Occasional Paper

Designing Sanctions After Brexit
Recommendations on the Future of UK Sanctions Policy

Isabella Chase, Emil Dall and Tom Keatinge
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188 years of independent thinking on defence and security

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Introduction

BREXIT PRESENTS MANY challenges and opportunities for the UK government. One challenge the government quickly identified as being an urgent priority was the UK’s ability to continue to implement sanctions, a foreign policy tool currently designed and agreed to within the EU. This potential gap has been addressed in the form of the Sanctions and Anti-Money Laundering Act (SAMLA) 2018. In addition, civil servants have devoted significant resources to rolling over existing EU sanctions into UK law by creating the necessary statutory instruments and replicating the vast majority of EU sanctions designations under this new legal regime. Together, these measures will ensure that under any Brexit scenario – whether it be with a deal and a resulting implementation period, or without a deal – the UK can continue to implement and enforce sanctions without interruption.

While the technical and legal work has been completed, an open question remains: what will the UK’s post-Brexit sanctions policy be? For the past 40 years, financial and economic sanctions implemented by the UK have been designed either at the UN (which will continue to be the case) or in Brussels via the consensus of all EU member states, a process in which the UK is widely viewed as being highly influential by both other member states and outsiders, such as US policymakers. Once no longer subject to the EU’s consensus decision-making process, it might be argued that the UK will have the freedom to design and implement a creative and more independent sanctions policy. Or, the UK might feel the need to remain aligned with the EU and/or the US to ensure that it follows the actions of these much bigger economic players.

Answering the question as to what the UK’s post-Brexit sanctions strategy should be is therefore urgent and – thus far – unaddressed. As the House of Commons Foreign Affairs Committee (FAC) noted in a June 2019 report (the FAC Report): ‘Little high-level thought appears to have been given to UK priorities for post-Brexit sanctions’.

With the technical work required to prepare the UK’s sanctions regimes for Brexit now complete, and to respond to the challenge posed by the FAC, RUSI has formed ‘The RUSI Task Force on the Future of UK Sanctions Policy’, composed of former officials, academic and policy experts and senior private sector executives, to inform RUSI’s work which seeks to provide recommendations

1. ‘Sanctions and Anti-Money Laundering Act 2018 (UK)’.  
2. Statutory instruments (SIs) are the most common form of secondary (or delegated) legislation by which the government gives effect to the Act in question. An SI allows a minister to make laws relating to a particular Act of Parliament using the procedure set out in the Act, rather than requiring a further vote.  
Designing Sanctions After Brexit

on what UK sanctions policy could look like after Brexit. Over the coming months, the Task Force intends to consider a range of questions over several meetings in London, informed by research trips to other EU member states, to provide input to a debate that will shape UK sanctions policy for decades to come. The first meeting of the Task Force explored the possible scope of an independent post-Brexit sanctions policy, focusing on how the UK will design and implement unilateral sanctions in practice.

The Task Force will hold two further workshops to consider how the UK’s future sanctions regime will exist alongside those of other countries and multilateral bodies and how the government will overcome practical barriers to effective implementation of its new regime. As such, questions on potential coordination with European or US allies on sanctions, and the benefits or challenges this presents for UK sanctions, are not discussed in this paper, as later meetings will be devoted to this specific purpose.

This paper and its recommendations are adapted from discussions from the first London-based workshop.

The workshop discussion questions were as follows:

- What role should sanctions play in UK foreign policy after Brexit?
- How should the UK exercise the range of sanction use-cases offered to it under SAMLA?
- How should the British government work with the private sector to prepare them for independent UK sanctions?

Before elaborating on these recommendations, a note on terminology. This project focuses on economic and financial sanctions – that is to say: targeted assets freezes; restrictions on financial markets and services; and direction to cease certain types of business. Put simply, these are measures that reduce the ability of the sanctioned entity to conduct business and earn revenue. It is to economic and financial sanctions that most contemporary references to ‘sanctions’ by politicians or the media relate. Other forms of sanction such as travel bans or trade embargoes also exist but are outside the scope of this paper, but the recommendations contained in the paper may also apply equally to those measures.

As a result of the discussions framed by these questions, three primary recommendations emerged. The recommendations were developed by RUSI, and are not necessarily the consensus

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5. The Sanctions and Anti-Money Laundering Act (SAMLA) outlines a range of purposes for which it is appropriate for a minister to deploy sanctions, such as preventing terrorism, promoting the resolution of armed conflicts, preventing the spread and use of weapons of mass destruction, and more general national security interests, or to further a foreign policy objective of the UK government. For the full list of so-called ‘use-cases’, see SAMLA, Chapter 1, Section 1.
view of Task Force members, nor have individual Task Force members been involved in the drafting of this report.

