

**BAR  
STANDARDS  
BOARD**

REGULATING BARRISTERS

**Thematic Review**  
**Financial Sanctions Compliance at the Bar**  
**2023**

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## Executive summary

1. All barristers and BSB entities, regardless of the type of work they do, must comply with the [UK's sanctions regime](#) and have procedures in place to ensure that sanctions are not breached.
2. This thematic review of sanctions compliance focused on 31 chambers that are members of the Commercial Bar Association. This group was prioritised because they were assessed to be the most likely to have exposure to clients subject to the sanctions regime, engaging in the highest value activity.
3. In general, there was a good level of awareness of the risks of unwittingly engaging with a designated person without a licence. It was evident that caution is being exercised to ensure compliance. We identified areas of good practice, which we are sharing in this report and would encourage all barristers and their chambers or entity staff to consider these, as they will be relevant to other practice areas too.
4. We also had some interesting discussions about how the market had changed since February 2022 as a result of the tranche of sanctions that were imposed following the Russian invasion of Ukraine.
5. We were satisfied that the majority of chambers had at least some procedures in place to promote a consistent approach in chambers and ensure compliance with the sanctions regime. However, we found that documenting and implementing appropriate controls within chambers was the area where most improvement was needed. Remedial actions were set where relevant and have been actioned.
6. We noted tension in delineating responsibility between chambers and barristers. Chambers felt there were practical difficulties due to confidentiality obligations as self-employed individuals and individual responsibility for compliance. Our view is that chambers' management committees need to have mechanisms and guidance in place to assure themselves that risk is appropriately and consistently assessed, and compliance controls are consistently applied.
7. Chambers were keen to have the support of Bar Council guidance to help ensure consistency across the profession. The Bar Council has set up a working group to develop this and we have shared our findings with them to help to inform the guidance.
8. Our initial rating of the Bar being used as enablers of sanction breaches was medium risk and although we are assured through this thematic review that there is a good awareness of the sanctions regime amongst the commercial Bar, we have set out the next steps at the end of this report and will continue to maintain this rating whilst these actions are ongoing.

## Introduction

9. All barristers and BSB entities, regardless of the type of work they do, must comply with the [UK's sanctions regime](#) and have procedures in place to ensure that sanctions are not breached.
10. The sanctions regime came into sharp focus in February 2022, following the Russian invasion of Ukraine, when the UK government imposed a significant number of financial and trade sanctions. The government sought the support of all regulators to raise awareness of the sanctions regime and to test compliance.
11. In August 2022, the BSB Supervision team commenced a focused review of 31 chambers that are members of the [Commercial Bar Association](#) (Combar). This group was prioritised because they were assessed to be the most likely to have exposure to clients subject to the sanctions regime, engaging in the highest value activity. Combar chambers that formed part of the Supervision team's ongoing Anti-Money Laundering (AML) work, where sanctions compliance is tested, were excluded from this review.
12. We issued a questionnaire to these 31 Combar chambers to assess the extent to which their barristers' practices are exposed to countries on the consolidated sanctions list, and the robustness of controls in the following areas:
  - a) Licence applications and reporting obligations to the Office of Financial Sanctions Implementation.
  - b) Risk assessment conducted to identify and assess sanctions risk to chambers and barristers' individual practices.
  - c) Policies, controls and procedures are in place, proportionate with regard to the size and nature of the practice, to mitigate and manage the risks identified and ensure compliance with the sanctions regime.
  - d) Relevant persons receive appropriate training.
13. Each questionnaire was assessed and those that provided insufficient assurance that appropriate controls were in place within chambers were subject to a supervision visit to explore their exposure to financial sanctions and to review their controls further.
14. This report sets out our findings from this thematic review and shares examples of good practice in complying with the UK's sanctions regime.

