

STEP Guidance Note: The Trust Services Prohibition in the UK Russia Sanctions Regime

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Background

On 16 December 2022, the UK introduced into its Russia sanctions regime a new prohibition on the provision of ‘trust services’. The ‘impact assessment’ accompanying the amending regulations stated that: ‘This intends to prevent avoidance or evasion of UK sanctions using trust services’,¹ and referenced the July 2022 National Crime Agency ‘red alert’ on *Financial Sanctions Evasion Typologies: Russian Elites and Enablers*.²

This note provides guidance as to the nature and scope of this prohibition.

There is a separate trust services prohibition under EU sanctions law that took effect on 9 April 2022.³ STEP has published guidance on this and it is not considered here, though some points of difference are noted.⁴ A key difference is that the EU rules include a prohibition on the provision of trust services to Russian nationals, but the UK rules make no reference to nationality.

Although this guidance deals with UK sanctions law, it is also relevant to the Crown Dependencies, and to the Overseas Territories, as UK sanctions law is given effect in those jurisdictions.⁵

The territorial scope of the UK Russia sanctions regime, including the trust services prohibition, identifies who must comply therewith: it covers any person or entity in the UK, and UK nationals and UK incorporated entities worldwide. The territorial scope is modified in the Crown Dependencies and Overseas Territories, as detailed below.

The trust services prohibition has two limbs,⁶ as follows:

- Limb one: ‘A person must not provide trust services to or for the benefit of a designated person’.

¹ See [here](#), at p.2.

² See [here](#).

³ Art.5m of Council Regulation (EU) No 833/2014. See [here](#).

⁴ STEP Position Paper: EU sanctions against trusts with a ‘Russian connection’, 21 April 2022. See [here](#).

⁵ In all of the Overseas Territories except Bermuda and Gibraltar, UK sanctions law is directly applied by Order in Council *The Russia (Sanctions) (Overseas Territories) Order 2020*, as amended – the most recent amendments having been made under the *Russia (Sanctions) (Overseas Territories) (Amendment) Order 2023*. In Bermuda, Gibraltar, and three Crown Dependencies (Guernsey, Jersey, and the Isle of Man), UK sanctions law is given effect through locally enacted legislation.

⁶ The term ‘limb’ being used only in this guidance for clarity.

- Limb two: ‘A person (‘P’) must not provide trust services to or for the benefit of a person connected with Russia (‘C’) unless pursuant to an ongoing arrangement pursuant to which P provided those trust services to or for the benefit of C immediately before 16th December 2022’.⁷

Thus, the central questions in each case are as follows:

- First, is the service provider within the territorial scope of the trust services prohibition? If no, it does not apply.
- Second, if yes, is the service a trust service? If no, the prohibition does not apply.
- Third, if yes, would that service be provided to a designated person (Limb one) or to a person connected with Russia (Limb two)? If yes, subject to any applicable exceptions or licences, the provision of the service would breach the prohibition.
- Fourth, if no, would that service be provided for the benefit of a designated person (Limb one) or for the benefit of a person connected with Russia (Limb two)? If yes, subject to any applicable exceptions or licences, the provision of the service would breach the prohibition. If no, the prohibition would not be breached.
- Fifth, if the answer to the third or fourth questions is yes, is there an applicable exception or licence available to allow the service to be provided in a way that would not breach the prohibition? As regards Limb two only, a key exception is that the prohibition is not breached if the service is provided pursuant to an ‘ongoing arrangement’ that has been in place since at least 15 December 2022.⁸

The ‘ongoing arrangement’ exception is particularly important since it means that, practically, the main focus of the trust services prohibition is on new arrangements with persons connected with Russia, and all arrangements with designated persons.

Another exception is that the trust services prohibition is not contravened by any act done for the purposes of complying with an asset freeze on a designated person. This is important because, in practice, trustees may find it impossible to cease to provide trust services in a way that does not breach such an asset freeze; and if so, this exception would allow trustees in that position to continue to provide trust services.⁹

In answering those questions, the following definitions are important.

A ‘designated person’ means, in this context, a person sanctioned by the UK for the purposes of the trust services prohibition – whether a person is so designated can be checked online, on the UK Sanctions List.¹⁰ In this respect, on 21 March 2023, the UK Government imposed what it characterised in the UK Sanctions List as ‘Trust Services

⁷ Reg.18C(2).

⁸ I.e. ‘immediately before’ 16 December 2022.

⁹ Reg.60ZZB(1)(b).

¹⁰ Reg.18C(1), read together with the definition of ‘designated person’ at reg.18C(7). All references to regulations (‘reg.’) in the footnotes are to the *Russia (Sanctions) (EU Exit) Regulations 2019* unless otherwise stated. The UK Sanctions List is available [here](#).

Sanctions’ on 1,730 persons who were already subject to an asset freeze under the UK Russia sanctions regime.¹¹

On the same day, the UK Government issued a general licence whose purpose is to allow trust services providers 90 days to cease the provision of trust services from the date a person is designated for the purpose of the trust services prohibition. For the persons so designated on 21 March 2023, this period ends on 18 June 2023 inclusive.¹²

However, trustees who are required to cease to provide trust services may be unable to do so without contravening the asset freeze prohibition; they may need to continue to provide trust services in reliance on the exception noted above. This is considered in more detail below.

A ‘person connected with Russia’:

- With respect to individuals, it means ‘an individual who is, or an association or combination of individuals who are, ordinarily resident in Russia’ or ‘an individual who is, or an association or combination of individuals who are, located in Russia’.¹³ The terms ‘ordinarily resident’ and ‘located in’ are considered below.
- With respect to entities other than individuals, such as companies, it means ‘a person, other than an individual, which is incorporated or constituted under the law of Russia’, or ‘a person, other than an individual, which is domiciled in Russia’.¹⁴

‘Trust services’ is defined as follows:¹⁵

- The creation of a trust or similar arrangement.
- The provision of a registered office, business address, correspondence address or administrative address for a trust or similar arrangement.
- The operation or management of a trust or similar arrangement.
- Acting or arranging for another person to act as trustee of a trust or similar arrangement, where ‘trustee’, in relation to an arrangement similar to a trust, means a person who holds an equivalent or similar position to a trustee of a trust.

This definition is considered below. In practice, a key issue is likely to be whether a person operates or manages the trust by the provision of a given service. A key distinction is between, on the one hand, the trustees and others who administrate the trust or similar arrangement and, on the other hand, professionals whose services are only advisory.

¹¹ See press statement [here](#). The statement suggests that these 1,730 persons have been ‘designated’ under reg.18C. That is inaccurate, as they are in fact designated under the power at reg.5, following the criteria at reg.6. The technically correct position is that what the UK Sanctions List refers to as the ‘Trust Services Sanctions’ is a ‘purpose’ for which a person can be designated, per reg.5(1)(ab).

¹² See [here](#).

¹³ Reg.19A(2)(a)-(b).

¹⁴ Reg.19A(2)(c)-(d).

¹⁵ Reg.18C(7).

Beware, however, of professional advice provided in respect of arranging for another person to act as a trustee of a trust or similar arrangement – for example, a lawyer drafting a trustee’s deed of appointment – for that would be a trust service under the last part of the definition.

A ‘similar arrangement’ would include arrangements such as foundations.

Whether trust services are provided ‘to’ a designated person or a person connected with Russia is not further defined.

However, whether trust services are provided ‘for the benefit of’ a designated person or a person connected with Russia is defined to mean that the person:

- is a beneficiary of a trust or similar arrangement;
- is referred to as a potential beneficiary in a document from the settlor relating to a trust or similar arrangement (such as a letter of wishes); or
- having regard to all the circumstances, the person might reasonably be expected to obtain, or to be able to obtain, a significant financial benefit from the trust or similar arrangement. This is considered in detail below.

As to exceptions and licences:

- There are various exceptions beyond ongoing arrangements (noting, again, that ongoing arrangements only apply to Limb two) and the exception for compliance with the asset freeze prohibition. For example, there is an exception if the person connected with Russia is under 18-years-old.
- As the trust services prohibition is a finance measure, licence applications are made to the Office of Financial Sanctions Implementation (OFSI) in HM Treasury.

Breach of the trust services prohibition is a criminal offence, the penalty for which can include a fine and a custodial sentence of up to seven years. Although the knowledge element of the offence is not expressly stated, it would appear to be that a person knows, or has reasonable cause to suspect, that the conduct in issue breaches the prohibition.

However, HM Treasury can impose a monetary penalty for breach of the provision on a strict liability basis (i.e., even if the person did not know that the conduct in issue breached the prohibition); although in its guidance, HM Treasury has stated that as a matter of its enforcement policy, it will take knowledge into account.

Further, the definition of trust service providers (TSPs) who are ‘a relevant firm’, and so subject to reporting obligations, has been amended to align with the definition of trust services under the trust services prohibition.

Finally, both TSPs and service providers outwith the definition of trust services must also comply with the prohibitions on professional and business services under the UK sanctions regime, if they apply.¹⁶ These are outlined below.

Practical examples

This section offers practical examples in the application of the central questions above.

