Responding to Illicit and Emerging Finance

Written evidence submitted by the UK Anti-Corruption Coalition to the Foreign Affairs Committee

March 2022

UK Anti-Corruption Coalition

Introduction and Summary

The UK Anti-Corruption Coalition brings together the UK's leading anti-corruption organisations to advocate for change, including experts in sanctions and illicit finance. Our submission will focus on how to make the Global Anti-Corruption Sanctions regime more effective and the measures the UK Government should now take to counter the flow of illicit finance into the UK.

To improve the effectiveness of the Global Anti-Corruption Sanctions regime, better transparency and oversight measures are needed. These would help ensure that the regimes are used ambitiously, consistently, and appropriately, and should include:

- Improved reporting on the use of sanctions.
- The creation of a parliamentary group tasked with an annual review of the GACS and an independent expert panel to challenge the FCDO on implementation of sanctions.

To ensure that the UK can act as a force for good in the fight against illicit finance, the UK Government should ensure further measures are brought beyond those already announced to tackle the enablers, close loopholes in overseas secrecy jurisdictions, and improve the enforcement of existing laws. These should include:

- Creating a more effective supervision scheme with far fewer and far more effective supervisory bodies, better enforcement, and real consequences for supervisors that fail in their duties.
- Reforming corporate criminal liability laws to ensure that companies can be held to account for economic crimes such as money laundering, fraud, and false accounting.
- Taking immediate steps to provide UK law enforcement agencies with full searchable access of registers of beneficial ownership in the Crown Dependencies and Overseas Territories, and doing everything possible to ensure these are made public by the end of the year.
- Provide a substantial and sustained uplift in the amount of resourcing made available to law enforcement to ensure that legislative changes deliver on their promise.

We wish to note our support for the comments made in submissions from our members, including The Sentry, Spotlight on Corruption, and Transparency International UK. In particular, we note their concerns about resourcing for the FCDO and cross-governmental work on these issues.

How effective are the UK's sanctions regimes on corruption and human rights? How could sanctions be used to greater effect in countering illicit finance?

Introduced in April 2021 respectively, the UK's Global Anti-Corruption Sanctions Regulations (GACS) has provided the UK Government with an important new tool for

tackling the most egregious corruption carried out around the world. Yet GACS must be used ambitiously, consistently and appropriately if it is to be effective as a tool to tackle illicit finance and promote open societies. To that end, better transparency and oversight are crucial.

Transparency

We want to ensure that the regime is as effective as possible at preventing and combating serious corruption, and ensuring that the UK offers no safe haven for corrupt wealth. This requires sufficient information being provided to Parliament and placed in the public domain to enable scrutiny. This should take the form of regular reporting, which would allow relevant stakeholders to identify where the sanctions regimes are working well and areas for improvement.

Information on implementation is critical for assessing the impact of the regimes. This includes:

- Statistics on amounts frozen per regime
- Details of any enforcement actions taken, disaggregated by regime;
- The number of requests for delisting, total number of delistings approved, and court challenges; and
- Resourcing made available for the GACS regimes. This should specify OFSI and the FCDO's respective annual budgets for staff and other costs associated with designations and enforcement under the GACS, including how many staff work on these regimes as their primary responsibility.

If the regimes are to have a real impact on the ability of human rights abusers and 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.

For example, information on assets frozen under GACS is not available to the general public. The Office for Sanctions Implementation (OFSI) publishes an annual review in October each year, in which figures on frozen assets are provided for each regime.[1] However, in regimes where the total value of assets frozen is below £3 million, no information is provided. In January 2022, the FCDO published a review of sanctions regulations, as required under Section 30 of the Sanctions and Anti-Money Laundering Act 2018.[2] No information was provided about the value of assets frozen in this review. We note that the review stated there were no humanitarian license applications in the preceding year, however it is not clear whether license applications on other grounds were made.[3]

[1] OFSI (2021), Annual Review, April 2020 to March 2021, p.6.
[2] SAMLA 2018, Section 30.
[3] FCDO (2022) *Sanctions Regulations: Report on Annual Reviews 2021*, p.7.