Developing a Strategic Approach to Sanctions

- The UK government should clarify the strategic objectives and threshold for use that will underpin UK unilateral sanctions policy. This includes determining whether sanctions are best deployed as a reactive tool, in response to international disagreements, or as a proactive tool to steer wider foreign policy objectives and change behaviour of sanctions targets.
- Clear policy objectives behind the deployment of new sanctions initiatives should be properly communicated to the private sector to avoid over-compliance or criticisms of overuse often faced by other sanctions regimes.
- If the UK government seeks to change the behaviour of sanctioned targets, sanctions will effect change only if targets clearly understand under what circumstances they can be lifted; the objectives and process for lifting sanctions must be clear.

The Use of Sanctions to Protect National Security and Integrity

- The UK government should endeavour to use sanctions not only as a tool for advancing foreign policy objectives but also to respond to recognised national security threats, such as those presented by serious and organised crime and those which undermine the integrity of the UK's financial system.
- The UK should also consider using sanctions to advance its international development priorities. For example, the government could use sanctions to strengthen global peace, security and governance by using sanctions to hasten conflict resolution.
- Sanctions pursued to tackle corruption or for humanitarian reasons should avoid the popular shorthand ‘Magnitsky’ and instead be entitled Human Rights and Corruption Sanctions. This will allow for a more clinical application of these sanctions against individuals in any country.

Engagement With the Private Sector

- The UK government, and the Office of Financial Sanctions Implementation (OFSI) in particular, must expand and improve its outreach and guidance to the private sector if UK-only sanctions are to be effective and implemented without unintended consequences. This includes providing clear guidance on licensing for NGOs and humanitarian actors.
- The government should review whether the current split of responsibilities between the Foreign and Commonwealth Office (FCO) and HM Treasury is optimal in a post-Brexit environment.
- To be effective, the staffing and investment in the UK sanctions capability must be reviewed and enhanced.
Developing a Strategic Approach to Sanctions

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Clear policy objectives behind the deployment of new sanctions initiatives should be properly communicated to the private sector to avoid over-compliance or criticisms of overuse often faced by other sanctions regimes.

If the UK government seeks to change the behaviour of sanctioned targets, sanctions will effect change only if targets clearly understand under what circumstances they can be lifted; the objectives and process for lifting sanctions must be clear.

Identifying Sanctions Objectives

In June 2019, the House of Commons FAC Report concluded that it was ‘deeply concerned … that three years after the referendum so little high-level thought appears to have gone into considering the UK’s strategy and policy approach’ to sanctions after Brexit and called on the National Security Council to complete an urgent review of the UK’s sanctions strategy. These concerns are not unique to the FAC, and many, including members of RUSI’s Task Force, share the view that it is essential to dedicate time and effort to answering the fundamental questions of sanctions policy, before embarking on using newly gained and independent sanctions powers in practice.

While the government has provided some indication of post-Brexit sanctions priorities, there are still areas of uncertainty, including how the UK could shape and use unilateral sanctions, and the contribution sanctions will make in meeting wider British foreign policy objectives.

In a speech in January 2019, then Foreign Secretary Jeremy Hunt emphasised that while ‘we are not a superpower and we don’t have an empire’, the UK still benefits from being the fifth biggest economy in the world, hosting one of the largest financial centres, and maintaining permanent membership of the UN Security Council and key international alliances through the

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Commonwealth, and with allies in Europe and the US. While these factors lend themselves well to an active sanctions policy, the role sanctions will play as part of the UK’s post-Brexit foreign policy vision is yet to be elucidated in detail.

Answering these questions is crucial. Richard Nephew, a US negotiator of the Joint Comprehensive Plan of Action between Iran and the US, China, Russia, Germany, France and the UK, and a sanctions expert, notes that as their use becomes more common, sanctions ‘remain trapped in a conceptual vacuum in public discourse, without form or function to govern assessment of their appropriate role in a state’s strategy’. This trend has led to a growing perception among sanctions experts and senior private sector stakeholders tasked with implementing them that sanctions have become ‘an easy way of doing foreign policy’ and are a stand-alone tool separate from wider foreign policy goals and objectives.