Is the service provider within the territorial scope of the trust services prohibition?

Example:

A UK national provides trust services from France. Do they have to comply with the UK trust services prohibition? Yes, as the territorial scope of the UK Russia sanctions regime in relation to UK nationals is worldwide.

Example:

A US national provides trust services from the British Virgin Islands (BVI). Do they have to comply with the UK trust services prohibition? Yes, as the UK's Russia sanctions regime is given effect in the Overseas Territories, including the BVI (it is also given effect in the Crown Dependencies).

Example:

A Luxembourg national resident in Luxembourg is a trustee of a trust whose beneficiary is a UK resident. Does the Luxembourg national have to comply with the UK trust services prohibition? The start point is no, being outside the UK and not a UK national. However, any conduct in the UK is within the territorial scope of the trust services prohibition; if, for example, the trustee met the beneficiary in London to provide trust services that conduct would be within the scope of the trust services prohibition.

Is the service a trust service?

Example:

An accountant is asked to advise the trustees of a trust as to a distribution. Would the accountant provide a trust service were they to perform the service? No, the service is purely advisory, so the accountant would not have operated or managed the trust. But the accountant should also check whether the prohibition on accountancy services in the UK Russia sanctions regime is engaged.

Example:

A lawyer is asked to advise on the appointment of a new trustee. Would the lawyer provide a trust service were they to perform the service? Yes: while the work is purely advisory, and as such does not constitute the operation or management of the trust, it involves arranging for another person to act as trustee, which is a trust service.

¹⁶ Reg.54C.

Example:

A person works for a trust as a general administrator, but they are not a trustee. Do they perform a trust service? Yes, just because they are not a trustee, that person still assists with the management of the trust.

Would the trust service be provided to a designated person (Limb one) or to a person connected with Russia (Limb two)?

Example:

Is a person designated under the EU's Russia sanctions regime, but not designated for the purposes of the trust services prohibition under the UK Russia sanctions regime, a designated person for the purposes of the UK's trust services prohibition? No: only persons designated for the purposes of the trust services prohibition under the UK's Russia sanctions regime are designated persons under the UK trust services prohibition – and this can be checked online in the UK Sanctions List.

Example:

The beneficiary of a Guernsey trust is a Russian national resident in the UK. Is the beneficiary a person connected with Russia? No, nationality is irrelevant to the UK trust services prohibition. However, if the trustee is an EU national, even if Guernsey resident, they personally will be bound by the EU trust services prohibition, to which Russian nationality is relevant.

Example:

A lawyer in the UK is asked to advise the beneficiary of a trust resident in Russia as to a trust distribution. Would that breach the trust services prohibition? No, the work is advisory only, so it does not matter that the beneficiary is a person connected with Russia, as this is not a trust service.

Would the trust service be provided for the benefit of a designated person (Limb one) or for the benefit of a person connected with Russia (Limb two)?

Example:

A person is identified by description, rather than by name, in a class of beneficiaries under a trust deed. Is the person a beneficiary for the purposes of the trust services prohibition? Yes: it is implicit that identification as a beneficiary can be by name or by description.

Example:

The sole beneficiary of a Jersey discretionary trust is assessed to be a proxy for a designated person (DP). The trustees can be assumed to comply with Jersey law. Having regard to all the circumstances, might a DP reasonably be expected to obtain, or to be able to obtain, a significant financial benefit from the trust? This is fact dependent, but the start point would likely be no, since it would be unlawful for the trustees to act in a way that

conferred a significant financial benefit on a DP (for so long as a DP remained a designated person); and the trustees here are assumed to comply with Jersey law.

Is there an applicable exception or licence available to allow the service to be provided in a way that would not breach the prohibition?

Example:

The beneficiary of a trust is designated for the purpose of the trust services prohibition under the UK Russia sanctions regime; however, the trustees have operated and managed the trust under a trust deed that pre-dates 16 December 2022, and that arrangement has been ongoing since immediately before that date. Can the trustees keep on acting on the basis of the 'ongoing arrangement' exception? No, since that exception only applies in respect of trust services provided to or for the benefit of persons connected with Russia, not persons designated for the purpose of the trust services prohibition.

Example:

The beneficiary of a trust is a person connected with Russia, but is 15-years-old. Can trust services be provided to them? Yes, so long as the trust services are not provided 'primarily' to, or for the benefit of, a person designated for the purpose of the trust services prohibition, there is an exception for the provision of trust services to or for the benefit persons connected with Russia who are under 18-years-old.

Example:

A UK-based trustee provides trust services to a person; that person is designated for the purposes of the trust services prohibition; and that person is also separately designated for the purpose of the 'asset freeze etc.' prohibition – meaning the measures at regs.11-15. Under the trust services prohibition, the trustee must cease to provide trust services, subject to any applicable licence (such as the general licence allowing TSPs 90 days to cease to provide services). But, if the ceasing of trust services would breach any of regs.11-15, for example, by the transfer of the legal title in the trust assets to a new trustee – the trustee cannot do that, for it would be unlawful (regardless of the general licence). In that situation, the trustee can rely on the exception at reg.60ZZB(1)(b), which provides that the trust services prohibition is not contravened by any act done by a person for the purposes of complying with the prohibitions and obligations in Chapter 1 of Part 3 (asset freeze etc.) – to continue to provide trust services to the designated person; but the trustee must in providing those trust services continue to comply with regs.11-15.

Analysis

The statutory context

The UK's Russia sanctions regime is set out in the *Russia (Sanctions) (EU Exit) Regulations 2019* (the Russia Regulations). All references to regulations (regs.) below are to regulations therein.

The Russia Regulations are made under the *Sanctions and Anti-Money Laundering Act 2018* (SAMLA).

The trust services prohibition is set out at reg.18C. This section is cited in full at Annex 1.

Various exceptions to the prohibition are set out at reg.60ZZB. Both reg.18C, and reg.60ZZB, came into force on 16 December 2022, having been made under the *Russia (Sanctions) (EU Exit) (Amendment) (No. 17) Regulations 2022*.

The trust services prohibition at reg.18C falls within Part 3 of the Russia Regulations, which concerns financial measures. In contrast, the prohibitions on professional services under reg.54C fall under Part 4, which concerns trade measures.

As such, in the UK, licence applications in relation to the trust services prohibition fall to be made to the OFSI within HM Treasury, as with all licence applications related to finance measures. This is unlike trade measures, in relation to which licence applications are usually made to the Export Control Joint Unit within the Department of Business and Trade.¹⁷

Territorial scope of the prohibition

The UK's Russia sanctions regime, which includes the trust services prohibition, binds:

- any person (natural or legal) in relation to conduct within the UK and its territorial sea; and
- 'UK Persons' in relation to conduct wholly or partly outside the UK.¹⁸

'UK Persons' means a United Kingdom national, or a body incorporated or constituted under the law of any part of the United Kingdom.¹⁹

The territorial scope of the UK Russia sanctions regime, as given effect in the Crown Dependencies and Overseas Territories, is modified accordingly.

For example, as given effect in Guernsey, the territorial scope of the trust services prohibition applies to any person in the Bailiwick, or worldwide as regards any 'Bailiwick person' (a Bailiwick person being 'a UK national who is ordinarily resident in the Bailiwick of Guernsey, or a body incorporated or constituted under the law of the Bailiwick or any part thereof').²⁰

For the avoidance of doubt, the territorial scope of the UK Russia sanctions regime relates to the persons who must comply with it. It is not a limitation on the range of persons whom the UK can designate under the UK sanctions regime; and it has nothing to do with the definition of a designated person, or of a person connected with Russia.

¹⁷ See [here](#).

¹⁸ Reg.3.

¹⁹ Section 21(2) SAMLA. 'UK national' is defined at s.21(3).

²⁰ See s.20(1) *The Sanctions (Bailiwick of Guernsey) Law 2018*; and reg.1(2) *The Sanctions (Implementation of UK Regimes) (Bailiwick of Guernsey) (Brexit) (Amendment) Regulations 2020* (as amended). For completeness, note that it also applies worldwide to a 'Bailiwick ship', being a Guernsey registered ship.

The definition of trust services

Limbs one and two

For the purposes of both Limbs one and two, the definition of ‘trust services’ is the same, as follows:²¹

‘trust services’ means—

(a) the creation of a trust or similar arrangement,

(b) the provision of a registered office, business address, correspondence address or administrative address for a trust or similar arrangement,

(c) the operation or management of a trust or similar arrangement, or

(d) acting or arranging for another person to act as trustee of a trust or similar arrangement, where ‘trustee’, in relation to an arrangement similar to a trust, means a person who holds an equivalent or similar position to a trustee of a trust.’

The reference to trusts and ‘similar arrangements’ raises the issue of what constitutes a similar arrangement. This has to be considered on a case-by-case basis. Foundations, for example, would be a similar arrangement.