We understand that the Economic Crime (Transparency and Enforcement) Act has removed the need for periodic reviews of sanctions designations and requirements so as to facilitate quicker designations. While this is understandable, However the removal of reporting requirements on offences created by regulations and on the exercise of power is more concerning. There needs to be strong parliamentary oversight of the use of sanctions and this amendment to SAMLA could reduce that, which is addressed in the subsequent section.

Recommendations:

- Make data around enforcement of sanctions much more transparent, including a breakdown of assets frozen and fines handed out under each separate sanctions regime.

Oversight

Effective oversight is critical for ensuring that the regime has impact and that it is accountable to the public and Parliament. However, the legislation currently makes no provision for independent or external oversight of the regime outside of Government. While we appreciate there are sensitivities regarding information surrounding the GHRS and GACS designations, embedding an external review mechanism will help ensure that the regime is ambitious and sustainable through ministerial changes.

At present, there are no provisions in SAMLA for independent review of regulations, with the exception of specific circumstances. These circumstances include: (1) where there is a counter-terrorism purpose, as set out in Section 31 and (2) in connection with a gross violation of human rights, as set out in Section 32. Regular independent review and oversight of the GHRS and GACS would therefore not fall under either of these criteria.

There are three relevant models for independent oversight mechanisms embedded in current UK legislation: a single independent commissioner with annual reporting obligations and standing to make recommendations; committee-based mechanisms which draw from members of parliament and have standing to set their own programmes and agendas; and an independent commissioner with advisory judicial commissioners who support oversight activities of the independent commissioner. Despite structural differences, the mechanisms all include an obligation to provide regular reports (mostly to Parliament) and independence from the relevant government department and the ability to set their own agendas. Stronger mechanisms also include the powers to make recommendations, give evidence before Parliament, clearance to access sensitive national security information, and the provision of training and technical assistance in implementing the legislation. We are of the position that the former two, and possibly also the third, criteria are most relevant for oversight of the GHRS and GACS regimes.

Independent oversight measures have also been recommended by experts. Amal Clooney, a former UK Special Envoy on Press Freedom, prepared a Report on the Use of Targeted Sanctions to Protect Journalists for the International Bar Association which addresses this topic. The report states that there could be an important role for an expert group external to the executive to receive and evaluate information about sanctions, taking the form of a quasi-judicial body, a panel of appropriate experts, or a committee within the legislature of

a particular state.[4] The rationale for such a body is that it can help increase transparency and accountability, ensuring that competing interests within government do not diminish the effectiveness of sanctions regimes. The report also recommends that relevant legislation should address the executive's obligations to report to the independent committee.[5] Yet, as noted, SAMLA does not provide any basis for external oversight of the GHRS and GACS.

Recommendations:

- A Joint Committee of MPs and peers or a Sub-Committee of the Foreign Affairs Committee should annually review all designations under the GHRS and GACS, any delistings under these regimes and the reasons given for them, and the effectiveness of the regime. The report should be laid before Parliament and the Foreign Secretary obliged to respond to any recommendations.
- An independent expert panel should be established to challenge the FCDO on implementation of corruption and human rights sanctions, with the power to make recommendations about who should be sanctioned, to review delisting and license decisions, and provide oversight about the consistency of sanction application.

What other measures beyond sanctions can counter illicit finance, including bilateral and multilateral approaches?

Sanctions are not a silver bullet and should not be seen as such. Rather, they are just one tool at our disposal. To effectively counter illicit finance, the UK Government must take a comprehensive approach to reform. It must ensure that companies and property in the UK and its Crown Dependencies and Overseas Territories offer no safe haven for kleptocrats, oligarchs, and other criminals, that enablers do not permit the flow of dirty money into our economy, and that law enforcement agencies have both the resources and powers they need to hold wrongdoers to account.