The UK government, in designing a unilateral sanctions policy from scratch, has the opportunity to determine the threshold for deploying sanctions and for what purposes they will be used. This includes deciding whether sanctions are most useful as a foreign policy messaging tool, or best deployed only when there is identified leverage through which the UK can coerce sanctions targets into changing their behaviour. It also includes deciding if sanctions are only to be used as a reactive tool, in response to international developments after they have happened, or as a proactive tool to steer foreign policy objectives.

Defining what sanctions are meant to achieve will also help the government coordinate these actions with other foreign policy processes, such as travel bans, physical or trade embargoes, diplomatic negotiations or the expulsion of foreign diplomats from British soil, and make them a coherent part of British foreign policy.

The Task Force identified two areas in particular where greater clarity on sanctions objectives would benefit the UK government: private sector implementation; and the criteria for the ultimate lifting of sanctions designed to change behaviour in targeted entities.

Private Sector Implementation

Greater clarity on the objectives behind sanctions is important for private sector actors, who are ultimately the ones tasked with implementation. Many have a genuine interest in understanding how their daily sanctions compliance work (a function which has grown significantly within London-based financial institutions in the 2010s) fits in with the government’s foreign policy objectives.

Despite sanctions implementation sometimes being a technical exercise, there is a consensus among private sector actors that the clearer the government is about what sanctions are seeking to achieve, the easier it becomes for the private sector to implement controls. According to one Task Force member, greater clarity ‘removes the abstract nature of sanctions and allows [banks] to apply a risk-based assessment of sanctions’. Another member pointed out that if the private sector understands the purpose of sanctions, and why they have been put in place, there is an ‘increased emphasis on reputational risk’ within the institution to implement sanctions correctly.\(^\text{10}\)

Many private sector actors reference the asset-freezing measures against the Libyan regime in 2011 as an example of a well-communicated sanctions action, with significant buy-in from the private sector tasked with implementing it. The US Treasury worked with bankers ‘to identify assets controlled by the Libyan government, Gaddafi, his family and their associates’ and in a coordinated fashion on 25 February 2011, more than $30 billion of assets were frozen, with the objective of crippling the operations of the former Libyan leader and his government.\(^\text{11}\)

Conversely, the lack of a clear policy objective behind sanctions can also lead to either a confused private sector, or in worse cases, an inactive private sector response. Recent US sanctions on Venezuela are a case in point. Sanctions in January 2019 targeting trade in Venezuelan bonds required multiple rounds of clarifications by the US Treasury to explain the scope and operation of the same sanctions measure to confused private sector actors. This was a result of ‘deploying sanctions amid a fluid situation on the ground in Venezuela’ and not being sufficiently clear about the scope or objective of sanctions.\(^\text{12}\)

It is the case that governments benefit from maintaining a level of ‘strategic ambiguity’ on sanctions, as it leads to over-compliance among the private sector and might ‘fill in gaps that diplomats may not have thought about’ when designing them.\(^\text{13}\) Yet, the result can be a private sector that decides to de-risk entire markets rather than navigating an opaque sanctions landscape. Similarly, it is also the case that if the private sector understands the reasons why certain sanctions measures have not been imposed, for example, to allow specific business channels to remain open for diplomatic purposes, they can act accordingly rather than treating any sanctions as a total embargo. For instance, ensuring that sanctions are linked to specific policy objectives from the start could facilitate the identification by governments and the private sector of the humanitarian exemptions that fall outside this objective, and should be excluded from the scope of sanctions targeting.

\(^\text{10}\) Statements by two private sector members of the Task Force, London, 28 May 2019.
Achieving Greater Clarity on Sanctions-Lifting Criteria

Guidance published by OFSI in preparation for a no-deal Brexit clarified that sanctions can ‘generally’ be imposed to coerce targets by applying economic pressure, constrain targets from continuing certain behaviour, or signal disapproval and send broader political messages nationally or internationally.\(^{14}\)

However, if the UK government seeks to use sanctions to coerce targets (in addition to constraining and signalling discontent), sanctions must include the prospect of reversal. If not, there is little motivation for sanctioned targets to change behaviour, as there will be no immediate reward for complying with demands made by the sanctioning state(s), and these actions cease to have their coercive effect.

These lifting criteria are ultimately linked to the original objective of sanctions. Examples of where the criteria for lifting sanctions against state targets have been successfully linked to the original sanctions objective include the lifting of EU ‘nuclear-related sanctions’\(^{15}\) after Iran complied with limits to its nuclear programme. Another more recent example is the EU revoking a 2018 framework put in place to impose sanctions against the Maldives after democratic elections took place in March 2019,\(^{16}\) which the original 2018 decision had called for.

