal_Services_GL_INT.2023.3744968.pdf

19 <https://ofac.treasury.gov/media/6191/download?inline>

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https://assets.publishing.service.gov.uk/media/657c815d95bf6500107190da/Legal_Services_GL_INT.2023.3744968.pdf

21 <https://ofsi.blog.gov.uk/2021/06/30/reasonableness-in-licensing/>

22 <https://ofac.treasury.gov/media/6191/download?inline>

23 <https://ofac.treasury.gov/media/6191/download?inline>

24 <https://ofac.treasury.gov/media/6191/download?inline>

25 [https://questions-statements.parliament.uk/written-](https://questions-statements.parliament.uk/written-questions?SearchTerm=OFSI+licences+legal+fees&DateFrom=01%2F02%2F2022&DateTo=30%2F03%2F2024&AnsweredFrom=&AnsweredTo=&House=Commons&Answered=Any&Expanded=True)

[questions?SearchTerm=OFSI+licences+legal+fees&DateFrom=01%2F02%2F2022&DateTo=30%2F03%2F2024&AnsweredFrom=&AnsweredTo=&House=Commons&Answered=Any&Expanded=True](https://questions-statements.parliament.uk/written-questions?SearchTerm=OFSI+licences+legal+fees&DateFrom=01%2F02%2F2022&DateTo=30%2F03%2F2024&AnsweredFrom=&AnsweredTo=&House=Commons&Answered=Any&Expanded=True)

practitioners, parliamentarians, journalists, academics and civil society about OFSI's licensing policy and processes.

14. Recent cases have highlighted serious imbalances in the use of sanctions licences. It emerged during the recent designation challenge from Anzhelika Khan that she had on the one hand faced inexcusable delays as a result of what the court described as a "*Kafkaesque*" sanctions licensing process for permitting spending on basic needs, while on the other hand she received licences for expenses most would deem beyond basic needs like personal staff, private healthcare and access to private schools.²⁶ Other examples include other Alpha Group co-founders Petr Aven and Mikhail Fridman being permitted extremely large annual expenses from frozen funds, ranging from £600,000 to £760,000 a year respectively.²⁷ These examples suggest that **more work needs to be done on striking a balance between providing basic needs licences swiftly and resisting luxury licensing permissions that undermine the effectiveness of sanctions.**

Resources available to OFSI

15. OFSI has expanded its capacity to deal with a vastly increased workload and is pursuing a 'Strategic Transformation Plan' to meet the demands of a geopolitical environment dominated by sanctions.²⁸ In addition to surge staff and secondees, OFSI has more than tripled the number of its FTE staff over the last two years. Since having only 40 FTE staff at the time of the full-scale invasion, OFSI grew to around 100 by the end of 2022 and was on track to hit 135 by the end of March 2024. In the 2022/23 financial year alone, OFSI's enforcement team received a 175% uplift in resourcing while the licensing team grew by 160% and the guidance and engagement team by 120%.

Enforcement work by OFSI

16. **The increase in OFSI's resources is yet to translate into robust enforcement.** Enforcement is an important part of the messaging around sanctions because it communicates the consequences of breaching or evading sanctions. It is problematic that judging by enforcement activity since Russia's full-scale invasion in February 2022, the government is signalling a low appetite to ensure compliance with sanctions. While its Director claims OFSI is a "*world leader*" in sanctions enforcement, it has yet to develop a strong track record since it was established in 2016.
17. OFSI's latest annual review records that 473 suspected breaches of financial sanctions were reported in the 2022/23 financial year – more than triple the number in 2021/22.²⁹ It reported closing 51 cases with no further action, 44 of which related to sanctions on Russia. By the end of March 2023, OFSI's enforcement team had 172 live investigations and yet, a year later, this has not translated into significant enforcement outcomes.

