

## THREE STONE SANCTIONS POLICY & PROCEDURES DOCUMENT

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Core Duty 10 of the BSB Handbook requires barristers to take reasonable steps to manage their practice to achieve compliance with legal and regulatory obligations. Self-employed barristers are individually responsible for compliance with UK sanctions. Rules C89.9 and C94.11 place obligations on sets of chambers and entities to take reasonable steps to ensure appropriate risk management procedures are in place.

The Bar Standards Board's guidance on sanctions explains that compliance with Core Duty 10 requires barristers to "ensure that you have procedures in place to enable you to comply with sanctions" and that "[a]ll barristers and BSB entities should assess their own exposure and put in place processes to check sanctions that are in force to manage any identified or anticipated risks of breaching sanctions"

### What are Sanctions?

- Sanctions are restrictions on activity with targeted countries, governments, entities, individuals and industries ("targets") that are imposed by bodies such as the United Nations (UN), the European Union (EU), individual countries or groups of countries in order to achieve a specific foreign policy or national security objective.
- The UK sanctions regime ([UK sanctions - GOV.UK](#)) can apply to persons and entities where the UK government has:
  - o Imposed sanctions unilaterally; and
  - o Implemented sanctions imposed by the United Nations (UN).
- The UK may impose the following types of sanctions measures:
  - o Trade sanctions, including arms embargoes and other trade restrictions; o Financial sanctions, including asset freezes;
  - o Immigration sanctions, known as travel bans; and
  - o Aircraft and shipping sanctions, including de-registering or controlling the movement of aircraft and ships.
- Sanctioned individuals, entities, planes or ships are referred to as "designated persons". This Sanctions Policy & Procedures Document is primarily focused on the financial sanctions regime (which aims to prevent money flows to and from designated persons). Some sanctions measures (such as asset freezes and travel bans) apply only to designated persons. It should be noted that the sanctions regime does impose serious and extensive restrictions on dealing with people who are listed.
- The Office of Financial Sanctions ("OFSI"), which is part of HM Treasury, produces a Consolidated List of Asset Freeze Targets ([Financial sanctions targets: list of all asset freeze targets - GOV.UK](#)), which contains details of designations specifically for financial sanctions, where asset freeze measures apply. **Please note that the entities owned or controlled by a "designated person" are usually NOT identified on the UK Sanctions List.** OFSI has provided guidance on ownership and control [Ownership and Control: Public Officials and Control guidance - GOV.UK](#)

- Contact details for the relevant government departments that administer each of the non financial regimes and signpost where to go to submit a licence application for exceptions to these regimes can be accessed here <https://www.gov.uk/guidance/uk-sanctions>.

- Though unusual, there are some sanctions relating to whole jurisdictions e.g. Chap 6B The Russia (Sanctions) (EU Exit) (Amendment) (No. 14) Regulations 2022 ([The Russia \(Sanctions\) \(EU Exit\) \(Amendment\) \(No. 14\) Regulations 2022](#)) which made it illegal to provide some professional and business services to clients in Russia.

Financial Sanctions Targets by Regime - as at 27th June 2024:

- Afghanistan
- Belarus
- Bosnia and Herzegovina
- Central African Republic
- North Korea (DPRK) Democratic Republic of the Congo
- Burundi
- Guinea
- Republic of Guinea-Bissau
- Haiti
- Iran
- Iraq
- Lebanon
- Libya
- Mali
- Myanmar
- Nicaragua
- Russia
- Somalia
- South Sudan
- Sudan
- Syria
- Venezuela
- Yemen
- Zimbabwe

#### What is the law?

The Sanctions and Anti-Money Laundering Act 2018 ([Sanctions and Anti-Money Laundering Act 2018](#)) ('SAML A') provides the main legal basis for the UK to impose, update and lift sanctions. In addition (although these points are not exhaustive):

- Some sanctions measures apply through other legislation, such as the Immigration Act 1971 and the Export Control Order 2008;
- Breaching a sanctions regime can also constitute an offence under the Counter Terrorism (Sanctions) (EU Exit) Regulations 2019 ('the Russia Regulations'); and

- The Economic Crime (Transparency and Enforcement) Act 2022 amends HM Treasury’s powers for issuing civil monetary penalties for sanctions breaches by removing the requirement to prove that the person had knowledge or reasonable cause to suspect their activity breached sanctions.