Sanctions on Russia are less clear in this respect. Where some sanctions packages, such as those imposed in response to Russia’s incursion in Eastern Ukraine and annexation of Crimea, are officially linked to Moscow’s compliance with the Minsk agreements and withdrawal from Crimea, others are less specific on their policy objective and/or path to the lifting of sanctions.

Addressing Russia sanctions in January 2019, German Foreign Minister Heiko Maas stated that for the EU, sanctions work only when ‘they are tied to clear, fulfillable conditions’ and concluded that ‘sadly, that is no longer the case for U.S. sanctions’.\(^{17}\) Then US Treasury Secretary Jack Lew similarly warned in 2016 that if sanctions were installed to change behaviour then they should be ‘forward-looking’ rather than to ‘dole out punishment for past actions’, and have a clear exit


\(^{17}\) Thomas Escritt, ‘We’ll Help with Russia Sanctions Fall-Out, German Minister Tells Business’, Reuters, 11 January 2019.
strategy attached to them.\(^\text{18}\) Actions by the US to designate Russian officials involved in alleged election interference or the wide-reaching Countering America’s Adversaries Through Sanctions Act legislation, which expands punitive measures against Moscow to potentially include everything from cyber security to human rights and oil pipelines, make it difficult to de-link individual sanctions objectives from wider Russian behaviour.\(^\text{19}\) The RUSI Task Force agreed that in this context, it is not always clear what these sanctions sought to achieve, other than demonstrate disapproval of Russian actions and put in place punitive measures. As a result, if there are no conditions for them being lifting, Russia will have little reason to change behaviour.

In the case of North Korea, while UN sanctions are technically linked to the overall goal of achieving complete denuclearisation, they have expanded over time in response to every provocation by Pyongyang or new technical development. Should the international community seek to offer partial sanctions relief, it could therefore be arbitrary which measures are lifted in return for which North Korean behaviours change. As a result, it has also become difficult to continue to link the sanctions to any specific objective or resolution.

For sanctioned individuals, this is even harder. One Task Force member pointed out that it is ‘near impossible for individuals to be de-listed in the EU because 28 member states have to agree’ and pointed to this as an area where the UK has an opportunity to do better. The Task Force emphasised that individuals who have their personal wealth disrupted by sanctions needed to have an avenue to have them lifted if they changed their behaviour or involvement in certain activities, given the otherwise permanent nature of such punitive action.

In sum, observing the lessons from other unilateral sanctions regimes, the UK government should clarify the strategic objectives that will underpin UK unilateral sanctions. This will not only lead to clearer processes for lifting sanctions (and a motivation for sanctioned targets to change their behaviour to achieve this) but will also result in more diligent private sector implementation that could help discourage unintended de-risking and overcompliance. Also, by tightening the messaging around sanctions objectives, the UK government can avoid facing some of the criticisms often thrown at other sanctions regimes, to ensure they do not simply become a default response but an effective tool that is linked to overall foreign policy objectives and integrated with wider foreign policy processes.

Of course, a UK unilateral sanctions regime will not operate in a vacuum after Brexit. Previous RUSI publications have detailed how the US and the EU are misaligned in how they design and implement certain aspects of sanctions.\(^\text{20}\) If the UK government pursues an approach to

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\(^\text{20}\) See, for example, Tom Keatinge et al., ‘Transatlantic (Mis)alignment: Challenges to US–EU Sanctions Design and Implementation’, *RUSI Occasional Papers* (July 2017).
sanctions that is fundamentally different from those of the EU and the US, the transatlantic difference in views on when and how to apply sanctions will only become starker. As the UK acquires the opportunity to pursue a unilateral sanctions policy, in addition to the UN sanctions which it will continue to implement, there are both advantages and disadvantages in coordinating with the sanctions regimes of its close allies in Brussels and Washington. Any decision to coordinate or not coordinate will no doubt impact the strategic objectives of UK sanctions. This will be the topic of the next Task Force meeting and subsequent paper, and further discussion about coordination is beyond the scope of this paper.
The Use of Sanctions to Protect National Security and Integrity

THE UK GOVERNMENT should endeavour to use sanctions not only as a tool for advancing foreign policy objectives but also to respond to recognised national security threats, such as those presented by serious and organised crime and those which undermine the integrity of the UK’s financial system.

The UK should also consider using sanctions to advance its international development priorities. For example, the government could use sanctions to strengthen global peace, security and governance by using sanctions to hasten conflict resolution.