In bringing forward the Economic Crime (Transparency and Enforcement) Act in response to the Russian invasion of Ukraine, the UK Government has taken an important first step in addressing some of the concerns above. The Act brings forward the long-awaited Register of Overseas Entities and important fixes to make Unexplained Wealth Orders and sanctions more effective. However, it should be noted that the Government first committed to the Register of Overseas Entities in 2016. Had this reform been implemented in line with its original timescale, having been drafted as legislation in 2018, the fully functional public register would have been operational by now. Instead, the Government has had to fall back on interim fixes and bring forward legislation in an expedited manner, increasing the risk of loopholes which money launderers or sanctions evaders may seek to exploit. We urge the Committee to continue to play an important role in holding the government to account on these issues. We would welcome efforts to encourage concerted action from the UK Government regarding the threat posed by dirty money, from Russia and elsewhere, to our

[4] Amal Clooney (2020), *Report on the Use of Targeted Sanctions to Protect Journalists*, International Bar Association Human Rights Institute, p.74.
[5] Ibid, p.75.

economy and our national security.

To do so, further legislation and a substantial and sustained uplift in the amount of resourcing made available to law enforcement agencies will be essential. We welcome the publication of a White Paper on reform of Companies House, with the encouraging intention to see it transformed into "a much more active gatekeeper over company creation and custodian of more reliable data."[6] To do so, Companies House must be empowered and properly resourced, with any loopholes in the legislation addressed, particularly regarding exemptions and higher risk LLPs and LPs. These changes should be brought forward in a second Economic Crime Bill as soon as possible, and further loopholes in our safeguards against dirty money addressed. These include the role of the Crown Dependencies and Overseas Territories (CDOTs) and enablers, which are discussed in more depth below, alongside measures to counter SLAPPs and protect whistleblowers.

Tackling enablers: A functioning AML supervision regime

Money laundered through UK property or UK companies does not end up here of its own accord. It relies on enablers – lawyers, bankers, accountants, and others – who facilitate its passage through our financial system, either through complicity or complacency. Tackling the enablers requires a system that prevents economic crime in the first place and holds all of those who facilitate these crimes to account, yet the UK's approach to anti-money laundering (AML) supervision is ineffective and fragmented and its laws fail to offer any credible deterrent. We also know that the UK's failures to stem illicit financial flows have been criticised by allies; the FinCEN Files revealed that the US Treasury considers the UK to be 'a higher-risk jurisdiction' for money laundering, akin to Cyprus.[7]

A disjointed system of 25 different supervisors is tasked with supervising businesses' compliance with money laundering regulations, yet most of these regulators fail to meet basic standards of good governance and effective supervision. Transparency International UK identified this problem in the 2015 report *Don't Look, Won't Find*, and sadly little has changed in the past seven years.[8] For example, a 2021 review of professional body supervisors responsible for the legal and accountancy sectors found that 81% were not supervising their members effectively.[9] In its 2018 review of the UK, the Financial Action Task Force raised questions over the Financial Conduct Authority's approach to inspecting and supervising firms that were high risk and over the lack of prosecutions and convictions of wrongdoing.[10] HM Treasury closed its consultation on changes to the anti-money laundering and counter-terrorist finance supervisory and regulatory regime in October 2021, in line with a commitment made in the Economic Crime Plan, but it is yet to report on its findings.[11]

Recommendations:

[6] BEIS (2022) Corporate Transparency and Register Reform White Paper, p.12.
[7] BBC (2020) 'FinCEN Files: All you need to know about the documents leak'
[8] Transparency International UK (2015), *Don't Look, Won't Find,*
[9] Spotlight on Corruption (2021) 'UK's ongoing weak link in the fight against dirty money – the supervision of lawyers and accountants.'
[10] FATF (2018), *United Kingdom: Mutual Evaluation Report*, p.3, pp.131-132.
[11] For more information, see UKACC (2021) *Submission on AML Supervision.*