### Sanctions v Anti-Money Laundering (AML)

The sanctions regime is not the same as the AML regime. The table below contains some important points to note:

<b>Sanctions Regime</b>	<b>AML Regime</b>
Prevents the use of all financial resources by or for the benefit of a designated person, entity or regime (the target); it is irrelevant that the funds and purpose of the transaction are legal.	Aimed at disrupting the flow of criminal property, i.e. property that constitutes or represents a person's benefit from criminal conduct.
Requires a licence from the Financial Sanctions team to deal with a transaction involving a target. Consent from the National Crime Agency (NCA) is not sufficient (and may not be required if there is no criminal property involved).	Requires consent from the National Crime Agency (NCA).
No tipping-off offences relating to sanctions compliance – the lists of designated persons, entities and regimes are public documents.	s.333A of the Proceeds of Crime Act 2002 applies so a person can commit a tipping-off offence when making a Suspicious Activity Report to the NCA.
No distinction between regulated and non regulated sectors or activities – the sanctions regime applies to all organisations and to all services.	Some aspects of the AML regime are limited to regulated sectors/regulated activities.
Legislation does not prescribe how compliance must be achieved – only that it must be.	Legislation sets out a mandatory framework for compliance, including requirements for risk assessments, CDD and Enhanced CDD.
A Member cannot outsource their liability for complying with the sanctions requirements e.g. by relying solely on a report by an e-verification provider.	In some defined instances a Member may be able to rely on a law firm to check their clients on their behalf, subject to certain conditions.
Control of an entity is ordinarily defined as: <ul style="list-style-type: none"> <li>• The person holds (directly or indirectly) more than 50 per cent of the shares or voting rights in an entity.</li> <li>• The person has the right (directly or indirectly) to appoint or remove a majority of the board of directors of the entity.</li> <li>• It is reasonable to expect that the person would be able to ensure the affairs of the entity are conducted in accordance with the person's wishes (further examples of this available in 4.1 of OFSI's guidance).</li> </ul>	Regulations 5 and 6 of Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (“MLTF 2017”) set out the definition of a 'beneficial owner.' This definition includes 25 per cent share ownership of a body corporate (or direct/indirect control of said shares) but also has other interpretations detailed in the legislation e.g. for partnerships.

The breadth of this definition means that the task of establishing control is one of the key issues in completing due diligence in relation to sanctions.	
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Notes:

a. A licence from OFSI may be required to proceed, and consent from the NCA if you know or suspect (i) the funds represent criminal property or the matter involves terrorist financing and (ii) the matter involves a target.

b. It is also important to remember that there is no distinction in the sanctions regime between regulated and non-regulated sectors or activities. The sanctions regime applies to all the services we offer as a Chambers.

Regulators

- OFSI is responsible for the implementation of financial sanctions in the UK. These sanctions are written into law and compliance with them is mandatory for all self-employed barristers.
- The Bar Standards Board’s (“BSB”) role is to ensure that all self-employed barristers have in place policies and procedures to ensure compliance with the sanctions regime in accordance with General Duty 10 of the BSB Handbook. Click [Sanctions](#) for the link to the Sanctions pages on the BSB website.
- The BSB’s assessment of the sanctions risk for self-employed barristers is designated in Paragraphs 25 and 26 of its’ Anti-Money Laundering and Counter Terrorist Financing Annual Report 2021/22 as medium. It is important to remember that the BSB risk for money laundering and terrorist financing is low.

Responsibility of members of Chambers

Breaching sanctions can result in criminal prosecution or a fine by OFSI.

Core Duty 10 says that a barrister must take reasonable steps to manage their practice or carry out their role within their practice competently and in such a way as to achieve compliance with their legal and regulatory obligations. A barrister should, therefore, ensure that they have procedures in place to enable them to comply with sanctions.

