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U.K. Office of Financial Sanctions Implementation Issues First Fine

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Introduction

On 21st January 2019, the U.K. Office of Financial Sanctions Implementation ("OFSI") issued its first ever monetary penalty against Raphaels Bank. While the penalty is small (£5,000), there are parallels with the Bribery Act 2010's early enforcement which suggest this is merely OFSI's opening salvo. Corporates would be well advised to prepare for more complex investigations and fines of a greater magnitude, and to actively consider cooperation with authorities over even small matters.

What happened?

Raphaels Bank has been fined for dealing with funds belonging to a person designated under Regulation 3 of the EU's Egypt (Asset-Freezing) Regulation 2011 (S.I. 2011/887). The Regulation was created to target persons following the overthrow of Egyptian President Mubarak in 2011. Britain – in alignment with the EU – froze the accounts of individuals designated under the Regulation. The value of the funds dealt with amounted to a mere £200. Nonetheless, OFSI "was satisfied on the balance of probabilities, that Raphaels Bank breached a prohibition that is imposed by or under financial sanctions legislation, and knew, or had reasonable cause to suspect, that they were in breach of the prohibition." Under s.146 of the U.K.'s Police and Crime Act 2017, OFSI has the power to fine companies up to £1m or fifty percent of the value of the money constituting the breach – whichever is higher. In this case, an initial fine of £10,000 was reduced to £5,000 "in consideration of Raphaels Bank's disclosure and cooperation." Unrelated to Raphaels Bank, OFSI continues to investigate further aspects of the dealing.

Implementation analogy to the U.K. Bribery Act 2010 and the U.S. Foreign Corrupt Practices Act 1977 ("FCPA")

The Raphaels fine – for handling a mere £200 – is reminiscent of the early enforcement of the Bribery Act and the FCPA. Lawyers and clients alike could have been forgiven for imagining that a breach of £200 would be *de minimis*. The first Bribery Act prosecutions also fell on similarly "low-profile" targets: an offence by a court clerk of taking bribes to alter a traffic offence database, and a prospective taxi-driver who unsuccessfully offered £200 to alter a failed private hire taxi licence test. It was some time before the first s.7 Bribery Act "failure to prevent" offence was prosecuted. *R v. SIL* was the first contested s.7 prosecution in early 2018, and Deferred Prosecution Agreements began in 2015 with only Standard Bank, XYZ, Rolls Royce, and Tesco so far. Similarly, it was almost a decade after implementation of the FCPA that U.S. bribery and corruption enforcement action became commonplace. Bribery Act and FCPA risk has escalated substantially and is now rightly taken extremely seriously; by analogy, so too should sanctions regime risk.

Proactive Preparation

The Raphaels Bank fine should be viewed as a dress rehearsal for more complex, higher value settlements and investigations. It also demonstrates that even small infringements will be taken seriously by OFSI. However, we do not anticipate that OFSI will be restricted to small scale enforcement on the basis of capacity. Stakeholders should therefore take no comfort from the low-level at which OFSI has pitched its early enforcement. On the contrary, the high ratio of offence value to fine quantum indicates OFSI's aggressive enforcement appetite. Companies doing business with designated individuals should review their sanctions risk protocols. They should also prepare for the implementation of the Sanctions and Anti-Money Laundering Act 2018, and the likelihood of subsequently changing sanctions regimes. Raphaels Bank's fifty percent discount demonstrates that such investment in compliance will reap substantial rewards: companies that are well-prepared and willing to cooperate may earn significant discounts under OFSI's published guidance.

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