However, in particular, the position of nominee shareholders is not clear as the drafting is ambiguous:

- The start point is that if a nominee holds an asset on trust, typically on bare trust, the nominee provides a trust service, the nominee being the trustee.
- However, the drafting appears to indicate that nominee shareholders do not provide a trust service.
- Thus, simultaneously with the introduction of the trust services prohibition, the reporting requirements at reg.71 were amended too:
 - Prior to the amendment, reg.71(2) included a definition of ‘trust or company services’. That definition included the following:
 - (d) acting, or arranging for another person to act, as—
 - (i) a trustee of an express trust or similar legal arrangement, or
 - (ii) a nominee shareholder for a person.
 - Following the amendment, the definition at reg.71(2) was amended to refer only to ‘company services’, and the above part amended as follows:
 - (d) acting, or arranging for another person to act, as—

²¹ Reg.18C(7).

- (i) [omitted]
 - (ii) a nominee shareholder for a person.
- Implicitly, prior to amendment, (d)(i) related to trust services, and (d)(ii) to company services. As trust services was redefined by reg.18C, reg.71(2)(d)(i) appears to have been amended to avoid inconsistent definitions.
 - That points to nominee shareholders being outwith the definition of trust services: were they not, reg.71(2)(d)(ii) would also have been omitted.
- Comparison with the equivalent EU prohibition points in the same direction:²²
 - The EU definition includes the following: ‘to act as, or arrange for another person to act as, a trustee, nominee shareholder, director, secretary or a similar position, for a trust or similar legal arrangement as referred to in paragraph 1’.²³
 - By contrast, limb (d) of the definition in the UK prohibition, reads: ‘acting or arranging for another person to act as trustee of a trust or similar arrangement, where ‘trustee’, in relation to an arrangement similar to a trust, means a person who holds an equivalent or similar position to a trustee of a trust’.
 - Thus, since the UK definition is clearly modelled on the EU definition, it is striking that by contrast therewith, ‘nominee shareholder’ is omitted.

This being a penal provision, the following principle of statutory interpretation is of assistance: ‘... if a penal provision is reasonably capable of two interpretations, that interpretation which is most favourable to the accused must be adopted’.²⁴ Applying that principle, to the extent that the position of nominee shareholders is ambiguous in light of the position of nominees generally, it is considered that the better view is that nominee shareholders do not provide trust services.

Though not stated in the explanatory memorandum to the amending legislation, it may be the case that this result, which would distinguish nominee shareholders from nominees holding other types of asset, is rationalised on policy grounds.

Nonetheless, it is surprising that, if the UK Parliament did intend to create an exception for nominee shareholders, it did so through this rather oblique drafting technique.

In sum, the position taken in this note as to nominees is that:

²² On comparison to an EU sanctions regime to interpret a UK sanctions regime, see the contrasting analysis in the following two recent cases: *PJSC National Bank Trust v Boris Mints* [2023] EWHC 118 (Comm), at [16] and [83]; and *Synesis v FCDO* [2023] EWHC 541 (Admin), at [30].

²³ See Art.5m(2) of *Council Regulation (EU) No 833/2014*.

²⁴ Lord Reid in *Sweet v Parsley* [1970] AC 132, at 149, as approved by the Supreme Court in *R v Lane* [2018] UKSC 36, at [8].

- In general, if a nominee holds an asset on trust, the nominee provides a trust service.
- As to nominee shareholders in particular, since there is ambiguity in the drafting, while there are good arguments that there is an exception for nominee shareholders, prudentially, this note advises to seek clarification from the regulator (in the UK, OFSI) before relying on that view.

The meaning of ‘the creation of a trust or similar arrangement’ is clear.

As to ‘the provision of a registered office, business address, correspondence address or administrative address for a trust or similar arrangement’:

- This definition covers the operators and managers of the trust or similar arrangement insofar as they, in a sense, provide a registered office, etc.
- Further, it would cover corporate TSPs who provided a registered office etc., even if that provider did not operate the trust.

As to ‘the operation or management of a trust or similar arrangement’:

- Under this part of the definition, it is considered that trust services are provided if, by the provision of the service, a person thereby operates or manages the trust or similar arrangement.
- This follows the plain language, by which the service must be ‘the’ operation or management of the trust.
- The trustees themselves would fall within this part of the definition. So too would persons who are not trustees, but who nonetheless administrate the trust.
- However, persons merely advising the trustees would not fall within this part of the definition (though they could still fall under other parts of the definition). For example:
 - If a professional (e.g. a lawyer or an accountant) advised the trustees of a trust, the professional has not thereby operated or managed the trust.
 - If a professional advised a person connected with Russia, who was a beneficiary of a trust, as to a trust distribution, the professional has not thereby operated or managed the trust.
- The example of investment managers illustrates the above analysis:
 - If the investment manager’s role is confined to advising the trustees as to, say, investment advice, then the investment manager has not thereby operated or managed the trust, and so does not provide trust services.
 - If the investment manager manages the assets of a holding company, even if the shares in the holding company are entirely owned by the trustees, the investment manager has not thereby operated or managed

the trust, as the holding company is a separate legal person from the trustees.

- If an investment manager directly manages trust assets, without more, that would be unlikely to constitute the operation or management of the trust, since the trust assets and the trust are not the same. However, a close factual analysis will be required in each case, to assess whether the investment manager does more, so as to operate or manage the trust, and not only to manage the trust assets.
- It is considered that custodians would not, absent unusual circumstances, operate or manage the trust whose asset(s) they hold; rather a custodian would typically be in the same position as a nominee holding on bare trust.

As to 'acting or arranging for another person to act as trustee of a trust or similar arrangement ...' as the term 'arranging' makes clear, this would include drafting a deed of appointment for a new trustee. As such, lawyers advising on how a new trustee could be appointed would likely be caught by this part of the definition.

Where multiple services are being provided, each service will need to be considered individually.

Further, as noted above, the professional and business services prohibitions under reg.54C must also be considered. For example, an accountant might not breach the trust services prohibition by providing accountancy services to a person connected with Russia, but the accountant might thereby breach the prohibition on the provision of accountancy services to a person connected with Russia under reg.54C(a).

The professional and business service prohibitions are outlined below.

The 'ongoing arrangements' exception in Limb two

Limb two is not engaged if the trust services are provided 'pursuant to an ongoing arrangement pursuant to which P provided those trust services to or for the benefit of C immediately before 16th December 2022'. Thus, this exception applies if four conditions are met:

- First, there must have been an 'arrangement' for the provision of trust services. 'Arrangement' is defined, broadly, as follows: 'arrangement' includes any agreement, understanding, scheme, transaction or series of transactions, whether or not legally enforceable [...].²⁵ Therefore, it is sufficient, but not necessary, for there to have been an agreement; an 'understanding', for example, would also be sufficient.
- It is reasonably clear that, ordinarily, a declaration of trust, and a trust instrument, would be included within the scope of an 'arrangement'.

²⁵ Reg.2.

- Second, the arrangement pursuant to which those the services are provided must have started before 16 December 2022.
- Third, the arrangement by which trust services were provided must have been ‘ongoing’ between at least 15 December 2022 (i.e. immediately before 16 December 2022) and the present, which implicitly means that ‘those’ same services are still being provided.
- Fourth, the trust services presently being provided must be a continuation of ‘those’ provided before 16 December 2022.
- The drafting does not specify whether ‘those’ means all of the services that could be provided under the arrangement, or only the services that were actually provided under the arrangement immediately before 16 December 2022.
- However, it is clear enough that the purpose of the limitation is to prevent new trust services being provided, rather than blocking the continuation of trust services that were already being provided at the time the trust services prohibition came into force (i.e., 16 December 2022).
- Purposively, therefore, the prohibition would appear to prevent, for example, the creation of an entirely new trust structure, even if the creation thereof was permitted within the terms of an ongoing contractual agreement for the provision of trust services.

Limb one: the provision of trust services to designated persons

How to identify whether a person is a ‘designated person’

As Limb one, cited above, prohibits *inter alia* the provision of trust services to a designated person, it is important to know how the provision defines a ‘designated person’.²⁶

Colloquially, designated persons are sometimes referred to as ‘sanctioned persons’, but this is not a legal term.

Per reg.18C(7) ‘designated person’ means ‘a person who is designated under regulation 5 (power to designate persons) for the purposes of this regulation’; the term ‘designated under regulation 5’ is defined at reg.5(3) to include designation by name and by description; and a person can be designated for the purpose of the trust services prohibition under reg.5(1)(ab).

As noted above, whether a person is designated by the UK for the purposes of the trust services prohibition can be checked online, on the UK Sanctions List.

Further, for the avoidance of doubt, Limb one of the trust services prohibition only relates to persons designated for the purpose of the trust services prohibition under the Russia Regulations. It does not apply to any person designated under the Russia Regulations who

²⁶ Reg.18C(1), read together with the definition of ‘designated person’ at reg.18C(7).

has not been designated for the purpose of the trust services prohibition; nor does it apply to any person designated under any other UK (or non-UK) sanctions regime.

Entities owned and controlled by designated persons

If an entity is owned or controlled by a person designated for the purpose of the trust services prohibition, is that entity also a designated person for the purposes of the trust services prohibition? No, persons owned or controlled by a designated person are not themselves designated persons (even though an asset freeze on a designated person will extend to them).²⁷

Limb two – the provision of trust services to persons connected with Russia

Limb two, cited above, prohibits *inter alia* the provision of trust services to ‘a person connected with Russia’.