²⁶ <https://www.spotlightcorruption.org/the-first-uk-sanctions-strategy/>

²⁷ <https://www.spotlightcorruption.org/press-release-uk-court-rules-frozen-funds-can-be-used-to-pay-sanctioned-russian-billionaires-luxury-expenses/>;
https://assets.caselaw.nationalarchives.gov.uk/ewhc/admin/2023/2657/ewhc_admin_2023_2657.pdf

²⁸ <https://www.gov.uk/government/publications/ofsi-annual-reviews/ofsi-annual-review-2022-to-2023-strengthening-our-sanctions>

²⁹ <https://www.gov.uk/government/publications/ofsi-annual-reviews/ofsi-annual-review-2022-to-2023-strengthening-our-sanctions>

18. OFSI's track record since its creation in 2016 shows it has rarely resorted to monetary penalties, having imposed just 9 fines across all sanctions regimes following 1,200 suspected breaches meaning that less than 1% of breach reports result in a fine.³⁰ The only enforcement action OFSI has taken since Russia's full-scale invasion of Ukraine in February 2022 was to exercise its disclosure power to publicly censure the fintech Wise Payments Limited for a minor sanctions breach.³¹ The only Russia-related fine imposed over the last two years was a £30,000 penalty against the Hong Kong Wines and Spirits Competition Limited for receiving 3 payments and 78 bottles of wine – cumulatively worth less than £4,000 – from a designated entity for entry into competitions between 2017 and 2020.³²
19. The absence of any fines for breaches committed since February 2022 raises real concerns about OFSI's appetite and capacity to back up sanctions with tough enforcement. While OFSI has explained that many investigations are "*complex and remain ongoing*", it appears reluctant to rely on its new powers to impose penalties on a strict liability basis without establishing knowledge or reasonable suspicion.³³
20. OFSI's approach so far appears heavily weighted towards gently encouraging businesses to comply with sanctions rather than cracking down on breaches to deter future violations. It issued seven administrative warning letters – which are not public – during the 2022/23 financial year.³⁴ Given OFSI has been heavily reliant on self-reporting by firms rather than proactively gathering intelligence on sanctions breaches, there is a real risk that the most serious violations and evasion of sanctions are flying under the radar while OFSI investigates minor breaches that land in its lap.

Comparison with other government departments' enforcement of sanctions

21. Other government departments with responsibility for sanctions enforcement have been similarly slow to pursue civil penalties. In August 2023, HMRC issued two financial penalties for breaches of sanctions on Russia – a settlement of £67,001.31 with a UK exporter for the attempted export of goods,³⁵ and a fine of £1 million for the unlicensed trade of goods by a UK company in breach of Russia sanctions.³⁶ With the Office of Trade Sanctions Implementation (OTSI) not yet operational, this light-touch approach to the enforcement of trade sanctions may continue for some time. To our knowledge, no enforcement action has been by the Department of Transport or the Home Office in relation to suspected breaches of transport or immigration sanctions.

³⁰ <https://www.gov.uk/government/collections/enforcement-of-financial-sanctions>

³¹ <https://www.gov.uk/government/publications/disclosure-notice-31-august-2023>

³² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1106745/Notice_of_Imposition_of_MP_-_HKIWSC.pdf

³³ <https://www.gov.uk/government/publications/ofsi-annual-reviews/ofsi-annual-review-2022-to-2023-strengthening-our-sanctions>

³⁴ <https://www.gov.uk/government/publications/ofsi-annual-reviews/ofsi-annual-review-2022-to-2023-strengthening-our-sanctions>

³⁵ <https://www.gov.uk/government/publications/notice-to-exporters-202323-compound-settlements/nte-202323-compound-settlement>

³⁶ <https://www.gov.uk/government/publications/notice-to-exporters-202317-a-compound-settlement/nte-202317-a-compound-settlement>

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22. While this is not within the remit of the Committee's inquiry, there have been some significant issues with criminal sanctions evasion enforcement which we could be happy to provide further evidence on if the Committee felt it was relevant to their inquiry.

March 2024