## UK Sanctions Regime & the BSB Handbook

15. [Sanctions](#) are restrictive measures that can be put in place to fulfil a range of purposes. In the UK, these include complying with UN and other international obligations, supporting foreign policy and national security objectives, as well as maintaining international peace and security, and preventing terrorism. Sanctions measures cover:
  - Financial sanctions, including asset freezes.
  - Immigration sanctions, known as travel bans.
  - Aircraft and shipping sanctions.
  - Trade sanctions, including arms embargoes.
16. The most relevant sanctions to the Bar are financial sanctions, which aim to prevent flows of funds and economic resources to and from designated persons (individuals, entities, planes or ships) directly and indirectly. It is also important to be aware of other forms of sanctions which may be relevant to the work of barristers eg immigration advice to an individual subject to a travel ban.
17. The [Office of Financial Sanctions Implementation](#) (OFSI), which is part of HM Treasury, is responsible for the implementation of financial sanctions in the UK and can issue licences for barristers to receive reasonable fees for the provision of legal advice to a designated person. In addition, there are certain reporting obligations such as informing OFSI promptly if a barrister knows or reasonably suspects that a person is a designated person or has committed offences under sanctions regulations and where that information is received in the course of carrying out their business.
18. Under the [Sanctions and Anti-Money Laundering Act 2018](#), OFSI may issue general licences which allow multiple parties to undertake specified activities which would otherwise be prohibited by sanctions legislation, without the need for a specific licence. An [OFSI general licence for legal fees](#) is currently in place.
19. [Core Duty 10 of the BSB Handbook](#) requires all barristers to take reasonable steps to manage their practice competently and in such a way to achieve compliance with legal and regulatory obligations. All barristers and BSB entities are bound by the sanctions regime and compliance is mandatory.
20. [Rules C89.8](#) and [C94.11](#) place obligations on barristers in chambers and BSB entities to take reasonable steps to ensure appropriate risk management procedures are in place. Whilst self-employed barristers are individually responsible for compliance with the UK sanctions regime, we anticipate that a number of policies and controls will be developed in common with chambers.
21. A breach of UK sanctions is a strict liability offence and can result in criminal prosecution or a fine by OFSI, therefore all barristers should ensure that they know and understand their exposure and their obligations.

## Findings

### *Licence applications and reporting obligations to OFSI*

*Our thematic review found that as soon as sanctions were imposed on Russia, chambers became very cautious of accepting instructions from a source that could be (either directly or through an ultimate beneficial owner) a designated person. Given this cautious approach, chambers considered the risk of unknowingly acting for a designated person to be low risk. In some cases, initial enquiries were withdrawn once chambers began to conduct due diligence. Some chambers noted a reduction in relevant instructions because of the sanctions.*

*Where a licence was required, common practice was for the instructing solicitors to submit the licence application to OFSI in conjunction with chambers. As a result, there were very few licences submitted by chambers in this group over the period since February 2022.*

22. Twenty-four chambers advised that they had not submitted a licence to OFSI to receive fees from clients nor had made a report to them. Thirteen said that they would rely on instructing solicitors to make any licence applications to OFSI. Four chambers advised that their barristers would apply for a licence themselves rather than the instructing solicitor; the instructing solicitor would apply for a licence to instruct the barrister but any application for payment of fees would be completed by the barrister.
23. The Combar chambers were asked whether instructions from a designated person had ever been refused. The majority reported having not been approached. Three chambers received enquiries from instructing solicitors whose clients were a designated person:
  - One chambers returned all instructions when it was established that their clients were added to the sanction list.
  - One chambers would only accept instructions if a licence is in place.
  - One chambers was approached by an instructing solicitor for potential instructions from a lay client entity. The barrister had concerns and raised this with the solicitor, who made further enquiries which resulted in the instructions being withdrawn.
24. Two chambers advised that they had made a report to OFSI as a matter of caution based on suspected breaches of the sanctions regime. One of these reports was regarding a potential breach by the instructing solicitor. Generally, these reports were made out of an abundance of caution in relation to concerns about the ultimate beneficial owner.
25. Our review found that no enforcement action had been taken by OFSI for sanction breaches, based on information on [OFSI's website](#), where breaches are published, and on what chambers told us.
26. Generally, all chambers were aware of the need to apply for a licence if necessary and aware of the reporting obligations under the sanctions regime.

### *Exposure to countries on the consolidated sanction list*

*Financial sanctions which relate to a specific country or terrorist group are known as 'regimes'. Russia, Venezuela, Iran and Libya were the most common regimes where chambers' clients originated from. The exposure to such regimes arose from instructions received in areas of work that had an international dimension such as shipping, international dispute resolution, insolvency, energy and construction rather than a commercial element.*

27. Twelve Chambers advised that they had never acted for individuals or entities from regimes on the sanctioned list nor provided any services in those countries. In the sets that did, the work related to international dispute resolution or dealing with issues arising out of the sanctions being imposed such as insolvency and restructuring.
28. A [Red Alert](#) was issued in July 2022 by the National Crime Agency and OFSI, which highlighted that instructions may be received from other countries that do not have a robust sanctions regime. For example, the UAE alongside Turkey, China, Brazil, India and the former Soviet Union (excluding the Baltic States and Ukraine) have all been identified as areas of higher risk. During our visits to chambers, we received feedback from several chambers which provided assurance about their understanding of methods designated persons were employing to evade the sanctions regime. This included hiding assets in British Virgin Island registered companies, Russians in Dubai setting up trust funds and Chinese nationals instructing law firms in Hong Kong.
29. The UAE was a common jurisdiction where Combar chambers received instructions from, however the instructions came from international branches of UK based law firms and chambers were alive to the risk of instructions potentially involving a Russian nexus.