For the purposes of the trust services prohibition (which falls within Part 3 of the Russia Regulations), a person ‘connected with’ Russia is defined as follows:²⁸

19A Interpretation of Part 3

[...]

(2) For the purposes of this Part, a person is to be regarded as ‘connected with’ Russia if the person is—

- (a) an individual who is, or an association or combination of individuals who are, ordinarily resident in Russia,
- (b) an individual who is, or an association or combination of individuals who are, located in Russia,
- (c) a person, other than an individual, which is incorporated or constituted under the law of Russia, or
- (d) a person, other than an individual, which is domiciled in Russia.

The focus of this guidance is on the position of individuals: as set out above, an individual is ‘connected with Russia’ if they are ‘ordinarily resident’ or ‘located’ in Russia.

As to reg.19A(2)(a), there is no case law as to the words ‘ordinarily resident’ in a UK sanctions context. However, per the leading case on the term generally:

‘Unless, therefore, it can be shown that the statutory framework or the legal context in which the words are used requires a different meaning, I unhesitatingly subscribe to the view that ‘ordinarily resident’ refers to a man’s abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or of long duration. There is, of course, one important exception. If a man’s presence in a particular place or

²⁷ Reg.11(7) by reference to the test at reg.7.

²⁸ Reg.19A(2)(a)-(d).

country is unlawful, e.g. in breach of the immigration laws, he cannot rely on his unlawful residence as constituting ordinary residence'.²⁹

As to reg.19A(2)(b), the words 'located in' are not further defined, but their meaning is not self-evident. In isolation, two interpretations of the words 'located in' are possible:

- Either 'located in' means purely physical location, and nothing more. This would be a formal, binary test, the question being: is the individual physically in Russia?
- Or 'located in' has a broader meaning, akin to 'based in'. This is a substantive test, the question being, in the ordinary sense of the word, is the individual located in Russia? Physical presence would be one factor amongst others in this test.

For the following reasons, when the provision is taken in its statutory context, the latter, substantive test, is to be preferred:

- Reg.19A(2)(b), beyond individuals, also covers the position of an unincorporated association,³⁰ or a combination of individuals,³¹ itself analysed as a 'person' (as distinct from their individual constituents).³² 'Located in' in relation to such a person cannot mean a physical location, because unincorporated associations and combinations of individuals have no physical being. Rather, in relation to such persons 'located in' can only sensibly have a meaning akin to based in. That same meaning logically applies to individuals, because 'located in' must have the same meaning in all of reg.19A(2)(b).
- This reading aligns with the syntax, since the two strands of the definition at reg.19A(2)(a) and (b) are identical save for the inter-changed words 'ordinarily resident' and 'located in'. This symmetry of syntax points to a related, conjunctive meaning rooted in the concept of an individual's presence in Russia.
- This reading makes sense from an avoidance perspective. Thus, if purely physical location was meant, in order to give any meaning to reg.19(2)(b) – though it would not be a sensible meaning for the reasons above – the provision would need to be read by looking through the association or combination of individuals (as it has no physical being) to the physical location of its individual members.
- That would require (1) its members to be individually identified, which may not be easy; and (2) every one of those members to be physically in Russia.

²⁹ *R v Barnet London Borough Council ex parte Shah* [1983] 2 AC 309. Per Lord Scarman at 343; see more recently *Anthony Mackay v HMRC* [2018] UKUT 378 (TCC).

³⁰ 'Associations' here means only unincorporated associations, since were an association incorporated it would fall under reg.19A(2)(c). An unincorporated association might include, for example, a general partnership under English law, or the equivalent under Russian law.

³¹ A 'combination of individuals' might include, say, a family.

³² The reference to associations and combinations of individuals at regs.19(2)(a)-(b) is clearly modelled on the emphasised part of the definition of 'person' at s.9(5) of SAML, as follows: '*In this Act 'person' includes (in addition to an individual and a body of persons corporate or unincorporate) **any organisation and any association or combination of persons***' (emphasis added). That makes clear how regs.19(2)(a)-(b), in referring to associations and combinations of individuals, are intended to refer to them as persons in themselves (as distinct from their individual constituents).

- It is unlikely that Parliament had intended that trust services could be provided to an unincorporated association or combination of individuals that was based in Russia (say the operators of a website, or a club, or a family office), if but one member was physically outside Russia.
- It is also unlikely that Parliament intended what would practically be an unworkable test, as it would, one can imagine, often not be possible to find out where all the individual members were at any given point in time, and then permanently to keep track of their movements; indeed, that seems absurd.
- The avoidance perspective also helps to rationalise the concept of 'located in' in relation to the other three tests in reg.19A(2) (i.e. ordinarily resident in Russia, incorporated or constituted under Russian law, and domiciled in Russia). That is because these three other concepts are all technical concepts, but 'located in' is not a technical concept. In this respect, taken to have a meaning akin to 'based in', the term 'located in' provides a fall-back position to catch individuals, or associations or combinations of individuals, who might not technically be 'ordinarily resident' in Russia, but who nonetheless can reasonably be said to be based there; the same is true for entities other than individuals who might not technically be 'domiciled' in Russia, but who nonetheless can reasonably be said to be based there.
- All of the references to 'located in' in the Russia Regulations that clearly mean a purely physical location relate only to inanimate objects, not persons,³³ and are distinguishable on that basis.³⁴
- Further, a person relying on the latter interpretation would likely be protected by the rule in *R v Lane*, to the extent that the provision is reasonably capable of two interpretations (notwithstanding that reg.19(2)(b) is not reasonably capable of meaning purely physical location, as that makes no sense for the reasons above, the only reasonable interpretation, in our view, being the substantive test identified above).

While external aides are of secondary importance to statutory interpretation (the statutory context being of primary importance), note that:

- There is no UK government guidance on the term 'located in' in the Russia Regulations.
- The equivalent EU trust services prohibition makes no mention of 'located in'. Rather, as concerns individuals, it attaches to the provision of services to 'Russian nationals or natural persons residing in Russia'.³⁵ It is therefore not of assistance.

³³ That is, persons as defined at s.9(5) of SAML A.

³⁴ Elsewhere in the Russia Regulations, in relation to inanimate objects, the word 'located in' clearly means physical location. For example: there is a reference to land located in Russia – reg.18B; there are several references in relation to trade sanctions which distinguish goods (e.g. steel, oil, natural gas, and coal) which 'originate' in Russia from those 'located in' Russia. For example, at reg.46E(1) in relation to steel; reg.46Z8(1) in relation to oil products; reg.46Z12 in relation to gold; reg.46Z19 in relation to coal; and reg.46Z26 in relation to natural gas; and there is a reference to ports 'located in' Crimea – reg.57(2).

³⁵ Art.5m(1)(a) of *Council Regulation (EU) No 833/2014*.

- The equivalent US trust services prohibition includes the provision of services to ‘a person located in the Russian Federation’;³⁶ and the US Office of Foreign Asset Control (OFAC) has provided guidance on the meaning of ‘located in’ which is not entirely clear on whether purely physical location is included – while it refers to persons ‘in the Russian Federation’, that criterion appears in the context of others which suggest that the focus is on substantive presence.³⁷ In any case, the OFAC guidance dates from 9 June 2022. Conversely, the concept of a ‘person connected with Russia’ was present in the Russia Regulations as originally made on 10 April 2019. Thus, if there is a parallel between the UK and US versions, given the chronology, the comparison might be of value in interpreting the later US legislation, but not the earlier UK legislation.

Practically, the concept of ‘located in’ understood as a substantive test may not be easy to apply at the boundaries, but is otherwise straightforward. For example:

- A beneficiary of a trust, who otherwise lives in the UK, and is resident in the UK, travels to Russia for one week. When in Russia, does that make the beneficiary located in Russia in sense akin to ‘based in’: clearly not – they remain located in the UK.
- A beneficiary of a trust, who otherwise lives in the UK, and is resident in the UK, travels to Russia to live there for six months. When in Russia, does that make the beneficiary located in Russia in sense akin to ‘based in’? Clearly, yes.
- The further away one moves from the clear-cut examples above, the harder it will be to assess whether an individual is located in Russia - in a sense akin to ‘based in’; the focus being on substantive presence; with physical location being one factor among others.
- Prudentially, in the absence of OFSI guidance, it is advisable for persons to, or for the benefit of whom, trust services are provided who are otherwise located outside of Russia to avoid travel to Russia if possible; and if necessary, to limit such travel to short periods that would clearly not constitute being located in Russia under reg.19(2)(b).

Limbs one and two: the provision of trust services for the benefit of designated persons / persons connected with Russia

Clearly, if trust services are provided to a designated person (Limb one), or to a person connected with Russia (Limb two), the trust services prohibition is engaged.

However, as cited above, the prohibition is also engaged if trust services are provided for the benefit of a designated person (Limb one) or for the benefit of a person connected with Russia (Limb two).

³⁶ Section 1(a)(ii) of Executive Order 14071, see [here](#).

