Solicitors Regulation Authority

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Agreement Date: 9 December 2024

Decision - Agreement

Outcome: Regulatory settlement agreement

Outcome date: 9 December 2024

Published date: 16 January 2025

Firm details

No detail provided:

Outcome details

This outcome was reached by agreement.

Decision details

1. Agreed outcome

1.1 Edgar Cule & Evans (the Firm), a Recognised Sole Practice, authorised and regulated by the Solicitors Regulation Authority (SRA), agrees to the following outcome to the investigation:

a. Edgar Cule & Evans will pay a financial penalty in the sum of £1,657, under Rule 3.1(b) of the SRA Regulatory and Disciplinary Procedure Rules;
b. to the publication of this agreement, under Rule 9.2 of the SRA Regulatory and Disciplinary Procedure Rules; and
c. Edgar Cule & Evans will pay the costs of the investigation of £1,350, under Rule 10.1 and Schedule 1 of the SRA Regulatory and Disciplinary Procedure Rules.

2. Summary of Facts

2.1 We carried out an investigation into the firm following a desk-based review (DBR) by our AML Proactive Supervision team.

2.2 Our DBR and subsequent investigation identified areas of concern in relation to the firm’s compliance with the Money Laundering, Terrorist

Financing (Information on the Payer) Regulations 2017 (MLRs 2017), the SRA Principles 2011, the SRA Code of Conduct 2011, the SRA Principles 2019 and the SRA Code of Conduct for Firms 2019.

Firm-wide risk assessment (FWRA)

2.3 Between 26 June 2017 and August 2023, the firm failed to have in place a documented assessment of the risks of money laundering and terrorist financing to which its business was subject (a firm-wide risk assessment (FWRA)), pursuant to Regulation 18(1) and 18(4) of the MLRs 2017.

2.4 The firm is required to have a FWRA which includes details of the firm's assessment of risks in five key areas. The firm failed to have in place a documented FWRA prior to August 2023.

2.5 The firm has now provided a FWRA which is compliant with Regulation 18 of the MLRs 2017.

Policies, controls and procedures (PCPs)

2.6 Between 26 June 2017 and August 2023, the firm failed to establish and maintain Policies, Controls, and Procedures (PCPs) to mitigate and effectively manage the risks of money laundering and terrorist financing, identified in any risk assessment (FWRA), pursuant to Regulation 19(1)(a) of the MLRs 2017, and regularly review and update them pursuant to Regulation 19(1)(b) of the MLRs 2017, and

2.7 Between August 2023 and July 2024, failed to establish and maintain fully compliant PCPs to mitigate and effectively manage the risks of money laundering and terrorist financing, identified in any risk assessment (FWRA), pursuant to Regulation 19(1)(a) of the MLRs 2017, and regularly review and update them pursuant to Regulation 19(1)(b) of the MLRs 2017.

2.8 PCPs are fundamental in setting out a firm's approach to practical AML and Counter Terrorist Financing activities. They should be effective in identifying and mitigating risks within its practice and play an important role in managing the risk of a firm facilitating money laundering and/or terrorist financing.

2.9 The firm has now provided PCPs which are compliant with Regulation 19 of the MLRs 2017.

Client and matter risk assessments (CMRA)

2.10 Between 26 June 2017 and March 2024, failed to adequately assess and document the level of risk on its clients and matters, as required by Regulation 28(12)(a)(ii) and Regulation 28(13) of the MLRs 2017.

2.11 Risk assessing clients and their matters is a mandatory requirement under Regulations 28(12) and (13) of the MLRs 2017. CMRAs must be documented, and rate and justify the risk with a supporting rationale.

2.12 The firm has since confirmed it now has a process and template form in place. This process meets the requirements of Regulation 28 of the MLRs 2017.

Customer due diligence (CDD)

2.13 The DBR identified that on three matters, the identity of the customer was not verified before the establishment of the business relationship or the carrying out of the transaction.

2.14 Regulation 30(2) of the MLRs 2017 requires firms to verify the identity of customers before a transaction is carried out. Accepting funds constitutes a transaction, and acceptance of these funds in advance of obtaining identification documents is a breach of this Regulation.

2.15 In August 2023, the firm admitted there had been delays in carrying out identification and verification checks on its clients and accepted an improvement had to be made.

3. Admissions

3.1 The firm admits, and the SRA accepts, that by failing to comply with the MLRs 2017:

From 26 June 2017 to 25 November 2019 (when the SRA Handbook 2011 was in force), the firm has breached:

a. Principle 6 of the SRA Principles 2011 – which states you must behave in a way that maintains the trust the public places in you and in the provision of legal services.
b. Principle 8 of the SRA Principles 2011 – which states you must run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial risk management principles.

And the firm has failed to achieve:

c. Outcome 7.2 of the SRA Code of Conduct 2011 – which states you have effective systems and controls in place to achieve and comply with all the Principles, rules and outcomes and other requirements of the Handbook, where applicable
d. Outcome 7.5 of the SRA Code of Conduct 2011 – which states you comply with legislation applicable to your business, including anti-money laundering and data protection legislation.