### *Risk Assessment*

*Most of the chambers assessed their exposure to the sanction regime as low risk which led to some having no, or minimum controls at chambers level and therefore put the responsibility for assessing risk on the individual barristers.*

30. Chambers were asked if any action was taken to assess the risk to chambers and barristers' individual practices of breaching sanctions to chambers. Ten Chambers said that there was no chambers-wide risk assessment and the responsibility for assessing risks was that of the individual barrister and carried out on a case-by-case basis.
31. For those Chambers that had implemented chambers-wide controls, there were several approaches adopted:
- Two Chambers prepared guidance to assist their barristers in carrying out individual risk assessments.
  - Two Chambers maintained a risk register which was reviewed regularly by their management committees.
  - Three Chambers had each set up an internal committee that solely focused on sanctions and risk to chambers. The committees undertook research and shared their findings with members of chambers.

- One chambers had a dedicated sanctions risk assessment, which doubled as a risk register and detailed their internal processes. This document acted in lieu of a formal policy.
- Eight other chambers conducted a chambers-wide risk assessment.

32. A common issue that arose across all the chambers we visited was not having oversight of the risk assessments carried out by their barristers. Chambers raised practical difficulties around this due to confidentiality obligations as self-employed individuals; barristers in chambers may be acting for opposing parties in a matter and may therefore be privy to privileged information if, for example, the management committee or clerks were to review individual risk assessments. Another set felt that having oversight of risk assessments would have the unintended consequence of inappropriately alleviating some responsibility away from the barrister and on to the chambers.

33. Our view is that chambers' management committees need to have mechanisms and guidance in place to assure themselves that risk is appropriately and consistently assessed. Whilst barristers are individually responsible for their own compliance, chambers as a whole are exposed to reputational risk if an individual is found to have breached the sanctions regime. Rule C89.8 places obligations on barristers to take reasonable steps to ensure appropriate risk management procedures are in place in chambers.

#### *Policies, controls and procedures*

*The thematic review demonstrated that documenting and implementing appropriate controls within chambers was the area where most improvement was needed.*

*We commonly found that this was due to a lack of guidance and training available in the market regarding the sanctions regime, but also tension in delineating responsibility between chambers and barristers. Chambers were of the view that the Bar Council should be issuing guidance in order to promote consistency and support chambers in other practice areas who may have less familiarity with the sanctions regime.*

*We were nevertheless satisfied that the majority of chambers had at least some procedures in place to promote a consistent approach in chambers and ensure compliance with the sanctions regime.*

34. When we reviewed the responses to the questionnaire, we found that 14 chambers did not have any policies or procedures in place to ensure compliance with financial sanctions whereas 15 chambers had a relevant policy or protocol and a further two had addressed this in their AML policies.

35. Of the 14, three chambers appeared to place a heavy reliance on instructing solicitors to identify whether a client is a designated person. When we discussed this with them further during the visits, it was clear, however, that there was proactive dialogue with instructing solicitors, including asking them robust questions as to the sanction checks they conducted.