³⁷ OFAC frequently asked questions, question 1058, see [here](#): ‘For the purposes of section 1(a)(ii) of E.O. 4071, OFAC interprets ‘person located in the Russian Federation’ to include persons in the Russian Federation, individuals ordinarily resident in the Russian Federation, and entities incorporated or organized under the laws of the Russian Federation or any jurisdiction within the Russian Federation’. Note that ‘person’ in E.O. 14071 means ‘an individual or entity’.

In this section the designated person under Limb one, or the person connected with Russia under Limb two, is referred to as the 'person in question' for brevity.

The 'for the benefit of' test is the same for both Limbs one and two, per regs.18C(5)-(6):³⁸

(5) [...] trust services are provided for the benefit of a person ('B') where—

- (a) B is a beneficiary of a trust or similar arrangement,
- (b) B is referred to as a potential beneficiary in a document from the settlor relating to a trust or similar arrangement (such as a letter of wishes), or
- (c) having regard to all the circumstances, B might reasonably be expected to obtain, or to be able to obtain, a significant financial benefit from the trust or similar arrangement.

(6) For the purpose of paragraph (5), 'beneficiary', 'potential beneficiary' and 'settlor', in relation to an arrangement similar to a trust, means those persons who hold equivalent or similar positions to those described in sub-paragraphs (a) to (c) of that paragraph in respect of a trust.

Beneficiaries and potential beneficiaries – regs.18(5)(a)-(b)

The definition 'is a beneficiary' appears to cover persons named or described in a trust instrument, including the objects of a discretionary trust.

As to whether a person 'is referred to' as a 'potential beneficiary':

- The reference must be in a document 'from the settlor'. This must refer to a document other than the trust deed (such as a letter of wishes) as any beneficiary referred to in the trust deed is covered by 18C(5)(a).
- But 'referred to' is ambiguous as to whether reference by name is required. It would be prudent to take 'potential beneficiaries' to mean any person in an identified potential class of beneficiaries, even if not mentioned by name.
- Note further that 'document': 'includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include producing a copy of the information in legible form'.³⁹
- Therefore, if the person in question is not referred to in any relevant document, then that person is not a potential beneficiary under reg.18C(5)(b). However, such a person might still be a beneficiary under reg.18C(5)(a), or be covered by reg.18C(5)(c) (see below).

³⁸ Reg.18C(5)-(6).

³⁹ Reg.2.

The ‘significant financial benefit’ criterion – reg.18C(5)(c)

This criterion can be hard to apply; but logically, it only needs to be considered if the person in question is not a beneficiary or potential beneficiary under regs.18(5)(a) or (b).

The criterion is: ‘having regard to all the circumstances, B might reasonably be expected to obtain, or to be able to obtain, a significant financial benefit from the trust or similar arrangement’.

The elements of this criterion highlighted above are considered in turn.

All the circumstances

The drafting is unclear as to:

- first, whether ‘all the circumstances’ is limited to the circumstances known to the provider of trust services, or whether it extends to circumstances not known to that person, or persons; and
- second, as regards the circumstances known to the provider of trust services, what is the standard of knowledge.

Following the principle that: ‘... if a penal provision is reasonably capable of two interpretations, that interpretation which is most favourable to the accused must be adopted’:⁴⁰

- As to the first ambiguity, it would seem that ‘all the circumstances’ is limited to the circumstances known to the provider of trust services.
- As to the second ambiguity, given that the standard of knowledge is not specified, prudentially, it is advisable to assume that it includes both actual and ‘blind-eye’ knowledge – that latter being knowledge that a person ‘deliberately abstains from enquiry in order to avoid certain knowledge of what he already suspects to be the case’.⁴¹

B might reasonably be expected to obtain, or to be able to obtain

The word ‘reasonable’ makes clear that this is an objective test. That means that the test assumes the position of a hypothetical reasonable person, not the actual provider of trust services. Though unstated, it is likely, by analogy to similar tests, that this hypothetical reasonable person would be taken to stand in the position of the provider of trust services.

The words ‘might ... be expected’ appear to mean a more than 50 per cent probability, since:

- The word ‘might’ indicates that a probabilistic assessment is required.

⁴⁰ Lord Reid in *Sweet v Parsley* [1970] AC 132, at 149, as approved by the Supreme Court in *R v Lane* [2018] UKSC 36, at [8].

⁴¹ *Group Seven Ltd and another v Nasir and others* [2019] EWCA Civ 614, at [59]-[61].

- The Russia Regulations distinguish between ‘reasonable cause to suspect’ (used for example in regs.11-15), and ‘reasonable to expect’ (used for example at reg.7(4)). This is an important distinction, since suspicion is clearly a lower standard than expectation.
- Logically, if a reasonable person considers an event 50 per cent or less likely to eventuate, that person does not expect that event to eventuate – even if a person considers an event exactly 50 per cent likely to occur, they cannot be said to ‘expect’ that event to occur, since it is still in their view 50 per cent likely that a different event occurs.

The words ‘to obtain’ are clear.

However, the words ‘or be able to obtain’ are vague.

- These words might, on first impression, appear to cover situations in which B is not a beneficiary, but B is nonetheless able to obtain a significant financial benefit from the trust or similar arrangement because they are a potential beneficiary. But the criterion at reg.18(5)(c) is only relevant if B is not a beneficiary or potential beneficiary under regs.18(5)(a)-(b).
- Hence this reading is only relevant to the extent that it might cover situations in which B is a potential beneficiary, but not in the terms of regs.18(5)(b). For example, it might cover a situation in which a person is identified as a beneficiary in a note or memorandum from the trustees or from another beneficiary who are not the settlor.
- However, read in the context of Part 3, the words ‘or be able to obtain’ in reg.18(5)(c) are likely intended to have the same meaning as in regs.13 and 15 – notwithstanding that the words in those regulations appear in a definition of ‘financial benefit’ stated to be for the purposes of those regulations, it would be illogical for Parliament to have intended the words to have a different meaning in another regulation within Part 3.
- Thus, reg.13(4)(a), provides that ‘funds are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit’; reg.15(4)(a) is materially identical, save that it refers to ‘economic resources’ rather than funds. Both regs.13 and 15 are, like reg.18C, within Part 3 of the Russia Regulations.
- In those regulations, it is relatively clear that the distinction is between: (1) the funds / economic resources being made available causing (i.e. ‘thereby’) the designated person to obtain, at that moment, a significant financial benefit (i.e. ‘obtains’); and (2) the funds / economic resources being made available causing the designated person to gain an ability (i.e. ‘be able’) to obtain a significant financial benefit.
- But in (2), is the ability confined to a capacity to call for a given significant financial benefit; or even without such a capacity, does it extend to being in a position to receive one? The former interpretation alone seems too narrow. However, without

limitation, the extended definition produces an unworkable test, since there could virtually always be a hypothetical under which a person might be in a position to receive a significant financial benefit even if they had no capacity to call for it. As such, it is unlikely that such an unlimited definition was intended, bearing in mind the principle of certainty in the interpretation of penal statutes in particular.

- A limitation is however provided, in the words ‘or is able to obtain’, by the words ‘to obtain’, in conjunction with the appropriate evidential standard. Thus, ‘to obtain’ is a result: that the significant financial benefit is obtained. There must therefore be evidence of how that result would eventuate.
- In sum, an ability in the words ‘or is able to obtain’ likely means: (1) a capacity to call for a significant financial benefit; or (2) being in a position to receive a significant financial benefit, even if having no capacity to call for it; but (3) that to establish (1) or (2), there is a requirement to evidence how the person would obtain a significant financial benefit, to the appropriate evidential standard:
 - In regs.13 and 15, such evidence would have to be sufficient to meet the ‘reasonable cause to suspect’ standard.⁴²
 - In reg.18C(5)(c), such evidence would have to be sufficient to meet the ‘reasonable to expect’ standard, as detailed above.

Note further how the ‘reasonably be expected to obtain’ and the ‘reasonably be expected to be able to obtain’ enquires are limited to the time during which the person is a designated person or a person connected with Russia. That follows from the fact that the trust services prohibition is only engaged in relation to the provision of trust services to or for the benefit of designated persons or persons connected with Russia.

For example, take a hypothetical in which it is concluded that, having regard to all the circumstances: (1) a designated person would not reasonably be expected to obtain a significant financial benefit from the provision of trust services so long as they remained a designated person; but (2) that they would reasonably be expected to obtain the same were they to cease being a designated person.

In that hypothetical, conclusion (2) would not give rise to a breach of the trust services prohibition under reg.18C(5)(c) were trust services then provided, because the period after the person ceases to be a designated person is not relevant. The hypothetical applies in the same way if the designated person is taken instead to be a person connected with Russia.

Significant financial benefit

The term ‘significant financial benefit’ is not defined in reg.18C.

However, the term ‘significant financial benefit’ is also used in regs.13, as cited above, and 15.⁴³ In those regulations, while the term ‘significant’ is not defined, the term ‘financial

⁴² See regs.13(1) and 15(1). On the reasonable cause to suspect standard, see *R v Sally Lane and John Letts* [2018] UKSC 36, at [24]; and *R v Wakil* [2019] EWCA Crim 1351, at [6].

