



UK ANTI-CORRUPTION SANCTIONS

A year in review

APRIL 2022

SUMMARY

Introduced in April 2021, the UK's Global Anti-Corruption Sanctions Regulations¹ ("GACS") have provided the UK Government with an important new tool for tackling the most egregious corrupt practices committed around the world. The GACS regime allows the Foreign Secretary to sanction individuals and entities for their involvement in bribery or misappropriation of state assets. They are commonly referred to as a type of "Magnitsky" sanctions.

Sanctioning corrupt actors can disrupt flows of illicit funds into the UK and globally, and removes the economic incentives for malign actors to commit abuses in the pursuit of kleptocratic wealth. GACS must be used ambitiously, consistently and appropriately if it is to be effective as a tool to tackle illicit finance, uphold human rights and promote open societies.

However, the effectiveness of the UK's anti-corruption sanctions regime has been undermined by a lack of designations; the absence of a strategic approach to dismantling corrupt networks, their leadership

and enablers; insufficient coordination and information sharing with other key sanctioning jurisdictions including the US; and limitations in implementation and enforcement. To make the regime a more effective anti-corruption deterrent, the UK should also recognise, as the US has, the benefits of a holistic approach to anti-corruption enforcement. Sanctions should be used alongside other enforcement measures: this includes asset recovery mechanisms which would facilitate the repatriation of ill-gotten gains to the true victims of corruption.

There has also been a marked stagnation in the use of anti-corruption sanctions since the current Foreign Secretary's appointment in September 2021. Between September 2021 and February 2022, no actors have been sanctioned under the UK's GACS regime, in comparison to the 27 designations authorised by her predecessor. The UK has currently sanctioned less than 10% of individuals designated for corruption under the US's Global Magnitsky sanctions regime.

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Ending torture, seeking justice for survivors



¹ The Global Anti-Corruption Sanctions Regulations 2021. Available at: <https://www.legislation.gov.uk/uksi/2021/488>

Recommendations

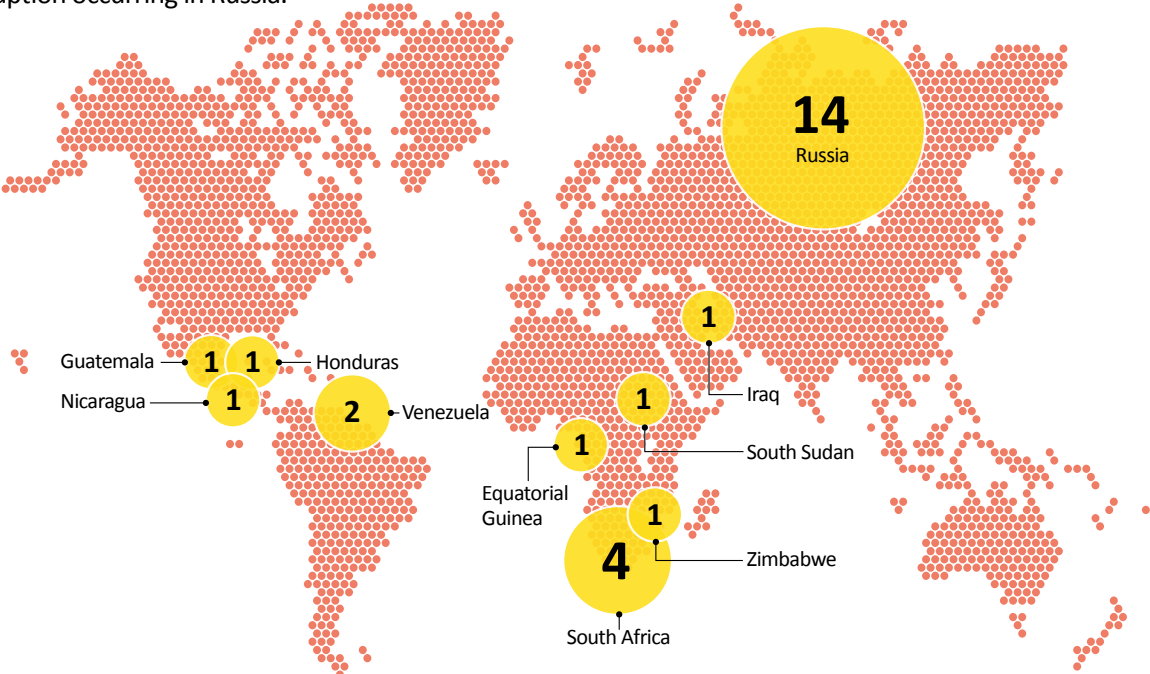
The UK Government must:

1. Adopt a more strategic and considered approach to sanctions, ensuring that they are used to disable corrupt networks by taking action against those at the centre of corrupt practices, in addition to enablers, family members (where appropriate), and other associated individuals and entities.
2. Work with key partner jurisdictions, including the US and EU, to share information and impose coordinated sanctions where appropriate and make such sanctions as effective as possible.
3. Ensure robust oversight of the use of sanctions, particularly in light of the amendments introduced under the Economic Crime (Transparency and Enforcement) Act 2022 (the “Economic Crime Act”), which widened the Government’s sanctions powers and removed regular review and reporting requirements. This should be achieved through a Parliamentary committee, such as the Foreign Affairs Committee.
4. Substantially increase the resources available to the Foreign, Commonwealth & Development Office (“FCDO”) Sanctions Unit and the Office of Financial Sanctions Implementation (“OFSI”) to increase capacity for sanctions designations and support more effective enforcement of sanctions and asset freezing.
5. Improve transparency and oversight of the GACS regime through regular public reporting of data on the usage and effectiveness of sanctions, including a breakdown of assets frozen, the number of fines imposed for breaches, details of any enforcement actions taken, and the resources available to the FDCO Sanctions Unit and OFSI.
6. Review how the sanctions regime can work in tandem with the asset recovery regimes more effectively to ensure assets are confiscated as well as frozen, including by revising the policy guidance note under the GACS sanctions regime in relation to when sanctions will be used where UK law enforcement has jurisdiction.

YEAR ONE IN REVIEW

Number of designations per country

Of the 27 anti-corruption sanctions imposed in the first year of the GACS regime, a significant majority (14) relate to corruption occurring in Russia.



Case study: Teodoro Obiang Mangué, Equatorial Guinea



On 22 July 2021, the UK sanctioned Teodoro “Teodorin” Obiang Mangué, Vice President of Equatorial Guinea, and son of the President, under GACS. He was sanctioned for “his involvement in the misappropriation of state funds into his own personal bank accounts, corrupt contracting arrangements and soliciting bribes, to fund a lavish lifestyle inconsistent with his official salary as a government minister. This included the purchase of a \$100m mansion in Paris and a \$38 million private jet”.²

The UK sanctions on Teodorin formed part of broader international efforts, including the seizure of 25 luxury cars by Swiss criminal authorities, €150m by French criminal authorities and \$70m by the US Department of Justice.³

Whilst a lack of coordination with the EU and US (who have not yet sanctioned Teodorin) has reduced the impact of the UK sanctions to some extent, they have still created a “trickle down fear” among those around him, particularly those with links to the UK.⁴ The UK sanctions have also energised local civil society and acted as a catalyst for further change.

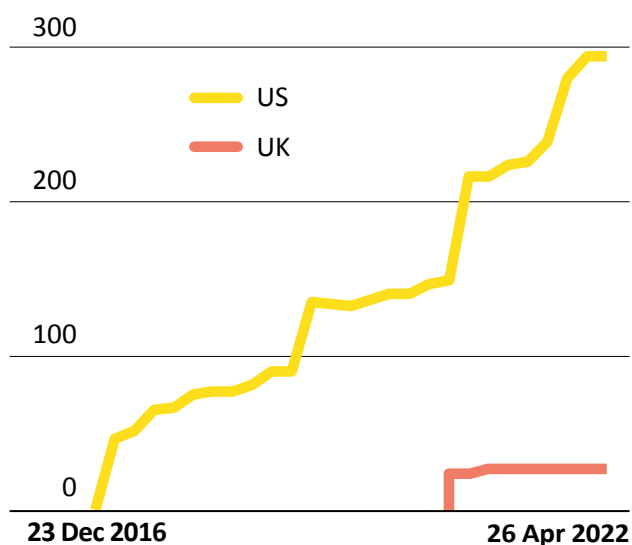
This case clearly demonstrates the potential impact of UK anti-corruption sanctions. Unfortunately, the overall success of the GACS regime has been undermined by a number of limitations, as detailed below.

