

The City of London Law Society comments on contract sanctions

Would contract sanctions be effective?

11 April 2014 | By [Simon James](#)

Today the [Financial Times](#) reported on City lobby groups and legal sector warnings about the Foreign & Commonwealth Office's proposals for a new system of "contract sanctions" that would stop English courts from enforcing commercial agreements entered into with targeted regimes (or "rogue states") after sanctions were imposed against those regimes. English law is often used by international parties to govern their contracts and commercial transactions, even where no party has a direct link with the UK, and similarly English courts are often called upon to resolve disputes between international parties.

The recent consultation paper issued by the Foreign & Commonwealth Office indicated that the aim of contract sanctions would be to damage the targeted regimes by discouraging parties in countries that have not imposed sanctions from dealing with targeted regimes. However, as the *Financial Times* reported, lawyers fear a consequence will be that overseas disputes move to courts elsewhere, to the detriment of London as a global legal centre.

We applaud those quoted in the media coverage today for bringing to wider attention the role of public policy and how it relates to the competitiveness of London and the UK's legal market in this particular instance. There are also additional problems with the proposals, including:

1. The reach of the proposals as expressed in the consultation paper is too broad. Contract sanctions could only apply to contracts that UK nationals could not enter into and not to all contracts with sanctioned entities. Otherwise it would penalise UK and other businesses from carrying out lawful transactions and the effect would be similar to a comprehensive embargo on trade with targeted entities.
2. The consultation paper is unable to cite any actual instance of English courts having enforced contracts with targeted entities that would be prevented by contract sanctions. It is therefore highly questionable whether the proposal addresses a real gap in the current system of sanctions that undermines sanctions' effectiveness.
3. The reason there is no real gap is that, in practice, no one selling goods to a regime already subject to sanctions in the UK would agree in the contract to the English courts having jurisdiction over disputes arising from the contract (and an English court would probably not have jurisdiction otherwise). As a result, there will be no effect on the behaviour of those the proposal seeks to influence.
4. An English court might in any event decline to enforce contracts of the kind targeted on grounds of public policy or the proper interpretation of the sanctions legislation.

Even if the above is wrong, the UK should not act alone in imposing contract sanctions because that would have no real effect on those they are targeting, but it would drive business away from the UK to other jurisdictions. Better to act in concert with all major economies.

It seems unlikely that the “contract sanctions” will have any realistic impact on those they are intended to target and, for the reasons outlined above, it is not worth pursuing. But we will await the government’s response.

Simon James is the Chair of the Litigation Committee of the City of London Law Society

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“The government is acutely aware of the benefits to our economy of the use of English courts and arbitration in England by foreign litigants – I think it unlikely that they would wish to do anything to prejudice this position”.

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The City of London Law Society (“CLLS”) represents approximately 15,000 City lawyers through individual and corporate membership, including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues. The CLLS responds to matters of importance to its members through its 19 specialist committees.

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