

Standard Chartered fined £20.5m for breach of EU sanctions against Russia

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Corporate Crime analysis: Ed Pearson, solicitor, and Lucia Cabello, a Spanish-qualified lawyer, both of Fulcrum Chambers, consider the decision of the Office of Financial Sanctions Implementation (OFSI) to fine the UK bank Standard Chartered a total of £20.5m for making loans to a bank that was almost wholly Russian-owned, in breach of European Union (EU) sanctions which were imposed against Russia after it annexed Crimea.

How did the fine arise?

In July 2014, the EU set out restrictive measures in order to prevent certain Russian banks, companies and their subsidiaries from accessing EU primary and secondary capital markets, which includes access to loans.

Article 5(3) of EU [Council Regulation 833/2014](#), which came into force in September 2014, prohibits any EU person from making loans or credit, or being part of an arrangement to make loans or credit, available to sanctioned entities where those loans or credit have a maturity of more than 30 days.

Alongside this prohibition, an exemption exists to ensure that legitimate EU trade is not harmed. The exemption permits loans or credit which have the specific and documented objective of financing the import or export of non-prohibited goods between the EU and any third country.

Between April 2015 and January 2018, Standard Chartered made 102 loans to Denizbank A.Ş., which at the time was almost wholly owned by the Russian bank, Sberbank. Sberbank was at the relevant time subject to restrictive measures under the EU's Ukraine (Sovereignty and Territorial Integrity) regime, which lists the persons subject to the EU's sanctions regime. As Sberbank's majority-held subsidiary, the restrictions also applied to Denizbank.

Following an internal investigation by Standard Chartered, it made a voluntary disclosure to OFSI, which assessed that Standard Chartered was aware of the sanctions regime and the need to take compliance steps and had initially ceased all trade finance business with Denizbank when Denizbank became a sanctioned entity. However, Standard Chartered had then sought to introduce dispensations enabling such loans to be made where it considered an exemption was applicable.

OFSI therefore determined that 70 of the 102 loans it assessed (relating to the period April 2015 and January 2018 and with an estimated transaction value of more than £266m) did not qualify for the exemption since they lacked the requisite nexus with the EU and were, therefore, in breach of [Article 5\(3\)](#) of Regulation 833/2014 and regulation 3B of the Ukraine (European Union Financial Sanctions) (No.3) Regulations 2014, [SI 2014/2054](#).

Because, however, OFSI only has authority to impose penalties from 1 April 2017, it only imposed penalties in relation to 21 of the loans made between 7 April 2017 and 17 January 2018, with an estimated transaction value of £97.4m.

In determining the appropriate level of penalty, OFSI designated the violation 'most serious' (the first time OFSI has used this designation). This is the highest level of severity and it is reserved for breaches which 'involve a very high value, blatant flouting of the law, or severe or lasting damage to the purposes of the sanctions regime'.

In mitigation, OFSI recognised and gave credit for Standard Chartered's voluntary disclosure and imposed a 30% reduction to the penalty (the highest reduction available for cases deemed 'most serious').

OFSI initially imposed penalties of £11.9m and £19.6m for the breaches.

On 7 January 2020, Standard Chartered exercised its right under the [Policing and Crime Act 2017 \(PCA 2017\)](#) to a review by a Minister of the Crown of both penalties. The Minister reduced the penalties to £7.7m and £12.8m, respectively, giving a total fine of £20.5m. This is the second time that an OFSI decision has been appealed to the Minister and the second time that the Minister has reduced the penalty imposed.

Although the Minister in this case upheld the OFSI decision to impose the penalty, agreeing with OFSI that these breaches fell into the 'most serious' category of financial sanctions breaches, the Minister reduced the level of the penalty, having given further consideration to Standard Chartered's internal investigation, concluding that it did not wilfully breach the sanctions regime, had acted in good faith, had intended to comply with the relevant restrictions, had fully co-operated with OFSI, and had taken remedial steps following the breach. Although these factors had been considered in OFSI's assessment, the Minister stated that they should have been given more weight in the penalty assessment.

How does the fine compare with those imposed before by the OFSI?

As of April 2017, OFSI has had the power under [PCA 2017, s 146](#) to impose a civil penalty if it is satisfied, on the balance of probabilities, that the person had breached a prohibition or failed to comply with an obligation which was imposed by financial sanctions legislation, and the person knew, or had reasonable cause to suspect, that he, she or it was in breach of the prohibition or had failed to comply with the obligation.

The maximum financial penalty that can be imposed for a sanctions breach is £1m where the breach does not relate to particular funds or economic resources; where the breach does relate to particular funds or economic resources, the maximum penalty is whichever is the greater of £1m or 50% of the estimated value of those funds or resources.

OFSI will refer more serious sanctions cases for criminal prosecution (now by the National Crime Agency) which can result in custodial sentences of up to seven years.

Before 21 January 2019, OFSI had not issued a single penalty for sanctions violations. The action taken against Standard Chartered therefore follows a trend of increasing activity (although from an admittedly low starting point) taken by OFSI, and represents the fourth penalty it has imposed.

Until now, however, the penalties that have been issued have been of a relatively low level, with the most recent (and largest to date) being a £146,341 penalty issued against Telia Carrier UK Ltd in September 2019. The multi-million-pound penalty imposed against Standard Chartered, despite the 30% discount and further ministerial reduction, therefore marks a significant milestone for OFSI. While it is too early, and the level of this penalty too isolated, to make any firm predictions, this enforcement action against Standard Chartered is bound to have provided OFSI with great confidence, and in all probability this will probably mark the start of increasingly regular and significant action by OFSI.

How does the fine compare with other fines being imposed on a global level?

While the Standard Chartered penalty is significant, and OFSI's enforcement action is increasing, activity levels still lag behind certain other sanctions enforcement agencies around the world, most notably the US Office of Foreign Assets Control (OFAC) whose penalties and settlements in 2019 alone amounted to \$1,289,027,059. The level of the penalty handed down by OFSI is also relatively small in comparison with the level of penalties and settlements that have historically been issued and agreed by OFAC—indeed, it is interesting to note that Standard Chartered was the subject of OFAC's largest penalty or settlement last

year, amounting to \$657,040,033 in global settlement of various sanctions violations (which did not include violations relating to Russia/Ukraine).

Perhaps surprisingly, the Standard Chartered penalty now puts OFSI ahead of OFAC in terms of the monetary value of penalties imposed or settlements concluded this year (£20,471,809.83 compared with \$8,966,790). It would be surprising, however, if this remained the case for long.

What does this development indicate about trends in sanctions compliance and enforcement generally?

The OFSI decision serves as a salutary warning to firms which are complacent and which have inadequate systems in place to prevent sanctions breaches, as sanctions violations look set to form the subject of a period of unprecedentedly rigorous enforcement action in the UK. Regular internal reviews of due diligence and compliance procedures, and ongoing monitoring of the effectiveness of those procedures, are essential.

The reductions applied to the penalties, firstly by OFSI and secondly by the Minister, also highlight the weight that will be given to voluntary disclosure and co-operation of any firm subject to an OFSI investigation. Early identification of sanctions violations and decisive action to address such violations will provide substantial mitigation, translating into significantly reduced penalties.

OFSI's 2019 Annual Review made it clear that OFSI's greatest efforts in the previous two years had been in providing the business community with guidance in order to ensure a proper understanding and awareness of sanctions and regulations. The recent penalties issued by OFSI suggest that its priority may now be turning to enforcement, in which case we should expect to see an upturn in both numbers of penalties issued and the levels of those penalties.

Interviewed by Robert Matthews.

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