⁴³ Regs.13(4)(a) and 15(4)(a).

benefit' is defined as follows: 'financial benefit' includes the discharge (or partial discharge) of a financial obligation for which the designated person is wholly or partly responsible'.⁴⁴

While the definition of 'financial benefit' in both regs.13 and 15 is stated to be 'for the purpose of' those regulations, it is unlikely that it was intended that 'significant financial benefit' would have a different meaning across different regulations within Part 3.⁴⁵ Thus:

- It is reasonably clear that the definition of 'financial benefit' in regs.13 and 15 would also apply to reg.18C:
 - To Limb one, without modification.
 - To Limb two, with the modification that 'the designated person' is read as 'the person connected with Russia', on the basis that it is unlikely that Parliament intended reg.18C to define 'financial benefit' differently as between Limb one and Limb two, noting that the 'for the benefit of' test therein applies to both Limbs one and two without distinction.
- Since it is defined neither in regs.13 or 15 nor in reg.18C, the scope of the term 'significant' is unclear. Prudentially, it is advisable to take 'significant' to mean not *de minimis*.
- The exclusion of *de minimis* financial benefits supports the view that the test at reg.18(5)(c) does not require one to imagine any number of hypotheticals in which the person in question might obtain a financial benefit, however small. Rather, only significant financial benefits are in issue.

Take now the definition of 'financial benefit' in reg.13 and 15, as cited above, as applied in the context of reg.18C.

As to the scope of the word 'includes':

- The word indicates that there may be other types of financial benefit beyond the core case set out in the definition.
- Given how the definition of financial benefit appears in the context of reg.13, which sets out the prohibition on the making available of 'funds' to designated persons, and reg.15, which sets out the prohibition on the making available of 'economic resources' to designated persons, it is clear that the transfer of funds or economic resources to a designated person would be a financial benefit.
- The same would appear to apply in the context of reg.18C, as modified in the case of Limb two to transfers to persons connected with Russia.
- 'Funds' and 'economic resources' are terms defined in SAMLA.⁴⁶

⁴⁴ Regs.13(4)(b) and 15(4)(b).

⁴⁵ For recent authority on this principle of statutory interpretation, see for example *HMRC v Centrica* [2022] EWCA Civ 1520, at [60].

⁴⁶ See s.60 SAMLA.

- Cases that fall outside of the transfer of funds or economic resources case, and outside of the core case in the definition (see below), would have to be considered on a case-by-case basis.

As to the core case in the definition – ‘the discharge (or partial discharge) of a financial obligation for which the designated person is wholly or partly responsible’ – two requirements must be satisfied:

- first, there must be a ‘financial obligation’ for which the person in question is wholly or partly ‘responsible’; and
- second, that obligation must be partially or fully discharged.

Financial obligations for which the person in question is ‘responsible’ clearly include legally enforceable financial obligations. Whether such an obligation would be wholly or partially discharged should be determinable by reference to the nature of the legal liability.

However, the word ‘responsible’ is unclear as to its scope. Beyond financial obligations for which the person in question is legally liable, it might be taken to extend to moral obligations too, on the basis that ‘responsible’ is a broader term than ‘liable’.

The point is arguable either way. As such, prudentially, it is advisable to take the broader interpretation. The question then is the potential scope a moral responsibility here.

The crucial limitation in the definition is that, per the second requirement noted above, the financial obligation must be capable of being discharged. It follows that it must also be possible to determine whether it has been discharged.

Thus, it is unlikely that financial obligations can be interpreted so broadly as to include open-ended moral obligations, for example, a general obligation of a parent to provide for their children – indeed, the scope of such obligations would be hard to define (e.g. should such a general obligation be taken to end when the child becomes an adult; and when does a child become an adult?), such that it is very hard to see how it could ever be said whether such open-ended obligations had been discharged.

Rather, it is tolerably clear that, insofar as financial obligations which are moral responsibilities are included at all, they must be specific and concrete. Were they not, they would not be quantifiable, such that it would be impossible to tell whether they were capable of being discharged, which is by definition, a requirement.

In practice, however, this point will be immaterial if a person has already discharged the obligation. Consider this hypothetical by way of example:

- A parent had agreed to pay their child’s university fees. The agreement was specific and concrete, but not legally enforceable.
- The parent had previously settled and funded a trust whose purposes included the payment of that child’s university fees. The trust pays the fees.

- It is unlikely that the parent has thereby obtained a significant financial benefit, as by settling and funding the trust, the parent had discharged their moral obligation to pay their child's university fees. Thus, the trust's payment of the fees does not discharge a financial obligation of the parent, as the parent is not responsible for that obligation, even if they had been in the past.

The relationship between regs.13 and 15, and reg.18C(5)(c)

Of importance in applying reg.18C(5)(c) in the context of Limb one is to ask whether the trustees of the trust or similar arrangement, with regards to all the circumstances, can reasonably be expected to comply with UK sanctions law.

If yes, such that compliance with regs.13 and 15 can reasonably be expected, it is hard to see how the test at reg.18C(5)(c) could be satisfied. The reasoning is as follows.

Reg.13 provides, as relevant, as follows:

'Making funds available for benefit of designated person

(1) A person ('P') must not make funds available to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the funds so available.

[...]

(4) For the purposes of this regulation—

(a) funds are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit, and

(b) 'financial benefit' includes the discharge (or partial discharge) of a financial obligation for which the designated person is wholly or partly responsible.'

Regulation 15 is materially identical, save that 'fund' reads 'economic resources'.⁴⁷

The second part of the definition at regs.13(4)(a) and 15(4)(a) (i.e. '... obtains, or is able to obtain, a significant financial benefit ...') is likely to carry the same meaning as the very similar wording in reg.18(5)(c) (i.e. '... to obtain, or to be able to obtain, a significant financial benefit ...').

'Significant financial benefit' is likely to carry the same meaning across all of Part 3, as noted above.

As such, if the trustees, or equivalent, can reasonably be expected to comply with UK sanctions law, they cannot take any action by which a designated person obtains, or is able to obtain, a significant financial benefit, as that would breach regs.13 or 15.

⁴⁷ Again, note that 'funds' and 'economic' resources are defined at s.60 SAMLA.

In that case, it likely could not reasonably be expected that the designated person might obtain, or be able to obtain, a significant financial benefit under reg.18(5)(c), because:

- 'significant financial benefit' appears to have the same meaning across Part 3; and
- the evidential standard in regs.13 and 15 (reasonable cause to suspect), is arguably lower, or at least the same,⁴⁸ as that in reg.18C(5)(c) (reasonable to expect), an activity in breach of regs.13 or 15 would also breach reg.18C(5)(c).

The above analysis does not amount to a proposition that reg.18C(5)(c) would inevitably not be satisfied if the trustees, or equivalent, could reasonably be expected to comply with UK sanctions law, as there might be unusual cases.

Further, this analysis does not relate to Limb two, since the prohibitions at regs.13 and 15 do not concern persons connected with Russia.

The offence

The criminal offence

Breach of the trust services prohibition is triable either way and carries a maximum sentence on indictment of seven years' imprisonment or a fine (or both).

OFSI's power to impose a monetary penalty

OFSI can impose a monetary penalty for breach of the trust services prohibition (or any other financial prohibition in Part 3 of the Russia Regulations) on a strict liability basis, and applying the civil standard of proof (the balance of probabilities) as distinct from the standard of proof in relation to the criminal offence (beyond reasonable doubt).⁴⁹

Strict liability means that OFSI can impose a monetary penalty even if the person in breach did not know that they were in breach. OFSI provides guidance on this regime, which is not repeated here, save to note that, as a matter of its enforcement practice, OFSI will consider the person's knowledge:⁵⁰

'To ensure our response is proportionate, we will assess overall how severe the breach is and the conduct of the individuals involved. A relevant factor in this assessment will include whether the person committing the breach knew or suspected that their conduct amounted to a breach of financial sanctions. Broadly, the more aggravating factors we see, the more likely we are to impose a monetary penalty. The more serious the breach, and the worse the conduct of the individuals, the higher any monetary penalty is likely to be.'

However, it appears that the criminal offence is not a strict liability offence, such that a knowledge element (i.e. *mens rea*) is required.

⁴⁸ See *R v Sally Lane and John Letts* [2018] UKSC 36, at [24].

⁴⁹ Section 146(1) *Policing and Crime Act 2017*.

⁵⁰ OFSI enforcement and monetary penalties for breaches of financial sanctions, para 3.14.

The drafting of reg.18C could be clearer, since:

- Each of regs.11-18B expressly state that the prohibitions therein are not contravened unless a person knows, or has reasonable cause to suspect.
- By contrast, there is no such requirement expressly set out at regs.18C(1) or (2), which simply provide, as relevant, that:
 - 'A person must not provide trust services to or for the benefit of a designated person' - reg.18C(1); and
 - 'A person ('P') must not provide trust services to or for the benefit of a person connected with Russia ('C') ...' - reg.18C(2).
- There appears to be a knowledge element required in the context of the criterion stated at reg.18C(5)(c), as detailed above (i.e. 'having regard to all the circumstances, B might reasonably be expected to obtain, or to be able to obtain, a significant financial benefit from the trust or similar arrangement').