Slowdown in use

Since entering into force on 26 April 2021, just 27 individuals have been designated for sanctions under the GACS regime and there has been a significant slow-down in the UK Government regime over recent months. Since her appointment in September 2021, the current Foreign Secretary has not sanctioned a single actor under GACS.

Whilst the US announced a tranche of sanctions targeting 68 individuals and entities for anti-corruption sanctions in the week leading up to the Summit for Democracy in December 2021, no new designations have been made under GACS since July 2021. There have only been two tranches of designations under GACS since its inception.

Number of sanctions designations



² FCDO Press Release, New UK sanctions against individuals involved in corruption around the world, 22 July 2021. Available at: <https://www.gov.uk/government/news/new-uk-sanctions-against-individuals-involved-in-corruption-around-the-world>

³ Human Rights Watch, France: Equatorial Guinea Vice President’s Conviction Upheld, 28 July 2021. Available at: <https://www.hrw.org/news/2021/07/28/france-equatorial-guinea-vice-presidents-conviction-upheld>

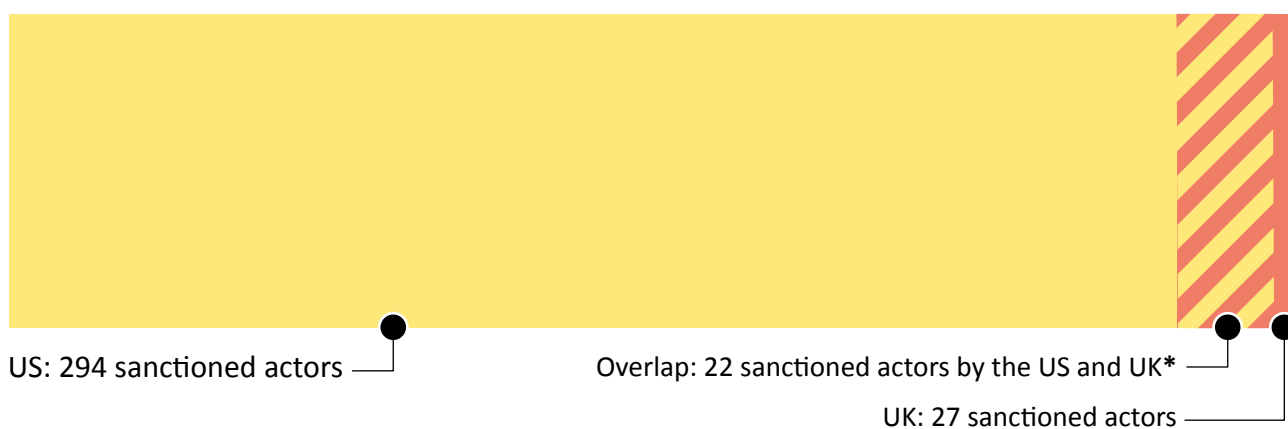
⁴ This is based on discussions between REDRESS and civil society actors working on corruption in Equatorial Guinea.

Lack of coordination

The UK is currently failing to keep pace on sanctions designations with its allies, particularly the US. In a recent statement, Lord Ahmad, Minister of State for South Asia, the United Nations and the Commonwealth, stressed that coordination is at the heart of the UK's sanctions regime, noting that "sanctions work best when multiple countries act together to constrain or coerce a target's ability to carry out unacceptable behaviour, or to send a political signal that such behaviour is intolerable".⁵

In spite of this, the UK has currently sanctioned less than 10% of individuals designated for corruption under the US's Global Magnitsky sanctions regime. This lack of coordination undermines the effectiveness of sanctions by allowing corrupt officials, kleptocrats and human rights perpetrators, sanctioned by the US and other jurisdictions, to use the UK as a haven to enjoy their ill-gotten gains. Similarly, the failure of the US and EU to sanction in cases where the UK has taken action has reduced the impact of the UK's actions.