Sanctions pursued to tackle corruption or for humanitarian reasons should avoid the popular shorthand ‘Magnitsky’ and instead be entitled Human Rights and Corruption Sanctions. This will allow for a more clinical application of these sanctions against individuals in any country.

Sanctions and National Security

To date, the UK has been able to use sanctions only to respond to international security threats via provisions set by the UN or the EU. After Brexit, it will gain new powers through SAMLA to not only implement UN-mandated sanctions and other international obligations, but to do so in a range of new scenarios that include, but are not limited to ‘the purposes of furthering the prevention of terrorism or for the purposes of national security or international peace and security or for the purposes of furthering foreign policy objectives’.21 The expansion in the scope of actions that can be sanctioned to include threats to national security should be viewed as an opportunity. The UK has been limited while a member of the EU in how it can experiment with sanctions to counter national security threats, other than to sanction terrorists, as the EU does not have a regime to serve this purpose.

This paper recommends that the government makes full use of this provision, especially to examine how sanctions could be used to tackle two specific threats to national security: serious and organised crime; and the abuse of the UK financial system by corrupt actors which undermine its integrity. Serious and organised crime was identified as a threat to national security for the first time in the 2015 National Security Strategy and it is estimated to cost the UK economy £37

21. ‘Sanctions and Money Laundering Act 2018 (UK)’, p. 1. SAMLA covers a range of different forms of sanctions, including immigration, trade, aircraft, and shipping, but consistent with the focus of this paper, only financial sanctions are considered here.
billion each year.\textsuperscript{22} The threat these actors pose alongside those who bring ‘dirty money’ into the country was also highlighted in the FAC report, which states that both groups are in need of review as possible subjects of future UK sanctions activity.\textsuperscript{23}

The use of UK sanctions in the interests of national security was a particular focus of the first Task Force meeting. Drawing on the experience of this form of sanctions use by the US Office of Foreign Assets Control (OFAC), it was identified that UK sanctions could have especially significant impact against illicit actors motivated by personal economic gain and access to, for example, the security offered by UK asset markets (such as high-end real estate) or lifestyle benefits, such as elite schools for their children. Actors that typically fall into this category include serious and organised criminals and those who profit from corruption.

In both cases sanctions can be effective because there is a clear point of leverage in the illicit actor’s wealth and/or access. If the targeted entity deems their assets held in the UK and freedom to access these as important, then the government may have the required leverage to motivate a change in behaviour or deter other illicit actors from operating in the UK. During the Task Force meeting, the US Foreign Narcotics Kingpin Designation Act 1999\textsuperscript{24} was posited as a successful example of sanctions used to counter organised crime linked to the illegal drugs trade. It was stated by Task Force members that in a number of cases the regime has persuaded prominent individuals in the illegal narcotics trade to change their behaviour, assist the government in their investigations or testify as a witness for the government during judicial proceedings. This is further supported by a 2017 House of Representatives Committee on Foreign Affairs hearing which gives multiple examples of the effectiveness of the kingpin regime at affecting a change in behaviour and at disrupting criminal activity.\textsuperscript{25}

If the UK chooses to create a similar regime, it must consider how easy it is to meet the de-listing standards. If these are too low, it is possible for actors to appear to have met them and then either carry on sanctioned activity via associates or revert back to illicit activity after a short time. Research should be conducted to determine the long-term success of the kingpin regime to permanently dissuade previously sanctioned actors from re-engaging in serious criminal activity and if the monitoring activities conducted by the US government are effective at identifying a re-entry into criminal life before it can be deemed an effective example of a national security sanctions regime.

The use of sanctions to target corrupt actors that abuse the UK’s financial system and asset markets was also proposed by the Task Force, reinforcing the findings in the FAC report. The


\textsuperscript{23} FAC, ‘Fragmented and Incoherent’, p. 15.


\textsuperscript{25} House of Representatives, ‘Hearing Before the Subcommittee on the Western Hemisphere of the Committee on Foreign Affairs House of Representatives’, First Session, 8 November 2017.
report states that ‘dirty money is a national security issue, especially in the light of London’s importance in the global financial system’. For this reason, this paper recommends that corrupt individuals who exploit the UK for their own gain and financial security must also be considered as potential subjects of future sanctions.

