

Alert | Export Controls & Economic Sanctions



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OFSI Issues Licensing Guidance for Payments to Personal Staff of Designated Persons

The UK's Office of Financial Sanctions Implementation (OFSI) has issued guidance on when payments can be made to personal staff of designated persons (DPs).¹ Under the UK's sanctions regime, DPs are subject to an asset freeze which would, but for an OFSI licence, prohibit them from making payments (from funds or economic resources they hold or control) to personal staff.

OFSI considers personal staff to include those who provide domestic or non-professional services to a DP and who are generally employed directly by the DP themselves, a company owned or controlled by a DP, or provided by a third party.

OFSI includes the following (non-exhaustive) examples of personal staff:

- chefs
- cleaners
- drivers
- house managers

¹ A designated person is an individual or entity (or ship) listed under UK legislation as being subject to sanctions.

- personal assistants
- laundresses
- gardeners

While OFSI has said the distinction is not strict, and that applicants should use their own judgement when considering whether an employee of a DP should be considered personal staff, it has stated explicitly that lawyers and accountants would not be considered personal staff.

OFSI recognises that many high-net-worth DPs may have property management companies to manage their personal property, including their primary residence. Such companies usually do not provide any services to the wider public and exist solely for the purpose of managing the DP's personal property. OFSI would likely consider personal staff employed by such companies, or more generally, staff of companies running DP's activities, to be personal staff of the DP.

OFSI's Policy

OFSI has stated the following:

- 1) **Basic needs:** Generally, personal staff payments do not satisfy the basic needs licensing ground, as personal staff usually perform services that would be considered “luxuries” rather than services genuinely necessary to provide for a DP's basic needs. However, OFSI has stated it will consider licensing personal staff payments under the basic needs licensing purpose if an applicant can establish a clear and direct causal link between the specific needs to be catered for and the specific employment of that individual. Moreover, the needs catered for must go beyond general wellbeing and must be a service that ensures that a DP or their dependents are not imperilled.
- 2) **Routine holding and maintenance:** Generally, payments for full-time maintenance staff do not meet the standard of reasonableness required for reliance on the “routine holding and maintenance of frozen funds or economic resources” licensing purpose. Applicants relying on this ground would need to demonstrate why any proposed works were necessary to maintain the fundamental integrity of the frozen asset, and they would need to supply evidence that the fees for such works were reasonable. Re-design, refurbishment, or redevelopment in order to improve the value of a frozen economic resource generally will not be covered.
- 3) **Prior obligations:** The “prior obligations” licensing ground should not be used to permit continuous service of a DP's personal staff. This licensing purpose is not intended to allow DPs to continue to enjoy the business activities and lifestyle that they enjoyed pre-designation, and must be balanced against the statutory purpose of the sanctions regime. As a result, OFSI may use its discretion to refuse requests for personal staff payments under the prior obligations licensing purpose in order to preserve the integrity of the UK sanctions regimes. OFSI generally will only license personal staff payments under the prior obligations licensing purpose to allow DPs to pay for services already provided, or to allow them to ‘wind down’ their existing arrangements, for example, by issuing redundancy payments.

OFSI has further stated that it generally expects DPs to terminate contracts with UK employees at the point of their designation, and OFSI would discourage staff from continuing to provide services to DPs post-designation.

Takeaways

OFSI's clarification provides welcome guidance on its approach to license applications for payments to personal staff. It also demonstrates that where it has discretion, OFSI will seek to uphold the purpose of the UK's sanctions regime. The guidance also serves as a reminder of the changing landscape stemming from Russia's invasion of Ukraine, particularly that the obligation to "know your client" is no longer a preserve of lawyers and financial institutions but has extended to domestic and non-professional roles.

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