Number of sanctioned corrupt actors (US vs UK)



*Two actors sanctioned under UK GACS have been sanctioned under the US Venezuela Sanctions Regime, and one actor has been sanctioned under the US Zimbabwe Sanctions Regime, rather than the US Global Magnitsky Sanctions Regime.

Failures in implementation and enforcement

The effectiveness of sanctions is often undermined by a lack of implementation in the freezing of assets and enforcement. This undermines the credibility of the sanctions regimes and weakens their potential deterrent effect.

After its establishment in 2016 and some initial success, OFSI's yearly performance record has stagnated and, in some areas, worsened. Prior to the Ukraine crisis, the total value of frozen assets in the UK had not changed significantly since the OFSI's first full year of operations, starting at £12.7 billion in 2017/18 and dropping slightly to £12.2 billion in 2020/21. At the same time, the number of people subject to an asset freeze in the UK has fallen by 25%, from 2,183 in 2018/19 to 1,638 in

2020/21. There have also been reports of the UK failing to take action in relation to relevant assets: for example, it was reported that a private jet targeted by sanctions for being linked to Russian businessman and supporter of President Lukashenko, Mikhail Gutseriev was allowed to land at Luton Airport twice in January 2022.⁶

OFSI also has a very low enforcement rate for breaches of sanctions, and where fines are imposed, they are generally low. The total value of sanctions breaches amounted to £928,000,000 in the year to March 2020.⁷ However, between 2018/19 to the present, the OFSI has only issued 7 monetary penalties with a total value of £20,681,000 on 6 entities (none of which were issued in relation to the GACS regime).

⁵ FCDO, Sanctions Regulations, Report on Annual Reviews 2021, January 2022. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1052217/The_Sanctions_Regulations_Report_on_Annual_Reviews.pdf

⁶ iNews, Sanctions: UK faces questions over enforcement after private jet linked to Belarus spends week in Britain, 15 February 2022. Accessible at: <https://inews.co.uk/news/sanctions-uk-faces-questions-over-enforcement-after-private-jet-linked-to-belarus-spends-week-in-britain-1460476>

⁷ HMT OFSI, Annual Review, April 2019 to March 2020. Accessible at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/925548/OFSI_Annual_Review_2019_to_2020.pdf

Sanctions and asset recovery: connecting the dots

The Russian invasion of Ukraine and the related sanctions have added weight to long-standing calls for the UK Government and its enforcement agencies to consider the confiscation and repurposing of frozen assets.⁸ On 28 February 2022, Foreign Secretary Liz Truss said she would look into this in the context of Ukraine following a question from the Foreign Affairs Committee Chair, Tom Tugendhat.⁹ Justice Secretary and Deputy Prime Minister, Dominic Raab,¹⁰ and Secretary of State for Levelling Up, Housing and Communities, Michael Gove, have also made similar proposals.¹¹

However, FCDO guidance and current practice suggests that the UK sanctions regimes, including GACS, and asset recovery legislation often operate separately and are even used to the exclusion of the other.

For example, the FCDO's policy note on global anti-corruption sanctions states that where the UK has jurisdiction in relation to acts of serious corruption - such as where assets obtained through corruption are located in the UK - sanctions will only be used in exceptional circumstances. An example of such a circumstance is where law enforcement agencies are unable to pursue a case because a person is outside the UK and a foreign Government does not provide the necessary cooperation.¹²

As a result, there is a clear risk that the potential use of UK law enforcement measures has prevented, and will continue to prevent, the sanctions and asset recovery regimes from operating in tandem. This approach is particularly concerning as law

enforcement bodies, such as the National Crime Agency, cannot always be relied upon as first port of call. These bodies often do not have sufficient resources to pursue such cases, and doing so can take months or even years to yield results.¹³ It is unsatisfactory that the use of sanctions may be excluded in the meantime.