Sanctions designed to target those who undermine the integrity of the financial system by laundering the proceeds of corruption and those who perpetrate human rights abuses are often dubbed Magnitsky sanctions. The original Magnitsky sanctions refer to the sanctions imposed on Russia by the US following the death of Sergei Magnitsky, a lawyer who was imprisoned for investigating corruption in Russia on behalf of William ‘Bill’ Browder. Magnitsky sanctions can be applied anywhere in the world and allow the US to target perpetrators of severe human rights abuses quickly and unconstrained by country regimes. This paper recommends that the UK should create a sanctions regime to protect human rights and tackle corruption but that this regime be entitled human rights and corruption sanctions and not Magnitsky sanctions. This will allow for a more clinical application of these sanctions, using strict tests to ensure that only disapproval of human rights abuses and corruption is signalled by the action, avoiding the use of this regime for political reasons, which would ultimately undermine its own authority.

One caveat that the government must consider when imposing sanctions in the interests of national security is the weight that these sanctions will carry. Unlike sanctions imposed to meet foreign policy objectives that might be shared by other sanction-issuing states, action by the UK for its own national security may not be required by other countries and so enforced only in Britain. When designing sanctions that only protect UK national security interests, the government must consider if the impact of freezing assets in the country and denying access to the British market will be significant enough to cause the desired change in behaviour or have the necessary deterrent effect.

Sanctions, Conflict Resolution and International Development Priorities

This paper recommends that the government also considers the opportunity to become a world leader in using future UK sanctions as a tool for ensuring global peace and security. It was discussed during the first Task Force meeting that an area where this could be particularly useful is in bringing warring factions in a conflict to the negotiating table and for other certain humanitarian purposes.

The use of sanctions to drive conflict resolution is not uncommon. During the Colombian peace process, the promise to remove EU sanctions on anti-government Marxist guerrilla movement FARC contributed to bringing the group into the formal peace process. The group was first placed

26. FAC, ‘Fragmented and Incoherent’, p. 3.
on the EU designated terrorism list in 2002 and was told that active participation in the peace process would cause a reversal in the listing. Sanctions were suspended in September 2016 after the signing of the peace accord and then fully revoked in November 2017. The peace will have been reliant on a number of factors, but the promise of the removal of sanctions can be viewed as a useful additional tool to bargain with. The use of financial sanctions within a wider array of tools is also quoted by Mikael Eriksson and Peter Wallensteen as being instrumental in bringing the former Yugoslav states together to sign and implement the Dayton peace accords. More recently, the use of sanctions by the US to try to persuade senior Venezuelan government officials to switch sides provides another case study of sanctions in conflict resolution. The listing of General Manuel Cristopher Figuera, the head of Venezuela’s secret police, in February 2019 resulted in his swift defection to the opposition by April, when sanctions were then lifted. It is too early to determine, however, whether the use of sanctions to bring about change in Venezuela will ultimately be effective.

This paper recommends that if the UK decided to take a leading role in resolving conflicts which have had severe effects on civilian populations it should do so with caution. The UK’s colonial legacy could negatively frame the use of UK sanctions in certain cases and so the country should seek international support wherever possible.

Finally, the Task Force discussed the use of UK sanctions to bolster other priority international development areas where the UK already takes an active international stance, such as promoting press freedoms. Promoting press freedoms was the FCO’s priority campaign in 2019 and in September 2019 the FAC recommended that economic sanctions and travel bans be used to put additional pressure on jurisdictions that persecute journalists. It was argued by the Task Force that where there is a clear and articulated case that sanctions could trigger a change in behaviour, they should be viewed as an appropriate tool to advance this cause.

The Task Force therefore recommends that in addition to the use of sanctions as part of advancing foreign policy objectives and the global security agenda, the UK government should consider the use of British sanctions in the context of national security and certain international development issues where it could confidently affect change. The successful use of sanctions in these cases is contingent on the clear articulation of the expected response of the target as discussed in the first recommendation of this paper.

Engagement With the Private Sector

The UK government, and OFSI in particular, must expand and improve its outreach and guidance to the private sector if UK-only sanctions are to be effective and implemented without unintended consequences. This includes providing clear guidance on licensing for NGOs and humanitarian actors.

The government should review whether the current split of responsibilities between the Foreign and Commonwealth Office (FCO) and HM Treasury is optimal in a post-Brexit environment.

To be effective, the staffing and investment in the UK sanctions capability must be reviewed and enhanced.

Sanctions Implementation and Enforcement

The success of whatever post-Brexit sanctions policy and strategy the UK chooses to follow will be contingent on effective implementation and compliance, primarily by the private sector. Achieving this objective is itself contingent on effective outreach by the government (including clarifying the objective of each sanctions regime) and the provision of guidance to ensure that the objectives and targets of sanctions regimes are fully understood by the private sector.

