

UK's OFSI Imposes First Monetary Penalty for Breach of Sanctions

4 March 2019

On 21 January 2019, the Office of Financial Sanctions Implementation (“OFSI”), the UK financial sanctions enforcement body, imposed a £5,000 penalty against R. Raphael & Sons plc (“Raphaels Bank”) for breaching the EU’s financial sanctions against Egypt. While the size of the penalty was modest, it was the first time OFSI has exercised its authority to impose penalties for sanctions breaches, and thus warrants examination.

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So far, OFSI has disclosed limited information about the breach and the basis for the penalty. According to OFSI’s [press report](#), Raphaels Bank processed a mere £200 in funds belonging to an asset frozen individual whilst knowing, or having had reasonable cause to suspect, that by doing so it breached EU sanctions. OFSI has stated that additional information may be disclosed in the future as the agency is continuing inquiries into “other aspects of the breach which do not concern Raphaels Bank”, indicating that a further enforcement action may be in the offing.

OFSI’s Decision to Impose a Fine. OFSI has had the power to impose civil fines for breaches of financial sanctions since 3 April 2017. Such fines are an alternative to criminal prosecution for sanctions breaches and are imposed on a civil standard of proof (i.e., the balance of probabilities that a breach was more likely than not to have occurred).

The process by which OFSI determines whether a financial sanctions breach meets its threshold for imposing a civil penalty is set forth in its [Monetary Penalties for Breaches of Financial Sanctions Guidance](#) (the “Guidance”). First, OFSI must determine that the balance of probabilities standard has been met. Second, it must determine that the breach involved one or more of the following aggravating factors: (i) the breach resulted in funds or economic resources being made available to a person subject to an asset freeze; (ii) there is evidence of circumvention; (iii) other aggravating factors make a monetary penalty “appropriate and proportionate”; or (iv) a person has not complied with the requirement to provide information to OFSI. It is expressly within OFSI’s discretion not to impose a penalty even when the penalty threshold is met.

Due to the lack information available regarding the Raphaels Bank fine, it is not possible to determine which factors resulted in the case meeting the penalty threshold. It is notable, however, that OFSI elected to impose a fine despite the transaction in question relating to a mere £200, particularly since Raphaels Bank appears to have self-reported the matter to, and fully cooperated with, OFSI.

The Fine Amount. OFSI can levy civil fines up to a maximum of the greater of 50 percent of the value of the transaction, or £1 million.

In determining the fine amount, the Guidance states that OFSI is to consider what penalty level is “*reasonable and proportionate*” by engaging in a holistic assessment of the breach. Factors considered include the severity of the breach, whether the violator in question had an appropriate compliance system in place, and whether the violator is a recidivist.

In the case of Raphaels Bank, OFSI determined that a reasonable and proportionate baseline fine was £10,000. OFSI further determined that, because the breach was categorized as “serious” rather than “most serious”, it was eligible for a 50 percent voluntary disclosure reduction, leading to the final £5,000 fine.

Although the fine amount is relatively small, OFSI’s determination that a breach worth £200 warranted a £10,000 baseline fine indicates that it is willing to take an aggressive approach to setting penalties. That said, it is possible that the case involved additional aggravating factors that have not yet been publicly disclosed.

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Please do not hesitate to contact us with any questions.

LONDON



Karolos Seeger
kseeger@debevoise.com



Jane Shvets
jshvets@debevoise.com



Konstantin Bureiko
kbureiko@debevoise.com

WASHINGTON, D.C.



Satish M. Kini
smkini@debevoise.com