One of the consequent risks is that the GACS regime will result in designations which do not significantly affect those with economic footprints, whether personal or professional, in the UK. This approach has also prevented the GACS regime (and other sanctions regimes) from being used in situations when they could prevent asset flight while law enforcement agencies gather the evidence required for civil recovery.¹⁴

This is a major flaw in the UK's approach and seriously undermines the effectiveness of both the sanctions and asset recovery regimes in combatting corruption and preventing kleptocrats from enjoying ill-gotten gains in the UK. One existing recommendation from civil society, which is supported by REDRESS and UKACC, is to impose an obligation on authorities to pursue asset recovery mechanisms when assets are frozen, to determine whether the relevant thresholds are met.¹⁵

The merits of such a joined-up approach have already been recognised by the US Government which successfully confiscated the multi-million-dollar mansion of former Gambian President, Yahya Jammeh, accused of stealing \$1 billion from his country, after it had been frozen pursuant to corruption sanctions.¹⁶

⁸ Hogan Lovells, Global Survivors Fund, REDRESS and Goldsmith Chambers discussion paper, Finance for Restorative Justice, Volume II, 19 June 2021, pp. 26 – 35. Available at: https://www.hoganlovells.com/-/media/hogan-lovells/pdf/2021-pdfs/2021_06_25_finance_for_restorative_justice_-_volume_ii_stage_5.pdf

⁹ Hansard, Sanctions; Volume 209, 28 February 2022, column 714. Available at: <https://hansard.parliament.uk/commons/2022-02-28/debates/3D28CB2C-B2E4-40B4-B40A-6D0D1147B6C9/Sanctions>

¹⁰ The Guardian, Property of Russian elites could be handed to Ukrainian refugees, says Raab, 4 March 2022. Available at: <https://www.theguardian.com/world/2022/mar/04/property-of-russian-elites-could-be-handed-to-ukrainian-refugees-says-raab>

¹¹ The Times, Michael Gove explores options for seizing oligarchs' property, 3 March 2022. Available at: <https://www.thetimes.co.uk/article/michael-gove-explores-options-for-seizing-oligarchs-property-wct37tm2t>

¹² FCDO, Policy Paper, Global anti-corruption sanctions: consideration of designations, 26 April 2021. Accessible at: <https://www.gov.uk/government/publications/global-anti-corruption-sanctions-factors-in-designating-people-involved-in-serious-corruption/global-anti-corruption-sanctions-consideration-of-designations> (point 5)

¹³ Spotlight on Corruption, Closing the UK's economic crime enforcement gap: Proposals for boosting resources for UK law enforcement to fight economic crime, January 2022. Available at: <https://www.spotlightcorruption.org/closing-the-uks-economic-crime-enforcement-gap-proposals-for-boosting-resources-for-uk-law-enforcement-to-fight-economic-crime/>

¹⁴ It is of course recognised that the purposes of sanctions under the GACS regime is to combat and prevent corruption. The prevention of asset flight is an advantageous consequence of sanctions which could also assist law enforcement agencies.

¹⁵ Hogan Lovells, Global Survivors Fund, REDRESS and Goldsmith Chambers discussion paper, Finance for Restorative Justice, Volume II, 19 June 2021, p. 33 paras. 63-64. Available at: https://www.hoganlovells.com/-/media/hogan-lovells/pdf/2021-pdfs/2021_06_25_finance_for_restorative_justice_-_volume_ii_stage_5.pdf

¹⁶ United States Strategy on Countering Corruption, December 2021, p. 25. Accessible at: <https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>

HOW TO IMPROVE THE USE OF SANCTIONS

A strategic approach to sanctions

When making sanctions decisions, the Government has often failed to take a sufficiently broad or strategic approach. This has led to significant gaps in accountability and deterrence.

GACS allow for sanctions to be imposed on state and non-state actors involved in corruption in numerous ways, i.e. not only those who are directly responsible for that conduct, but also those who facilitate, incite, promote, support, profit or otherwise benefit from it; who conceal evidence of it; or who fail to investigate and/or prosecute when they have a duty to do so. They also permit the UK to impose derivative sanctions on individuals and entities owned or controlled, directly or indirectly, by an involved person; acting on behalf of or at their direction; and those who are associated with them.

