

Meeting: Legal Services Board

Date: 26 April 2022

Item: Paper (22) 20

Title: Financial sanctions and legal services

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Status: Official

Purpose of the paper

1. To update the Board on work undertaken to improve engagement by legal services regulation with the sanctions regime as it applies to legal services. The paper outlines the key elements of the regime, the work done so far, key themes emerging from the work and a co-ordinated “ask” on information sharing and additional powers. It annexes key correspondence with the regulators and with the MoJ.

Recommendation

2. The Board is invited to note this update

Key elements of the regime

3. The sanctions regime in the UK is broad and applies to a range of economic sectors. This paper concentrates on the obligations and exemptions arising from the regime specifically in relation to legal services providers. While there is an obvious focus on sanctions relating to the war in Ukraine, the principles apply to all sanctions imposed by the UK.
4. The key elements of the regime as it applies to legal services are:
 - providing legal services to a sanctioned entity is permitted;
 - however, in order to receive fees for those services, a licence is required in advance from the Office of Financial Sanctions Implementation (OFSI), a branch of HMT; and
 - any such fees must be reasonable
5. The formulation of the regime preserves the principle that everyone is entitled to legal representation, while seeking to ensure that providers do not profit unreasonably from assisting those on sanctions lists.

6. OFSI is charged with enforcing the regime. A key question has been the extent to which, and how, legal services regulation (and the expert regulators it comprises) can assist.

Work done so far

7. The LSB wrote to the regulators (Annex A) on 4 March to organise a round table discussion on 11 March. OFSI, OPBAS and MoJ were also invited and attended.
8. Discussion at the round table was wide ranging but settled on a common understanding that legal services regulators had an important role to play in raising awareness and, in general terms, supporting the effective operation of the sanctions regime.
9. On the back of the roundtable, the LSB sought assurances from all the regulators on the following points:
 - What they were doing to raise awareness of the regimes among their regulated communities
 - Their approach to compliance and enforcement
 - Key “asks” on information sharing (with a view to the LSB compiling a consolidated ask for discussion with Government)
 - Any additional powers that regulators considered might be helpful (again for discussion with Government in the first instance)
10. We were grateful to receive full returns from all the regulators and we presented our analysis of the information at a second round table discussion on 1 April.

Emerging themes

11. From the returns supplied to us, and from discussion, the following key themes have emerged:

General

- All regulators are to be commended for their willingness to engage on the issues
- However, there is a wide range of approaches taken on every dimension of activity.
- Sanctions-related messaging and activity tends to be “drowned out” by that relating to anti-money laundering (and in fact for most regulators there appears to be an over-reliance on AML controls as mitigating sanctions-related risks when the two regimes are in fact distinct)
- The “UK nexus” of the sanctions regime may have had a tendency to be overlooked, with the result that there is likely to have been an over-

reliance on such factors as the absence of Russian business addresses as an indicator of risk

- More broadly, assessments of risk and exposure of various parts of the sector are somewhat under-developed

Raising awareness

- All regulators have conducted active “push” campaigns. There is much good and some excellent practice
- However, specific information on legal services licensing requirements is absent altogether from a minority of campaigns and can be demoted by the broader requirements in others. There has been much (one might argue too much) reliance on linking to OFSI guidance, which may make it harder for legal services providers to find their way to specific requirements placed on them
- There is little information available as to the *effectiveness* of the awareness-raising (eg follow up surveys, calls). (In this context it might be noted that only a very small number of licences have been applied for and *no* licences have yet been issued.

Compliance

- There is considerable divergence of views on role and this is reflected in range and intensity of activities undertaken
- Not clear that intensity of response is always based on well informed understanding of risk/exposure
- Limited information as to actual compliance with legal services requirements; some, but not all, regulators are taking steps to address the gap (in line with overall positioning)
- Coupled with low licensing numbers, possibly widespread non-compliance must remain a significant concern

12. In response to these themes, we offered to set out the LSB’s “central expectations” of the role to be played by the regulatory community in relation to sanctions and have drafted a letter, at annex b.

Co-ordinated ask on information sharing and broader powers

13. As part of the work, we collated an assessment of where regulators might be assisted in their role by improved information sharing, and by broader powers. We set out this co-ordinated “ask” in response to a letter from the Deputy Prime Minister (that letter and our response attached at annexes c and d). For efficiency, that assessment is not repeated in the body of this paper.

Next steps

14. The next steps for this work include the following:

- Work with the regulators to agree the “central expectations” and follow up to assess progress towards them
- Continue to work with Government and the regulators to pursue information sharing and additional powers to secure compliance
- In the slightly longer term, build the learning from this exercise into our broader work, planned for this business plan year, on the rule of law and what that means for regulation.

Risks and mitigations	
Financial:	N/A
Legal:	Issues around alignment of the legal services regulatory framework with the sanctions regime
Communications and engagement:	Engagement with regulators, OFIS, OPBAS, MoJ
Equality and diversity:	N/A
Resource:	N/A

Annexes

Annex A – Invitation to March 11 round table

Annex B – Letter to regulators on central expectations

Annex C – Letter from the Deputy Prime Minister to the LSB

Annex D – Response to the Deputy Prime Minister setting out central ask on information sharing and powers

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
N/a	N/a	N/a