In the UK, the role of helping ‘to ensure that financial sanctions are properly understood, implemented and enforced’ falls to OFSI, established in 2016 within HM Treasury. As the OFSI website notes, its existence ‘enables financial sanctions to make the fullest possible contribution to the UK’s foreign policy and national security goals’. The existence of a dedicated implementation and enforcement office in the UK contrasts with other EU member states where these competencies are subsumed, most often, within ministries of finance or foreign affairs. This, along with the resources committed to the implementation and enforcement of sanctions (a responsibility of individual member states) and the publication of limited guidance documents, underlines the extent to which the UK prioritises the use of sanctions.

34. Ibid.
While this dedicated focus should be welcomed by those calling for a more rigorous approach to sanctions implementation in the EU, the performance of OFSI has been repeatedly called into question by those through whom UK sanctions are implemented – in particular the private sector and NGO community. When it was launched, OFSI committed to ‘provide a high-quality service to the private sector, working closely with law enforcement to help ensure that financial sanctions are properly understood, implemented and enforced’. Although OFSI provides a dedicated platform for more effective sanctions implementation and enforcement in the UK, thus far, measured against its own core objective, it would appear to be falling short.

Implementation

The most common complaint from the private sector (and those from the legal sector that provide advice on implementation) related to implementation is the lack of guidance provided by OFSI. Having created OFSI, the private sector expected more valuable, effective and timely guidance from the government. Inevitably – and perhaps unfairly – OFSI’s performance in this field is often compared to that of US OFAC.

Founded in 1950, OFAC has more decades of experience than OFSI, and has benefited from significant investment in people and technology during that time. It has also developed a cadre of career civil service professionals, some of whom, such as John Smith, OFAC’s director until April 2018, have served with the office for over a decade.

Notwithstanding this deficit of experience, if the UK is to develop an effective sanctions policy, sound implementation will be critical to its success. Providing guidance to the private sector is key. OFSI’s current approach when responding to requests for guidance is reported to simply be to recommend ‘seek legal advice’. This is not optimal in the context of EU sanctions regimes where room has been left for interpretation by individual member states, and will clearly not be sufficient once the UK starts diverging from EU sanctions approaches. A concerted effort is needed to ensure private sector understanding moves beyond the superficial to the necessary level of detail to determine the true intent and scope of sanctions. Recent guidance published by OFSI in preparation of Brexit to assist the private sector to understand the nature of ‘ownership sanctions-faqs>, accessed 23 June 2019.

38. According to media reports, the Office of Foreign Asset Controls (OFAC) is estimated to have approximately 200 employees. See, for example, Saleha Mohsin, ‘Trump’s Sanctions Staff Defects as U.S. Expands Economic War’, Bloomberg, 22 March 2019.
and control’ in a UK sanctions context, similar to detailed guidance provided by OFAC, is therefore welcomed and should set a precedent for future guidance.

Without communicating detailed objectives and clarifying the precise measures the private sector is expected to take, two polarised risks will manifest themselves. On the one hand, blanket implementation decisions by the private sector driven by a ‘better-safe-than-sorry’ approach will trigger unintended financial exclusion consequences; on the other, a lack of understanding will fail to capture the range of targets intended to be covered by a sanctions regime.

OFSI is proud of its record of public engagement, reporting in its Annual Review (April 2017–March 2018) that it ‘spoke at more than 60 public events … in the UK, Europe and the US’. In the view of several Task Force members, these speaking engagements are superficial and lack the granular detail that the private sector requires, with one Task Force member noting that ‘OFSI does not bring value to these events’. Thus, OFSI should strongly consider developing a formal sanctions enquiry response model, perhaps similar to that available under the defence against anti-money laundering element of the UK’s suspicious activity reporting regime. At a minimum it should seek to replicate the OFAC FAQ webpage which provides guidance on a wide range of general and sanctions programme-specific questions and is widely perceived by the Task Force to be useful.