The Government should consistently use the full breadth of GACS to take action against the diverse range of actors involved in activities which generate illicit finance: that includes those at the centre of corrupt networks and their enablers. The UK must also consider designating close business associates and family members, as well as the full corporate network of a designated individual or entity where appropriate, to avoid sanctions evasion through the transfer of assets. Recent designations under the separate Russia sanctions regime that cover family members of the main sanctioned individual (such as the Shuvalov and Rotenberg families) show the FCDO is open to this approach.

With regards to the Russian invasion of Ukraine, none of the actors sanctioned have been sanctioned under the anti-corruption sanctions regime. If the Government took a more strategic approach by cross-sanctioning, it would ensure that those involved in serious corruption would remain on the sanctions list regardless of the outcome of the invasion.

Global leadership

The Government has repeatedly stated that it will use its sanctions regime to “take on a distinctive leadership role as a credible, effective and collaborative sanctions partner”.¹⁷ If the UK is to contribute to the fight against illicit finance, it must lead by example and ensure that it keeps pace with its allies in a coordinated manner to avoid the risk of asset flight. The Government must also capitalise on the momentum which has built around targeted sanctions in the context of the Ukraine crisis and encourage other countries to develop their own laws and help to implement them robustly. This means working bilaterally with allies and using the fora of multilateral diplomacy, including the newly established G7 Sanctions Working Group.

Enhanced Parliamentary scrutiny and oversight

Effective oversight of the Government’s use of the GACS regime (and other sanctions regimes) is essential in ensuring that it is effective in preventing and combating corruption. In 2018, the Government itself recognised the importance of parliamentary scrutiny of its sanctioning powers.¹⁸

However, recent amendments to the Sanctions and Anti-Money Laundering Act 2018 (introduced through the Economic Crime Act 2022) have removed a number of obligations on the Government to review and report on its sanctions regulations – including GACS – and individual designations. In particular, the Government is no longer obliged to review all designations every three years; to respond to any recommendations made by a Parliamentary committee; or to publish a report on offences created for breaches of sanctions with new regulations.¹⁹ Importantly, the Government is no longer obliged to conduct and publish an annual review of its various sanctions regulations and their use. This amendment is a big step backwards and puts the UK out of alignment

¹⁷ FCDO, Sanctions Regulations, Report on Annual Reviews 2021, January 2022. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1052217/The_Sanctions_Regulations_Report_on_Annual_Reviews.pdf

¹⁸ House of Commons, Foreign Affairs Committee, Moscow’s Gold: Russian Corruption in the UK: Government response to the Committee’s Eighth Report, 5 September 2018. Available at: <https://publications.parliament.uk/pa/cm201719/cmselect/cmfa/1488/1488.pdf>

¹⁹ Sections 62 and 63 of the Economic Crime Act

with the US, where the Secretary of State (in consultation with the Secretary of the Treasury) is obliged to submit an annual report to Congress on implementation of its sanctions regime.

As the UK Government is no longer obliged to review and report on its own use of its sanctions regimes, it is essential that Parliament steps into that role. This is vital for ensuring that sanctions regimes are used not only effectively, but appropriately, with sufficient regard to due process concerns.

UK Parliamentarians and civil society have made a number of recommendations over recent years. In 2018, the Government agreed with the conclusion of the Foreign Affairs Committee (“FAC”) that it would be the most appropriate committee to exercise scrutiny. Other options would be to create a tripartite Sanctions Committee, which would include the FAC, the Treasury Select Committee and the Home Affairs Committee, or for oversight to be undertaken by the Lords (such as by the International Relations and Defence Committee). Civil society has also long advocated for an Independent Expert Panel to be established, as recommended by the High-Level Panel of Legal Experts on Media Freedom’s report on the use of sanctions.²⁰

Regardless of the form that it takes, it is essential that there is a mechanism by which designations, decisions as to variations and de-listings, the resources allocated to the Sanctions Unit and OFSI, and the impact and effectiveness of the UK’s sanctions activities can be examined, and by which recommendations can be made.