OFSI explains in its guidance on penalties for breaches of sanctions ([UK financial sanctions guidance - GOV.UK](#)) about how it responds to breaches:

*“when we consider what action to take, we take into account the level of actual and expected knowledge of financial sanctions held by an individual or a company, considering the kind of work they do and their exposure to financial sanctions risk. Regulated professionals should meet regulatory and professional standards. We may consider their failure to do so an aggravating factor....We will consider, for example, whether the breach appears to be deliberate; whether there is evidence of neglect or a failure to take reasonable care; whether there has been a systems and control failure or an incorrect legal interpretation; whether the person seems unaware of their responsibilities”.*

OFSI maintains a consolidated list of sanctions ([Who is subject to financial sanctions in the UK? - GOV.UK](#)) in force in the UK. You can access this list, register for updates and obtain further information on financial restrictions. Please note that the US Office of Foreign Assets Control sanctions lists and regimes are not included in this list, but may apply to your practice.

OFSI does not mandate specific measures to be taken. All barristers and BSB entities should assess their own exposure and put in place processes to check sanctions that are in force to manage any identified or anticipated risks of breaching sanctions. The BSB's Supervision Team, when reviewing the policies and processes that you have in place to ensure compliance, will consider the following:

- What is the risk that, in your practice, you will engage with clients that are subject to sanctions? Have you conducted a risk assessment and how is it kept up to date?
- What processes do you have in place to make yourself aware of current sanctions that are in place and how do you keep up to date with changes?
- What processes are in place to check the consolidated list of sanctions when engaging with a new client?
- Do you take a risk-based approach? For example, are there enhanced due diligence checks for clients (and their beneficial owners) from countries that are covered by the sanctions regime?
- Have you documented your policy and processes for screening clients (and their beneficial owners) and ensured that relevant persons (for example clerks that may carry out some of these processes for you) have received appropriate training?
- When are clients screened? Are any long-standing clients regularly screened where appropriate?

If using electronic identification and verification tools to conduct sanction checks, a barrister should refer to Chapter 7 of the LSAG Sector Guidance 2021. This contains additional information to help manage risk if using a third party service to conduct their sanctions checks.

If a member of chambers thinks they may have instructions or anticipate having instructions involving individuals or organisations subject to financial sanctions, they should first contact Robert Bourne who can offer guidance and act as a central point for Chambers for interactions with OFSI. Please note that while Robert Bourne can offer guidance responsibility for correspondence and/or licence applications with OFSI rests with the relevant individual member of Chambers.

Members of Chambers are strongly encouraged to sign up to OFSI's email alert service [Global Sanctions | law, practice & guidance](#).

### Reporting to OFSI

OFSI provides guidance on how to report information to them and the relevant form on which to do so [Reporting information to OFSI – what to do - GOV.UK](#)

By way of exception, a barrister (or solicitor) is not required to disclose any privileged information in their possession in that capacity. Accordingly, in practice, the need for any reporting by barristers is likely to be limited. However, OFSI has said that it will challenge any attempts to take a blanket approach to legal professional privilege to prevent any sharing of information about a

designated person. Members of Chambers are strongly advised to consider noting why they consider that legal professional privilege applies in situations in which this issue arises.

### Licences

Members of Chambers should consider whether providing legal advice in any particular case is prohibited by UK sanctions for any reason and may require a licence. In particular, the Russia Regulations impose a prohibition on “legal advisory services”, which is not a trade measure, such that licences in respect thereto are provided by the Department for Business & Trade (‘DBT’) and not by the OFSI.

Licensing powers are contained in the sanctions regulations made under SAMLA<sup>1</sup> and can allow otherwise prohibited transactions and prohibited activity to take place in certain circumstances.

A licence (not to be confused with an exception to a prohibition that applies automatically in certain defined circumstances as set out in the relevant regulations) is a written permission from, for example, OFSI or the DBT allowing an act that would otherwise breach prohibitions imposed by financial and trade sanctions respectively.