**Enforcement**

Where guidance fails to achieve effective implementation and errors of omission or commission result in sanctions breach, enforcement action must be taken if any sanctions regime is to

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45. A Defence Against Money Laundering can be requested from the UK’s National Crime Agency when an entity, such as a bank, that is obliged to file suspicious activity reports has a suspicion that funds they intend to deal with are in some way criminal, and thus by dealing with those funds they risk committing a money-laundering offence. In essence, this provides the obliged entity with an opportunity to receive formal clarification as to whether the proposed transaction is related to money laundering. For more details, see National Crime Agency, ‘SARs Regime Good Practice: Frequently Asked Questions – Defence Against Money Laundering (DAML)’, May 2019.

maintain its deterrent effect. Without potential consequences, there is little reason for the private sector to comply fully with sanctions obligations. As noted by OFSI director Rena Lalgie in evidence to the Treasury Select Committee’s 2018 Economic Crime enquiry, the new civil monetary power bestowed on the organisation is not retrospective and can thus only be used in cases identified since April 2017. Given the complexity of sanctions investigations, it is unsurprising that there has been a lag in the announcement of enforcement actions and that the two penalties issued thus far were for a straightforward case that was voluntarily disclosed to OFSI by Raphaels Bank and Travelex (UK) Ltd. As more cases emerge, it will be important for OFSI both to publish the enforcement action and to ensure that such action is accompanied by clear explanations from which others in the private sector can learn.

While enforcement is indicative of sanctions implementation failures, the extent to which enforcement action by OFAC has galvanised greater focus on implementation in the private sector suggests (and Task Force members agree) that OFSI needs to move quickly to demonstrate that, where necessary, it has teeth. Establishing a strong track record of enforcement is thus an urgent requirement for OFSI as it will both demonstrate intent as well as present opportunities for case law and precedent to be developed that will bring certainty to the post-Brexit implementation and enforcement landscape.

**Licensing**

The process of issuing licences to ensure that certain activities can continue in environments where such activity would be otherwise prohibited is often highly frustrating. NGOs are particularly limited by the licensing process, as their work can be contingent on the approval of a licence. Here sanctions can present contradictions that are not anticipated by policymakers designing new regimes. Often-cited examples include the need to purchase fuel for delivery vehicles in areas of humanitarian crisis, such as Syria, that are subject to sanctions, or the need to purchase and ship machinery for the on-site processing of food packages in North Korea by humanitarian agencies, or the import of drilling machines, filters and pumps to North Korea for use by humanitarian agencies to install clean water systems.

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Once again, this is an area in which participants feel that OFSI is lagging. The efficient provision of licences must be a critical element of the UK’s post-Brexit sanctions policy, to ensure that the government’s policy objectives do not trigger unintended consequences that, at worst, have a negative impact on the intention of sanctions or exacerbate the situation they are seeking to address. The example of OFAC’s regular inclusion of general licences for humanitarian activity, food, medicine and medical devices in its sanctions regulations should be instructive.

Leadership and Ownership

OFSI is a relatively new agency operating in a high-profile field. Its ability to contribute fully to the government’s sanctions objectives, be they foreign policy- or security-related, remains to be fully realised. As noted by Maya Lester to the Foreign Affairs Committee’s enquiry: ‘There is a great deal of frustration on the part of the private sector with the lack of real proactive engagement on sanctions enforcement’.51

Thus, in seeking to contribute to an independent UK sanctions policy, OFSI must demonstrate far greater engagement on sanctions implementation. The provision of clear and sufficiently granular guidance and the efficient response to queries and licensing requests via mechanisms similar to those listed above are urgently needed and will be warmly welcomed by those private sector actors based in the UK and (importantly given the government’s Global Britain trade agenda) those businesses and services seeking to engage with Britain. Conversely, a lack of clarity and leadership from OFSI will be detrimental to these objectives.

Finally, the government should review whether the current split of responsibilities between the FCO (where staff rotate regularly, diminishing the opportunity to develop an expert sanctions cadre) and HM Treasury is optimal in a post-Brexit environment. The continued dominance of the City of London in global financial markets and the leading role the UK plays on the international stage via its permanent seat on the UN Security Council and membership of bodies such as the G7 mean that the UK has the ability to contribute meaningfully to the international sanctions agenda as well as to use sanctions to address its own security threats. The staffing, training and investment in the UK sanctions capability must therefore be reviewed and enhanced to ensure that the necessary skills and experience are available to fulfil this ambition.

Conclusions

This first task Force workshop endeavoured to set the scene and focus on issues fundamental to the establishment or continuation of a sanctions programme, namely strategy, implementation and enforcement. Having not needed to articulate a sanctions strategy that is independent from the EU for more than 40 years, much needs to be done. While the pieces are there, execution needs to advance considerably if the UK is to exert the maximum possible influence as an independent issuer of sanctions in the future.
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