And from 25 November 2019 (when the SRA Standards and Regulations came into force) until July 2024, the firm has breached:

e. Principle 2 of the SRA Principles 2019 – which states you act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons.
f. Paragraph 2.1(a) of the SRA Code of Conduct for Firms – which states you have effective governance structures, arrangements, systems and controls in place that ensure you comply with all the SRA's regulatory arrangements, as well as with other regulatory and legislative requirements, which apply to you.
g. Paragraph 3.1 of the SRA Code of Conduct for Firms 2019 – which states that you keep up to date with and follow the law and regulation governing the way you work.

4. Why a fine is an appropriate outcome

4.1 The SRA's Enforcement Strategy sets out its approach to the use of its enforcement powers where there has been a failure to meet its standards or requirements.

4.2 When considering the appropriate sanctions and controls in this matter, the SRA has taken into account the admissions made by the firm and the following mitigation:

a. The firm has admitted its failings.
b. The firm acted to rectify the non-compliance and is now compliant with the MLRs 2017.
c. The firm has cooperated with the SRA's AML Proactive Supervision and AML Investigations teams.

4.3 The SRA considers that a fine is the appropriate outcome because:

a. The conduct showed a disregard towards statutory and regulatory obligations and had the potential to cause harm, by facilitating dubious transactions that could have led to money laundering (and/or terrorist financing). This could have been avoided had the firm established adequate AML documentation and controls.
b. It was incumbent on the firm to meet the requirements set out in the MLRs 2017. The firm failed to do so. The public would expect a firm of solicitors to comply with its legal and regulatory obligations, to protect against these risks as a bare minimum.
c. The agreed outcome is a proportionate outcome in the public interest because it creates a credible deterrent to others and the issuing of such a sanction signifies the risk to the public, and the legal sector, that arises when solicitors do not comply with anti-money laundering legislation and their professional regulatory rules.

4.4 Rule 4.1 of the Regulatory and Disciplinary Procedure Rules states that a financial penalty may be appropriate to maintain professional

standards and uphold public confidence in the solicitors' profession and in legal services provided by authorised persons. There is nothing within this Agreement which conflicts with Rule 4.1 of the Regulatory and Disciplinary Rules and on that basis, a financial penalty is appropriate.

5. Amount of the fine

5.1 The amount of the fine has been calculated in line with the SRA's published guidance on its approach to setting an appropriate financial penalty (the Guidance).

5.2 Having regard to the Guidance, the SRA and the firm agree that the nature of the misconduct was more serious (score of three). This is because, although there was no direct loss to clients, there were several failings which continued for a number of years, formed a pattern of misconduct, and continued after it was known to be improper. This showed a persistent disregard of the firm's regulatory obligations.

5.3 The impact of the harm or risk of harm is assessed as being medium (score of four). This is because failing to ensure it had a FWRA, PCPs, CMRAs and not conducting CDD in a timely manner, left the firm vulnerable to the risks of money laundering, particularly when providing in-scope work such as conveyancing (which forms a significant area of work for the firm). The firm left itself without effective arrangements in place to manage compliance with the and MLRs 2017. The score reflects that, although there is no evidence of actual harm having occurred, it had the potential to cause significant loss or have significant impact.

5.4 The nature and impact scores add up to seven and this places the penalty in Band 'C', as directed by the Guidance, which indicates a broad penalty bracket of between 1.6% and 3.2% of the firm's annual domestic turnover.

5.5 We recommend a basic penalty at the upper-mid end of the bracket. This is because while there were multiple failings identified which formed a pattern of misconduct, and which had the potential to cause significant loss or have significant impact, no evidence of actual harm was identified.

5.6 Based on the evidence the firm has provided of its annual domestic turnover, this results in a basic penalty of £2,071.

5.7 The SRA considers that the basic penalty should be reduced to £1,657. This reduction reflects the mitigation at paragraph 4.2 above.

5.8 The firm does not appear to have made any financial gain or received any other benefit as a result of its conduct. Therefore, no adjustment is necessary to remove this and the amount of the financial penalty is £1,657.

6. Publication

6.1 Rule 9.2 of the SRA Regulatory and Disciplinary Procedure Rules states that any decision under Rule 3.1 or 3.2, including a Financial Penalty, shall be published unless the particular circumstances outweigh the public interest in publication.

6.2 The SRA considers it appropriate that this agreement is published as there are no circumstances that outweigh the public interest in publication and it is in the interest of transparency in the regulatory and disciplinary process.

7. Acting in a way which is inconsistent with this agreement

7.1 The firm agrees that it will not deny the admissions made in this agreement or act in any way which is inconsistent with it.

7.2 If the firm denies the admissions, or acts in a way which is inconsistent with this agreement, the conduct which is subject to this agreement may be considered further by the SRA. That may result in a disciplinary outcome or a referral to the Solicitors Disciplinary Tribunal on the original facts and allegations.

7.3 Acting in a way which is inconsistent with this agreement may also constitute a separate breach of Principles 1, 2 and 5 of the SRA Principles and paragraph 3.2 of the Code of Conduct for Firms.

8. Costs

8.1 Edgar Cule & Evans agrees to pay the costs of the SRA's investigation in the sum of £1,350. Such costs are due within 28 days of a statement of costs due being issued by the SRA.

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