Increased resources

Insufficient resourcing is a serious problem and has led to a lack of effective implementation by the FCDO’s Sanctions Unit and failures in enforcement by OFSI. There is also a particular concern, which the Government has recognised,²¹ about the resourcing of enforcement of sanctions in the British Overseas Territories, where many corrupt actors hide their wealth.²²

There is little transparency in the budget for the UK’s sanctions work. The only publicly available information is that as of December 2021, there were 40 – 49 staff working in the FCDO Sanctions Unit, and in the financial year 2020/21 the Sanctions Unit spent £49,000 on non-pay costs. As of March 2021, the OFSI had 37.8 staff, in comparison to an estimated 259 FTE staff members at the US Office of Foreign Assets Control.

In the US, for 2022, Congress has supported funding levels of \$5.5 million for the Treasury, State and Justice Departments to implement the Global Magnitsky sanctions program and other related sanctions programs addressing human rights violations and corruption.

Increased transparency

If the regimes are to have a real impact on the ability of corrupt actors to enjoy their illicit profits, they should extract a financial cost as well as a reputational one. Sanctions will therefore be most effective as a deterrent if they target those most likely to use the UK financial system or those of its Overseas Territories and Crown Dependencies, particularly in the case of the GACS. However, the information needed to assess this is not currently available to the public.

The following information should be made publicly accessible:

- the number and value of assets frozen under the GACS regime;
- details of any enforcement actions taken, including any exclusion from public procurement;
- the number of requests for variation and/or de-listing; number of such requests approved; and the number of judicial challenges; and
- resourcing made available for the GACS regime, namely: OFSI and the FCDO’s respective annual budgets for staff and other costs associated with designations and enforcement under the GACS, including how many full-time/part-time staff work on these regimes as their primary responsibility, their level of seniority, and how long they have been in that position for.

²⁰ International Bar Association, Report on the Use of Targeted Sanctions to Protect Journalists, 13 February 2020. Available at: <https://www.ibanet.org/Media-Freedom-Sanctions-report-launch-2020>

²¹ As per Michael Ellis MP, Hansard, Sanctions; Volume 709, 1 March 2022, column 991. Available at: <https://hansard.parliament.uk/commons/2022-03-01/debates/6EF274E3-57A6-46ED-BFE2-348AEB926501/Sanctions>

²² In February 2022, Transparency International linked £830 million worth of property in the UK’s OTs and Crown Dependencies to individuals close to Russian President Vladimir Putin or Russians accused of corruption. See: <https://www.transparency.org.uk/uk-money-laundering-stats-russia-suspicious-wealth>

REDRESS

Ending torture, seeking justice for survivors

REDRESS is an NGO that pursues legal claims on behalf of survivors of torture in the UK and around the world to obtain justice and reparation for the violation of their human rights. As part of this work, REDRESS uses sanctions to prevent human rights abuses and corruption, through imposing a financial cost on the perpetrators. It does this by investigating abuses and submitting evidence to sanctions authorities; by using data-driven analysis to shape public policy; and by supporting NGOs across the world on using sanctions.



The UK Anti-Corruption Coalition (UKACC) Sanctions Working Group works to ensure the new UK anti-corruption sanctions mechanism is used actively, with the cooperation, coordination and support of the UKACC's member NGOs, and results in a number of strategic sanctions designations to limit opportunities for kleptocrats to launder their wealth in the UK financial system. UKACC is able to leverage our close links with relevant NGO and government officials all over the world to disseminate information on the usefulness of sanctions and to foster an active community of NGOs working on corruption sanctions. Our methods of achieving this include:

- consultations and discussions with anti-corruption and legal experts to identify a range of strategic potential cases; and
- training and mentoring for civil society submissions.

Together, UKACC and REDRESS are working to ensure the effective use of targeted sanctions to provide accountability for corrupt practices and disrupt and deter future corrupt acts for the benefit of citizens of corruption-affected countries.

Cover image: Foggy Skyscrapers, Toronto Financial District, Matthew Henry

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