- Consolidate and standardise AML supervision as a priority to ensure a more consistent, proportionate, transparent and accountable system than the fragmented and conflicted existing system. There should be a substantial reduction in the number of supervisors to avoid duplication and the consistency of supervision needs to be vastly improved.
- Lawyers and accountants face almost zero prospect of criminal enforcement action where they breach the UK's money laundering Regulations. While those regulated by the Financial Conduct Authority and HMRC can be criminally prosecuted, as we have seen with the recent Natwest money laundering prosecution, no one body is properly responsible for ensuring lawyers and accountants could face similar criminal sanction. A new professional enabler unit at the NCA must be empowered to police criminal breaches of the Money Laundering Regulations as well as taking more robust action under the Proceeds of Crime Act, such as bringing criminal action against those who fail to report suspicions of money laundering.
- Ensure there are consequences for supervisors who fail to do their job and fail to separate their advocacy and regulatory functions. There should be provisions for sanctions of professional bodies which license solicitors, barristers, accountants and other professionals who act as professional enablers.

Tackling enablers: Stronger corporate criminal liability rules

The current rules for holding large companies and financial institutions to account for economic crime are ineffective and offer little real deterrent for enablers facilitating the flow of corrupt wealth into the UK economy. Concerningly, the rules in England and Wales lag significantly behind those of our closest allies in the fight against illicit finance. Whilst the US is renowned for its strong criminal prosecution record, the UK had failed to secure any prosecutions under the Money Laundering Regulations until very recently.

Corporate criminal liability laws in the US are based on a form of vicarious liability, in which companies are liable for criminal actions taken by their employees and others working on their behalf. There is a clear trend towards stronger approaches amongst our allies[12]: the Netherlands already use a form of vicarious liability, while the Australian Law Commission has recommended that the Australian Government also adopts a form of vicarious liability. The Irish Law Commission has also recommended stronger rules, while Germany is abandoning its long held position of only using regulatory punishments in favour of criminal liability.

At present, the law in England and Wales is underpinned by the 'identification principle', which means that prosecutors must identify a 'directing mind and will' for the offence among a company's most senior directors. This principle has widely been described as antiquated and ill-suited to decision-making structures in today's large, complex, and global companies, including criticisms from past and present directors of the Serious Fraud

[12] For more information, see UKACC (2021) *Submission on Corporate Criminal Liability.*

Office[13]. In a government consultation held in 2017 and published in 2020, 75.9% of respondents thought that the 'identification' doctrine inhibits holding companies to account.[14] The Law Commission is due to provide the UK Government with options for reform in Summer this year.

Recommendations:

- Replace the 'identification principle'. A form of 'vicarious liability', as used in the US and the Netherlands, would be most appropriate and help the UK tackle enablers. The system means that companies can be held criminally liable for the criminal activities of an employee, representative or agent acting on their behalf.
- Create 'failure to prevent' offences for money laundering, fraud, sanctions evasion and false accounting. This would make it easier to prosecute enablers and those who commit other economic crimes and ensure coherence across the UK's legislative landscape; there are already 'failure to prevent' offences in place for bribery and tax evasion.

Closing the loopholes: Crown Dependencies and Overseas Territories

One of the most globally significant actions that the UK could take to counter illicit finance is addressing the oversized role of the Crown Dependencies and Overseas Territories in facilitating high-end money laundering. It is undeniable that the secrecy afforded to companies in some of these jurisdictions is facilitating international illicit finance, with potentially negative consequences for British national security. Transparency International UK have identified £1.5 billion worth of UK property bought by Russians accused of corruption or of links to the Kremlin, with the majority of this held by companies in the Crown Dependencies and Overseas Territories.[15] While the Register of Overseas Entities will bring much-needed and long-overdue transparency to foreign ownership of UK property, the UK Government should act now to ensure that law enforcement have full and unfettered access to company information held by these jurisdictions to prevent sanctions evasion.