Therefore, one view, it is a strict liability offence as there is no mention of a knowledge element in regs.18C(1) or (2). Or in a modification of that view, it is a strict liability offence on that basis, unless the prohibition is satisfied on the basis of reg.18C(5)(c), in which case there is a knowledge element.

However, for the following reasons, it is considered that the above view, and its modified form, is incorrect.

- The UK Supreme Court has recently re-stated the presumption that: 'it is firmly established by a host of authorities that *mens rea* is an essential ingredient of every offence unless some reason can be found for holding that that is not necessary. It is also firmly established that the fact that other sections of the Act expressly require *mens rea*, for example because they contain the word 'knowingly' is not in itself sufficient to justify a decision that a section which is silent as to *mens rea* creates an absolute offence'.⁵¹
- It follows that it is not in itself sufficient to conclude that the trust services prohibition is a strict liability offence because regs.11-18B expressly state a knowledge element.
- Rather, a presumption remains that there is a knowledge requirement, unless 'some reason can be found for holding that that is not necessary'. In the absence of a clear indication in the Russia Regulations that the offence is intended to be a strict liability offence, as the Supreme Court states is required, it is necessary to go outside of the Russia Regulations, and to examine all relevant circumstances in order to establish the intention of Parliament.

⁵¹ Lord Reid in *Sweet v Parsley* [1970] AC 132, at 149, as approved by the Supreme Court in *R v Lane* [2018] UKSC 36, at [8].

- Looking at all of the circumstances, a key point is the comparison with the civil monetary penalty for breach of financial sanctions, which is expressly stated to be a strict liability offence.
- Thus, under s.146 of the *Policing and Crime Act 2017* (PCA), HM Treasury can impose monetary penalties for breaches of, *inter alia*, regulations 11-18C of the Russia Regulations.
- Section 146 PCA was amended on 15 June 2022 to introduce a new provision, which expressly stated that such breaches were strict liability offences for the purpose of the civil monetary penalty regime, as follows: ‘In determining ... whether a person has breached a prohibition, or failed to comply with an obligation, imposed by or under financial sanctions legislation, any requirement imposed by or under that legislation for the person to have known, suspected or believed any matter is to be ignored’.⁵²
- That amendment, which pre-dates the trust services prohibition, introduced a clear distinction between the criminal and civil penalties for breaches of financial sanctions in, *inter alia*, Part 3 of the Russia Regulations.
- It would be surprising if the introduction of the trust services prohibition had been intended to change that core distinction between the criminal and civil penalties regime. Further, had it been the intent to effect such a consequential modification, Parliament could have provided for in similar terms to s.146(1A) PCA 2017, but it did not.

That leaves the issue of what is the knowledge element in reg.18C. Subject to clarification, it would be prudent to apply the same standard as applies to the other prohibitions in Part 3, namely ‘knows, or has reasonable cause to suspect’. Save, however, that for the purposes of reg.18C(5)(c), a reasonable to expect test is applied, as is clear from the plain words of that criterion, as detailed above.

The words ‘knows, or has reasonable cause to suspect’ have been held by the UK Supreme Court, in an analogous context,⁵³ to mean: (1) that ‘knows’ means actual, subjective knowledge; and (2) that the ‘reasonable cause to suspect’ standard requires that a reasonable person ‘would (not might or could)’ suspect the thing in question, as follows:

‘The requirement that there exist objectively assessed cause for suspicion focuses attention on what information the accused had. [...] that requirement is satisfied when, on the information available to the accused, a reasonable person would (not might or could) suspect [the thing in question].’

⁵² Section 146(1A) PCA 2017, as inserted by s.54(3) *Economic Crime (Transparency and Enforcement) Act 2022*.

⁵³ *R v Sally Lane and John Letts* [2018] UKSC 36, at [24]; in that case the provision in question was s.17(1)(b) of the *UK Terrorism Act 2000*. Further, note that the ‘reasonable cause to suspect’ test should not be confused with the ‘reasonable grounds to suspect’ test at reg.6 which is different.

The England and Wales Court of Appeal, following the UK Supreme Court decision, has since taken ‘what information the accused had’ to mean ‘on the information known to the defendant’.⁵⁴

Exceptions specific to the trust services prohibition – reg.60ZZB

Regulation 60ZZB provides for several exceptions to the trust services prohibition. These are, for the most, part self-explanatory.

However, three such exceptions are highlighted here on the basis that they are likely to be frequently in issue.

First, per reg.60ZZB(1)(a), the trust services prohibition is not contravened by any act done by a person in satisfaction of an obligation in respect of the provision of trust services by that person to or for the benefit of a designated person, or a person connected with Russia, where those services are provided in relation to the discharge of or compliance with UK statutory or regulatory obligations.

Compliance with such obligations clearly includes receiving legal, or other professional advice, requested for the purpose of compliance with UK sanctions law, including as to the application of the trust services prohibition itself.

Second, per reg.60ZZB(1)(b), the trust services prohibition is not contravened by any act done by a person for the purposes of complying with the prohibitions and obligations in Chapter 1 of Part 3 (asset freeze etc.). This exception appears to overlap with that in reg.60ZZB(1)(a), since the prohibitions and obligations in Chapter 1 of Part 3 are regulatory obligations. However, it is helpful as it particularises, for the avoidance of doubt, what is likely to be a common situation in practice: where trustees cannot cease to provide trust services without breaching the asset freeze prohibition. For example:

- A UK-based trustee provides trust services to a person; that person is designated for the purposes of the trust services prohibition; and that person is also separately designated for the purpose of the ‘asset freeze etc.’ prohibition – meaning the measures at regs.11-15.
- Under reg.18C, the trustee must cease to provide trust services, subject to any applicable licence (such as the general licence allowing TSPs 90 days to cease to provide services, as detailed below).
- But if the ceasing of trust services would breach any of regs.11-15 – for example, by the transfer of the legal title in the trust assets to a new trustee – the trustee cannot do that, for it would be unlawful (regardless of the general licence).
- In that situation, the trustee can rely on reg.60ZZB(1)(b) to continue to provide trust services to the designated person; but the trustee must in providing those trust services continue to comply with regs.11-15.

⁵⁴ *R v Wakil* [2019] EWCA Crim 1351, at [6].

- In practice, a trustee so relying on that exception may need to provide a variety of trust services which would in themselves not breach the asset freeze. That raises the issue of whether the exception at reg.60ZZB(1)(b) would allow that. In our view, the better view is yes. Since were that not the case, it would defeat the purpose of the exception – for the trustee would not be able to discharge their duties, but would not be able to transfer the trust assets either, which purposively makes no sense.

Third, per reg.60ZZB(4), the trust services prohibition is not contravened by the provision of trust services for making funds and economic resources available to or for the benefit of, *inter alia*, a person under the age of 18, if the trust services ‘are not provided primarily to, or for the benefit of, a designated person’.

In this exception the words ‘to, or for the benefit of’ a designated person clearly carry the same meaning as in reg.18C.

However, ‘provided primarily’ is not further defined. The natural and ordinary meaning of ‘primarily’ is in the first place. This suggests that a purpose-based test is intended here, which can be tested by asking whether the purpose of the provision of trust services is in the first place to, and for the benefit of, either (1) the person under 18; or (2) not a designated person. If either (1) or (2) is satisfied, it seems that the ‘provided primarily’ condition would not be satisfied. The reason ‘and’ is emphasised is because, clearly, it is conceivable that a trust service could, for example, be provided to the person under 18, but still be for the benefit of a designated person.

Exceptions and licences

If an act would, if performed, breach the trust services prohibition, it should be considered whether there is an exception or licence available to allow the service to be provided in a way that would not breach the prohibition.

As to exceptions

- As detailed above, one important exception – the ‘ongoing arrangement’ exception – is stated in reg.18C itself.
- The next place to check is reg.60ZZB, which concerns exceptions specific to the trust services prohibition.
- Finally, there may be general exceptions available under Part 7 of the Russia Regulations.

As to licences

- Licences in relation to the trust services prohibition are issued by OFSI.
- Licences are either ‘specific’ – meaning that they have to be specifically applied for by the person seeking to rely on it, or on that person’s behalf; or they are ‘general’ –

OFSI has issued a number of 'General Licences' which any person meeting the criteria therein can rely on. OFSI's General Licences are published online.⁵⁵

- The regime dealing with specific licences is set out in Part 7, and Schedule 5, of the Russia Regulations.
- The General Licence most relevant to the trust services prohibition is the OFSI *GENERAL LICENCE: Wind down of Trust Services provided to Designated Persons INT/2023/2589788* first issued on 21 March 2023.⁵⁶ It allows trust services providers 90 days to cease the provision of trust services from the date a person is designated for the purpose of the trust services prohibition. There is also a reporting requirement within this general licence that requires information to be provided to OFSI within 30 days of relying thereon.⁵⁷
- However, even during the 90 day period, this General Licence only protects TSPs from breaching the trust services prohibition at reg.18C; it does not protect TSPs from breaching any other prohibitions, such that those at regs.11-15.
- In sum, trustees relying on the general licence to cease to provide trust services must be careful not to breach any other prohibition, especially regs.11-15; and if this is not possible then trust services may have to be continued to be provided in reliance on the exceptions set out above.