There are two types of licences: general, and specific. A general licence allows multiple parties to undertake specified activities which would otherwise be prohibited by sanctions legislation, without the need for a specific licence. General licences cannot be applied for: they are published by OFSI on behalf of HM Treasury, and they can be varied, suspended or revoked at any time. The licensing section of [Global Sanctions | law, practice & guidance](#) contains all current and former general licences. Each general licence includes requirements for reporting and record-keeping.

In the context of legal fees and financial sanctions, a licence – subject to rare cases where the advice itself might constitute an economic resource or fund – is not required to provide legal advice to, and act for, a designated person; it is, however, a requirement for any person or organisation involved in a transaction with those subject to financial sanctions. OFSI has stated in guidance that generally there is no prohibition on providing legal advice (as distinct from receiving payment) without a licence.

Lawyers therefore need a licence in order to receive payment for any work on behalf of a designated person (and any related disbursements) so that they are not in breach of, inter alia, the asset freeze prohibition at regulation 11 of SAMLA. Barristers cannot be paid for legal services provided to or for the benefit of a sanctioned person under UK financial sanctions (whether or not they are expressly designated) without a licence from OFSI, either a general or specific licence, authorising the payment. This is so whether or not the sanctioned person is paying for the legal services. Any conditions of a licence must be complied with.

There is a general licence to permit payments for legal fees and disbursements incurred in connection with the representation of persons designated under the Russian and Belarusian sanctions regime. For all other UK sanctions regimes, specific licences must be sought in order to be paid for legal services. The legal fees General Licence which was issued on 29 October 2024 (INT/2024/4671884)

[https://assets.publishing.service.gov.uk/media/671bab4cfc28a840abc6d2a7/INT.2024.533475\\_6\\_GL.pdf](https://assets.publishing.service.gov.uk/media/671bab4cfc28a840abc6d2a7/INT.2024.533475_6_GL.pdf)

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<sup>1</sup> SAMLA 2018, s.15(2)(b) and s.15(3)

expires on 28 April 2025 but it has been OFSI practice in the past to always issue a replacement licence. This General Licence – granted under regulation 64 of the Russia Regulations and regulation 32 of the Belarus Regulations – disapplies the prohibitions in regulation 11-15 to any act necessary to give effect to the licence. Legal services are defined as those “provided to a designated person, including legal advice and/or representation in court, whether provided within the UK or another jurisdiction, in relation to any matter except a claim for defamation or malicious falsehood”. Reliance on the general licence requires reports to be made, set out in the general licence.

There are separate conditions for payment obligations that predate designation and those that post-date designation. The terms of the general licence include a cap on total fees paid by a sanctioned person. This means that members of Chambers and instructing solicitors will need to co-ordinate so that the cap is not breached.

OFSI has published Frequently Asked Questions ([UK Financial Sanctions FAQs - GOV.UK](#)), which includes a section on those related to licensing issues.

Where the legal fees General Licence does not apply (for example in a regime other than Russian and Belarusian sanctions regime or where the amounts in question have been exhausted), an application can be made for a specific legal fees licence. The application form is here [Licences that allow activity prohibited by financial sanctions - GOV.UK](#) For specific licences, OFSI will expect the instructed law firm to provide a schedule demonstrating the anticipated legal fees (and/or those incurred to date). Members of Chambers should find out from those instructing when specific licences (or proposed amendments) that include their services and rates have been submitted to OFSI. When issuing a licence to enable the payment of professional fees and expenses for the provision of legal services, OFSI is obliged under SAMLA to ensure that those fees and expenses are reasonable ([Reasonableness in licensing – Office of Financial Sanctions Implementation](#)) As a result, members of Chambers should know whether they are being paid for legal services under a specific licence or general licence, **and let their clerk know so that this information can be stored centrally by Chambers.** OFSI’s Guidance<sup>2</sup> in respect of reporting under the Legal Services General Licence in respect of the receipt of fees from a designated person or a person paying fees on their behalf makes clear that barristers do not need to report if instructing solicitors have already done so.