The threat posed by these jurisdictions also extends beyond the UK's borders. Research by Transparency International UK has identified 2,189 companies registered in the UK and its Overseas Territories and Crown Dependencies used in 48 Russian money laundering and corruption cases.[16] These cases involved more than £82 billion worth of funds diverted by rigged procurement, bribery, embezzlement and the unlawful acquisition of state assets. More than 2 out of 3 of the cases involving public officials revealed through the Pandora Papers leak involved a company based in the British Virgin Islands (BVI).[17] Action is

[13] Caroline Binham and Jane Croft (9 March 2020), 'Barclays: the legal fight over a company's 'controlling mind'', *Financial Times*.
[14] Spotlight on Corruption (2020) 'The UK's corporate crime rules – why urgent change is needed - Spotlight on Corruption'.
[15] Transparency International UK (2022) 'Stats reveal extent of suspect global wealth in UK property and Britain's role as a global money laundering hub.'
[16] Ibid.
[17] ICIJ (2021) Offshore havens and hidden riches of world leaders and billionaires exposed in unprecedented leak.

urgently needed to address these issues and the FCDO should do all it can to speed up the publication of registers of beneficial ownership information in jurisdictions of concern, such as the BVI and Cayman Islands. This is an obligation under the Sanctions and Anti-Money Laundering Act 2018 and has been committed to by the governments of the BVI and the Cayman Islands; there is no good reason for further delay.

Recommendations:

- To ensure anonymous companies registered in the UK's offshore financial centres are not being used to evade UK sanctions, the Government should request full access for UK authorities to registers of beneficial ownership in the CDOTs.
- The UK should also be doing everything in its power to ensure the CDOTs open their company registers to public scrutiny this year.

Playing our part: Resourcing for law enforcement

Underpinning all of these measures is the need to urgently reassess current funding arrangements for tackling economic crime within government and law enforcement agencies. At present, the lack of resourcing made available to tackle economic crime in the UK has drawn the criticism of our allies. In the Atlantic Council's Issue Brief on Global Britain, the UK was described as "in severe danger of being shown as a paper tiger" when it comes to fighting kleptocracy. The reason for this was its poor record on enforcement, with the author concluding that "Britain must summon the political will and resources needed to massively strengthen enforcement of its own existing laws."[18]

This problem has also been identified by experts within the UK. Spotlight on Corruption has found that money laundering prosecutions have dropped by 35% over the past 5 years, while the number of individuals being convicted by the SFO every year is on a noticeable downward trajectory from 13 in 2016/17 to 8 in 2019/20, even prior to the effects of the COVID-19 pandemic taking hold, reaching 4 in 2020/21, and is also reflected in the decline in the overall conviction rate from 86.7% in 2016/17 to 67% in 2020/21. Key national-level agencies continue to suffer real term declines in their budgets, with the National Crime Agency suffering a 4.2% decrease in its core budget over the past five years. The current mechanism for returning assets to law enforcement (the Asset Recovery Incentivisation Scheme) is broken, and there has been a 34% decrease in the amount of funds returned through this mechanism being used to fund asset recovery work over the past five years. Notably, the UK spends £852 million – equal to just 0.042% of GDP (on a generous estimate) – a year on funding core national-level economic crime enforcement bodies – even though annually economic crime costs the UK £290 billion – equal to at least 14.5% of GDP.[19]

Recommendations:

[18] Atlantic Council (2021) Global Britain: An American review, p.14.
[19] Spotlight on Corruption (2022) 'Closing the UK's economic crime enforcement gap: Proposals for boosting resources for UK law enforcement to fight economic crime.'

- The UK Government should enhance long-term sustainable public investment across economic crime enforcement. In particular, it should double the budgets of key agencies such as the National Crime Agency, OFSI, SFO and HMRC.
- Funds brought in from law enforcement efforts should be consolidated into an economic crime fighting fund rather than returning to the Treasury, and as a replacement to the Asset Recovery Incentivisation Scheme (ARIS).
- Cost protection for law enforcement in economic crime cases should be expanded across all civil recovery under the Proceeds of Crime Act and not just for Unexplained Wealth Orders as specified under the Economic Crime Act.

The UK Anti-Corruption Coalition brings together the UK's leading anti-corruption organisations who, through their work, witness the devastating impact of corruption on society.

www.ukanticorruptioncoalition.org

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