Reporting obligations

Regulation 70 sets out several reporting obligations that apply to a 'relevant firm'.

Those obligations are beyond the scope of this guidance, and for the most part self-explanatory.

Prior to 16 December 2016, a 'relevant firm' was defined in reg.71(1)(d) to include 'a firm or sole practitioner that provides to other persons, by way of business trust or company services', as further defined in reg.71(2)(d)(i) to include 'acting, or arranging for another person to act, as a trustee of an express trust or similar arrangement'.

However, the amending instrument that introduced the trust services prohibition also amended the definition of trust services in reg.71 to align with that in reg.18C.⁵⁸

Note for completeness that 'company services', both before and after the above amendments which came into force on 16 December 2022, includes 'acting, or arranging for another person to act, as a nominee shareholder for a person'.⁵⁹

⁵⁵ See [here](#).

⁵⁶ See [here](#).

⁵⁷ See para. 7 thereof.

⁵⁸ Reg.71(3).

⁵⁹ Reg.71(2)(d)(ii).

Circumvention

The amending instrument that introduced the trust services prohibition also amended the separate offence under reg.19 relating to the circumvention of prohibitions in Part 3 of the Russia Regulations to include circumvention of the trust services prohibition.

Reg.19 now provides as follows:

19 Circumventing etc. prohibitions

(1) A person must not intentionally participate in activities knowing that the object or effect of them is (whether directly or indirectly)—

(a) to circumvent any of the prohibitions in regulations 11 to 18C, or

(b) to enable or facilitate the contravention of any such prohibition.

(2) A person who contravenes the prohibition in paragraph (1) commits an offence.

Breach of the circumvention prohibition is triable either way and carries a maximum sentence on indictment of 7 years' imprisonment or a fine (or both).

Prohibitions on professional and business services set out at reg.54C of the Russia Regulations

Part 4 of the Russia Regulations concerns trade measures, as distinct from Part 3 which concerns finance measures. While the trust services prohibition is within Part 3, reg.54C, in Part 4, prohibits various 'professional and business services' to persons connected with Russia (which is defined in the same way as in the trust services prohibition).

A full analysis of reg.54C is beyond the scope of this guidance. However, TSPs within the territorial scope of the Russia Regulation must also comply with reg.54C, to the extent that it applies. Regulation 54C provides as follows:

'54C Professional and business services

(1) A person must not directly or indirectly provide, to a person connected with Russia—

(a) accounting services,

(b) advertising services,

(c) architectural services,

(d) auditing services,

(e) business and management consulting services,

(f) engineering services,

(g) IT consultancy and design services, or

(h) public relations services.

(2) Paragraph (1) is subject to Part 7 (exceptions and licences).

(3) A person who contravenes any of the prohibitions in paragraph (1) ('P') commits an offence, but it is a defence for P to show that P did not know and had no reasonable cause to suspect that the person to whom the services were provided was connected with Russia.'

Each of the services listed at reg.54C(1)(a)-(h) is defined in Schedule 3J.⁶⁰

This guidance focuses only on one issue: whether persons providing trust services under reg.18C would also provide business and management consulting services under reg.54C(1)(e). For the following reasons, the start point is no:

First, the definition of business and management consulting services would not ordinarily correspond to trust services.⁶¹ The definition is as follows:⁶²

'Business and management consulting services' means advisory, guidance and operational assistance services provided for business policy and strategy and the overall planning, structuring and control of an organisation, which includes (but is not limited to) management auditing, market management, human resources, production management and project management consulting.'

Second, the above definition, read in its statutory context, is clearly intended to identify a particular professional area – here business and management consulting. This is clear by the following two elements of statutory context:

- One can test the contrary proposition: that business and management consulting services is meant to apply broadly, in that 'guidance and operational assistance' to 'an organisation' could if taken broadly, apply to virtually any business support activity. This broad meaning is clearly not what Parliament intended, for that reading would render otiose the express definition of the other professional and business services listed at reg.54C.
- Limb two of the trust services prohibition would be otiose if those services to persons connected with Russia (which is defined in the same way in relation to the professional and business services prohibitions),⁶³ were already prohibited by the business and management consulting services prohibition.

Third, the above reading is reinforced by the statutory guidance. The UK Government *Russia Sanctions: Guidance* states that:⁶⁴

'The definitions of business and management consulting and public relations services are based on Extended Balance of Payments Services classification (EBOPS) 2010

⁶⁰ See reg.54B.

⁶¹ That is, trust services as defined at reg.18C(7).

⁶² Sch. 3J, para. 6.

⁶³ Reg.21(2).

⁶⁴ See [here](#). Version updated on 20 March 2023.

and includes EBOPS 10.2.1.3 - Business and management consulting and public relations services includes advisory, guidance and operational assistance services provided to businesses for business policy and strategy, and the overall planning, structuring and control of an organization.'

EBOPS 10.2.1.3 is defined in the *Manual on Statistics of International Trade in Services 2010* (the 2010 Manual) as follows:⁶⁵

'10 Other business services

10.1 Research and development services [...]

10.2 Professional and management consulting services

10.2.1 Legal, accounting, management consulting, and public relations services

10.2.1.1 Legal services

10.2.1.2 Accounting, auditing, bookkeeping, and tax consulting services

10.2.1.3 Business and management consulting and public relations services

10.2.2 Advertising, market research, and public opinion polling services [...]

10.3 Technical, trade-related and other business services [...]

Then 2010 Manual at 3.241 then defines business and management consulting services in exactly the same way as defined in the Russia Regulations (which, per the statutory guidance, is as intended).⁶⁶

The 2010 Manual takes a formal approach to the classification of services, such that definitions of services are exclusive of other services. For example, at s.3.212, it is stated that 'financial services exclude: [...] Non-financial advisory services provided by banks (such as management advisory services, which are included in business and management consulting and public relations services'.

Since the definitions of professional and business services in the Russia Regulations are based on those in the 2010 Manual, it follows that those definitions in the Russia Regulations should also take a formal approach to the classification of services, such that definitions of services are exclusive of other services – this supports the view that professional and business services should be interpreted narrowly to refer to a specific professional area, not broadly in a way that could cover virtually any business support activity.

Summary

For the reasons above, the start point is that persons providing trust services under reg.18C would not also provide business and management consulting services under reg.54C(1)(e).

⁶⁵ See [here](#).

⁶⁶ Sch. 3J, para. 6.

However, each case will need to be considered on its facts as, in theory, a provider of trust services might also provide further services; and if so, it would need to be considered whether any of those further services fell within any of the professional and business services listed at reg.54C, including business and management consulting services.

As regards licences, if a given activity engages both the trust services prohibition and a professional and business services prohibition, separate licences for the same activity will be required from the Export Control Joint Unit within the Department for Business and Trade (in respect of the professional and business services prohibition) and from OFSI (in respect of the trust services prohibition).

Point of contact

Please direct any comments as respects this note to policy@step.org

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of the STEP UK Technical Committee.**

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Annex 1: regulation 18C of the *Russia (Sanctions) (EU Exit) Regulations 2019*

18C Trust services

(1) A person must not provide trust services to or for the benefit of a designated person.

(2) A person ('P') must not provide trust services to or for the benefit of a person connected with Russia ('C') unless pursuant to an ongoing arrangement pursuant to which P provided those trust services to or for the benefit of C immediately before 16th December 2022.

(3) Paragraphs (1) and (2) are subject to Part 7 (Exceptions and licences).

(4) A person who contravenes a prohibition in paragraph (1) or (2) commits an offence.

(5) For the purposes of paragraphs (1) and (2), trust services are provided for the benefit of a person ('B') where—

(a) B is a beneficiary of a trust or similar arrangement,

(b) B is referred to as a potential beneficiary in a document from the settlor relating to a trust or similar arrangement (such as a letter of wishes), or

(c) having regard to all the circumstances, B might reasonably be expected to obtain, or to be able to obtain, a significant financial benefit from the trust or similar arrangement.

(6) For the purpose of paragraph (5), 'beneficiary', 'potential beneficiary' and 'settlor', in relation to an arrangement similar to a trust, means those persons who hold equivalent or similar positions to those described in sub-paragraphs (a) to (c) of that paragraph in respect of a trust.

(7) In this regulation—

'designated person' means a person who is designated under regulation 5 (power to designate persons) for the purposes of this regulation;

'trust services' means—

(a) the creation of a trust or similar arrangement,

(b) the provision of a registered office, business address, correspondence address or administrative address for a trust or similar arrangement,

(c) the operation or management of a trust or similar arrangement, or

(d) acting or arranging for another person to act as trustee of a trust or similar arrangement, where 'trustee', in relation to an arrangement similar to a trust, means a person who holds an equivalent or similar position to a trustee of a trust.'