While it is up to members of Chambers as to how they wish to conduct their practice please note that even if licences are in place payment difficulties may be encountered when acting for a client who is sanctioned or there is otherwise a sanction concern. Fees are at risk on this basis until a payment route has been agreed, including by the banks who need to process the payment.

#### Chambers’ role

It is for individual members of Chambers to be compliant with the UK sanctions regime. Furthermore, compliance with the UK sanctions regime cannot be outsourced to third parties such as Instructing Solicitors. However, Chambers recognises that it will be helpful to members of Chambers to implement a process to mitigate the risk of inadvertently receiving a payment in breach of the UK sanctions regime.

#### *Screening of new clients*

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<sup>2</sup> OFSI FAQ 79. See [UK Financial Sanctions FAQs - GOV.UK](#)

All new cases from the date of this Policy will be subject to a sanctions check carried out by the relevant clerk using OFSI's screening platform [OFSI Consolidated List Search](#). The clerks will input into this search engine the name(s) of the lay client(s) as presented to them by Instructing Solicitors, using the "fuzzy search" if the lay client's name has to be transliterated into English/the Roman Alphabet (e.g. all Russian/Slavic surnames should use the "fuzzy search" as such individual's surnames can often be transliterated into English in multiple different ways).

Please note that the above OFSI search engine will only capture individuals and entities that are designated, and not individuals/entities that are controlled by designated persons. **It is the responsibility of members of Chambers to let whoever is clerking for them know if further due diligence is needed to capture other relevant individuals/entities that are controlled by designated persons, the carrying out of such further due diligence being the responsibility of the relevant member of Chambers.**

*Clerks and barristers to jointly consider whether the instructions involve an enhanced risk under the UK sanctions regime*

Enhanced risk factors include, but are not limited to:

1. Jurisdiction

The lay client(s), or the family members and/or known close associates of sanctioned persons (on the [OFSI Consolidated List Search](#)) and/or the entities that are ultimately controlled by the sanctioned person is located in/has links to a dedicated sanctions regime, currently being:

- Afghanistan
- Belarus
- Bosnia and Herzegovina
- Central African Republic
- North Korea (DPRK) Democratic Republic of the Congo
- Burundi
- Guinea
- Republic of Guinea-Bissau
- Haiti
- Iran
- Iraq
- Lebanon
- Libya
- Mali
- Myanmar
- Nicaragua
- Russia
- Somalia
- South Sudan
- Sudan
- Syria
- Venezuela



- Yemen
- Zimbabwe

2. Nature of the lay client

Is the lay client an ultra-high net worth individual or one of his/her entities?  
Does the lay client have links with any of the jurisdictions identified above?

3. Nature of the transaction

Do the Instructions involve being asked to advise on a structure/legal arrangement which would make identification of the individuals behind it more difficult?

4. Sanctions in other jurisdictions?

Is the individual or entity sanctioned in any other jurisdiction?

If, after carrying out the above review, the member of Chambers considers the set of Instructions to involve an enhanced risk under the UK sanctions regime, he/she should consult the additional guidance in the NCA/OFSI Red Alert [NCA and OFSI issue red alert with private sector on financial sanctions evasion typologies by Russian elites and enablers - National Crime Agency](#) and discuss with Robert Bourne as to what further due diligence is required before accepting the Instructions or to refuse the Instructions. Any correspondence/documents produced by the above process must be shared with the relevant clerk so that Chambers has a record in this high-risk area.

*Records to be kept by Chambers centrally*

1. For each new case from the date of this Policy the result of the sanctions check carried out by the relevant clerk using OFSI's screening platform [OFSI Consolidated List Search](#).
2. Where a case involves an enhanced risk under the UK sanctions regime the additional due diligence obtained by the relevant member of Chambers and all associated correspondence.
3. All correspondence and documents relating to sanctions licences (see above) and the payment of fees into Chambers pursuant to such licences, including all correspondence to ensure solicitor compliance with the General Licence for Legal Fees.
4. Any reporting to OFSI.

**NB Members of Chambers must provide copies of all documentation referred to at points 2 to 4 (inclusive) above to whoever is clerking for them. Your co-operation is appreciated.**

Three Stone

6 November 2024