36. Feedback was given to these three chambers to ensure their internal documentation contained guidance on how correspondence with instructing solicitors should be recorded in relation to checking whether the client is a designated person and when, if at all, it was appropriate to rely on them to conduct such checks.
37. Responsibility for conducting due diligence, including identifying ultimate beneficial owners, varied with some chambers assigning clerks to do this, whilst in other cases the barrister themselves obtained the assurance. The latter was particularly the case where the nature of the work involved complex corporate structures, and understanding this was intrinsic to the instruction. These barristers and practice staff in particular were able to demonstrate clear understanding of the risks.
38. By the time we had completed our review, all chambers had implemented some form of control at chambers level.
39. Two chambers advised that they used their AML procedures for sanctions compliance rather than implementing separate procedures. These chambers had added information about the sanctions regime to their existing policies. There is, however, a risk of confusion in doing this because not all barristers are subject to the Money Laundering Regulations, whereas all barristers must comply with the sanctions regime.
40. One Chambers had worked with a consultant to review chambers' processes and carry out a sanctions risk assessment. Following this, chambers drafted a robust written policy.
41. In the questionnaire, we asked if any chambers used a third-party IT provider to carry out sanction checks. Five chambers confirmed they used a third party provider, namely, [North Door Sanction Checker](#), [SmartSearch](#), and/or [AML Search](#). There is guidance in chapter 7 of the [Joint Legal Sector AML Guidance](#) about identifying the risks of relying on third-party platforms.
42. Two chambers had looked at a third-party sanctions compliance software but were deterred by the high cost.
43. A common motivating factor for chambers in conducting robust due diligence was the financial risk of not receiving fees for the work undertaken should the client be a designated person. The commercial motivation to conduct appropriate checks therefore helps to mitigate the risk of non-compliance as fees in this area of practice can be substantial.

## Training

*A consistent theme among all selected chambers was that individual barristers were responsible for their own training and therefore any internal training focused solely on chambers staff to enable them to scrutinise instructions appropriately.*

*Some chambers had significant in-house expertise arising from their area of practice, either about the sanctions regime itself, or the relevant jurisdictions and those who are now subject to sanctions. Some barristers have been involved in advising the government on implementation of sanctions.*

44. Chambers were asked to provide details of any training and awareness raising given to their barristers and chambers staff in relation to the sanctions regime. For the vast majority, the training or sharing of guidance was focused on chambers staff rather than barristers. This was to ensure key staff were aware of chambers procedures and their responsibilities under the UK's sanctions regime.
45. One chambers brought in a law firm that specialises in sanctions to provide training to its staff. A majority of chambers encouraged their barristers to attend a [Combar seminar](#) on sanctions. The seminar is available for Combar members. Some sets shared updates they received as a result of their membership of the Legal Practice Management Association. There was general consensus that the choice of training in the market was very limited.
46. It is clear that in some chambers there was considerable knowledge and experience about the regime, including barristers who have been advising the government on implementing sanctions. We were able to broker a connection between them and the Bar Council policy staff, who have now been able to put together a working group to develop guidance for the profession. During the course of discussions with this cohort of chambers, it was clear that there was a demand for this, and also a concern for chambers in other practice areas that have less expertise in this area.
47. We took this opportunity to ask about the extent to which chambers have central oversight of barristers' CPD plans, since this would provide them with an opportunity to understand the extent to which their barristers have reflected on their training needs in this area. Whilst our Handbook does not mandate it, we think that it is good practice and have encouraged chambers to consider this.

## OFSI Engagement

48. The legal sector regulators have, collectively, sought to engage directly with OFSI about risk but the information flows have so far been limited. We understand that this is due to resource constraints at OFSI, given the significant increase in the number of sanctions and the impact that had had on their workload. OFSI is seeking to enhance its engagement with the legal sector and recently established a [new forum](#) that will meet quarterly. Membership of the forum is open to all interested parties within the legal sector (regulators and practitioners) and the forum is intended to help OFSI build more

productive relationships with the legal sector. The Legal Services Board has lobbied OFSI for more direct communication separately with the regulators. We welcome this.

## Good Practice

49. In this section we highlight some good practice we have seen during our review.

Although the approach adopted by barristers, chambers and BSB entities will be bespoke to their own practice, we hope the following information will be useful to the Bar in assessing their own exposure and putting in place processes to manage any identified or anticipated risks of breaching sanctions.

- a) **Head of Chambers, management committee and senior staff play a key role in promoting sanction compliance:** We found a number of chambers had written to members and staff reminding them of their obligations under the sanctions regime, highlighting red flags for sanction risks and signposting to relevant guidance. One chambers established an internal procedure which required barristers to complete an annual periodic return confirming that they have carried out a sanction risk assessment of their practice.
- b) **Conducting a chambers-wide risk assessment:** There was a continuing theme amongst all chambers of being alive to the potential reputational damage should a barrister breach sanctions. As a result, although some chambers assessed their exposure to sanction risk to be low, they nevertheless took steps to specifically identify higher risk areas (jurisdictions and areas of practice) within chambers to ascertain if internal controls should be more targeted.
- c) **Information is provided to members to enable them to conduct individual practice risk assessment:** One chambers produced guidance that gave members a clear steer as to the type of risk assessment they should be conducting, starting with identifying high-risk factors within the instructions and proceeding from there. This included highlighting red flags and practice areas where a barrister could come across a designated person.
- d) **Keeping up to date with sanctions:** Most chambers were signed up to receiving [update alerts from OFSI](#). These alerts highlighted new posts published by OFSI and when an individual or entity is added to or removed from the consolidated list of sanctions. One chambers would run any new additions to the consolidated list through their Lex system to detect whether any existing clients had been added.
- e) **Not relying on instructing solicitors' due diligence:** Most chambers maintained an ongoing dialogue with instructing solicitors, reviewing the due diligence completed by them but also carrying out their own checks with the awareness that liability for sanction compliance could not be outsourced.

- f) **Having a chambers-wide sanction policy to ensure a consistent approach to compliance with the sanctions regime:** OFSI does not prescribe the level or type of due diligence to be undertaken to ensure compliance with financial sanctions. However, in March 2023, OFSI updated its [guidance on enforcement and monetary penalties for sanctions breaches](#) to set out what mitigating or aggravating factors it will consider in the event of a breach, when assessing the degree and quality of research and due diligence conducted on ownership and control. OFSI will consider whether the level of due diligence conducted was appropriate to the degree of sanctions risk and nature of the transaction. It would expect to see evidence of a decision-making process that took account of the sanctions risk and considered what would be an appropriate level of due diligence in light of that risk.
- g) **Nominating an individual(s) in chambers with appropriate expertise and authority to consider sanction issues:** We found three chambers had set-up internal committees to consider sanction issues, sharing emerging risks and changes to the sanctions regime. We also found that policies were usually prepared by a member who specialised in areas where they were likely to engage with the sanctions regime.
- h) **Adopting a cautious approach:** In general, there was a good level of awareness of the risks of unwittingly engaging with a designated person without a licence. One chambers explained that their approach was to treat each instruction with heightened scrutiny and to seek legal advice if necessary. If chambers were not satisfied through their due diligence that the client was not a designated person, they would not act on the instructions.
- i) **Clerks as the first line of defence for screening clients for sanction risks:** One chambers implemented a process whereby for each instruction received, the clerks would check against the consolidated list maintained by OFSI and then record this has been done on Lex. This would prompt the barrister to carry out further checks before accepting the instructions.
- j) **The requirements in the Money Laundering Regulations can be a useful framework to implementing controls to ensure sanction compliance, but chambers need to ensure that this does not create confusion:** One chambers updated their AML procedures to include sections on the sanctions regime covering how to apply for licences, reporting obligations, possible red flags and links to relevant guidance. Although there is some overlap between the [Money Laundering Regulations](#) (MLRs) and the sanctions regime, the MLRs only apply to those that do relevant work whereas the sanctions regime applies to everyone, and this can be a source of confusion if documented processes are combined.

## Next steps

50. During our visits, a number of barristers were keen to stress that barristers may come across designated persons in other areas of practice such as family law (setting up trusts with obscure ownership), immigration (travel bans) and chancery. We are engaging with the Bar Council, who are developing guidance for the wider Bar, which we think is a priority. We will also continue to engage with OFSI (alongside other legal sector regulators) and press for access to targeted intelligence, if applicable to the Bar.
51. Furthermore, on 30 March 2023, the government published their [Economic Crime Plan 2](#) setting how they will tackle economic crime such as reducing money laundering, fraud and combatting kleptocracy. The Plan has a chapter covering sanction evasion and sets out that the government remains committed to working effectively in partnership with private sector stakeholders to tackle risks of sanctions evasion and emerging risks that may warrant a sanctions response. The full list of actions to combatting sanction evasion can be found [here](#) and includes:
- Publishing an assessment of sectoral threat and identify vulnerabilities relating to financial sanctions by quarter 4 2024. This will include an evidence gathering stage which will provide an opportunity for the BSB to engage.
  - Enhanced OFSI engagement and information sharing with the public and private sector and supervisors by quarter 4 2023. This will also include reviewing and expanding OFSI guidance on licencing framework and enforcement where necessary.
52. The outcome of the above actions will help us to scope whether and, if so, where further compliance testing is a priority for the Bar.
53. Our initial rating of the Bar being used as enablers of sanction breaches was medium risk and although we are assured through this thematic review that there is a good awareness of the sanctions regime amongst the commercial Bar, we will continue to maintain this rating whilst the above actions are ongoing.

**27 June 2023**