



Clarkes LLP - 559338 (Clarkes Solicitors / Clarkes Law)

Hazeldine House, Town Centre,
Telford , TF3 4JL

Recognised body
559338

Agreement Date: 17 June 2022

Decision - Agreement

Outcome: Regulatory settlement agreement

Outcome date: 17 June 2022

Published date: 24 June 2022

Firm details

No detail provided:

Outcome details

This outcome was reached by agreement.

Decision details

1. Agreed outcome and Undertakings

1.1 Clarkes LLP, a recognised body, authorised and regulated by the Solicitors Regulation Authority (SRA), agrees to the following outcome to the investigation:

- a. Clarkes LLP will pay a financial penalty in the sum £2,000, pursuant to Rule 3.1(b) of the SRA Regulatory and Disciplinary Procedure Rules
- b. to the publication of this agreement, pursuant to Rule 9.2 of the SRA Regulatory and Disciplinary Procedure Rules
- c. Clarkes LLP will pay the costs of the investigation of £1,350, pursuant to Rule 10.1 and Schedule 1 of the SRA Regulatory and Disciplinary Procedure Rules.

Reasons/basis

Summary of Facts

2.1 We carried out an investigation into Clarkes LLP (the firm).

2.2 The investigation identified areas of concern in relation to compliance with Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs 2017), the SRA Principles 2011 (the Principles), the SRA Code of Conduct 2011 (the Code), the SRA Standards and Regulations 2019 and the SRA Code of Conduct for Firms 2019.

2.3 The firm did not have in place a compliant AML practice-wide (firm-wide) risk assessment, as required by Regulation 18 of the MLRs 2017, until February 2022. The firm incorrectly made a declaration to us, on 8 January 2020, that its risk assessment was compliant, in line with the requirements of Regulation 18 and in line with relevant guidance. The risk assessment the firm had in place failed to consider the firm's delivery channels and its transactions as required by the MLR 2017.

2.4 The firm did not have in place compliant AML policies, controls and procedures (PCPs), as required by Regulation 19 of the MLRs 2017 (and previously Regulation 20 of the MLRs 2007; the previous iteration of the money laundering regulations). The firm is required to have established and maintained PCPs, to mitigate and manage effectively the risks of money laundering and terrorist financing. Those PCPs were not compliant until February 2022 due to (but not limited to):

- lacking accurate information
- completely omitted information
- out of date guidance and links
- references to an employee who is no longer with the firm
- references to incorrect and superseded money laundering regulations
- lacking source of funds information.

2.5 The firm failed to take appropriate measures to ensure relevant employees were made aware of the law, relating to money laundering and terrorist financing, and regularly given training, as required by Regulation 24 of the MLRs 2017. Further, employees had a non-compliant and out-of-date AML policy to refer to (see 2.4 above), for any training needs.

2.6 In one instance, the firm failed to conduct adequate ongoing monitoring and scrutinise the transaction, including necessary source of funds' checks, as required by Regulation 28(11)(a) of the MLRs 2017, when £115,000 was received into firm's client account and returned to sender following an aborted transaction.

2.7 The firm failed to have sufficient regard for the SRA's warning notice on money laundering and terrorist financing, which was first issued on 8 December 2014 and updated on 2 March 2018 and 25 November 2019.

The firm failed to identify warning signs listed within the warning notice, with respect to source of funds and large cash payments, and also the transaction having unusual features such as unexplained urgency.

2.8 The firm failed to conduct an assessment of the level of risk arising in the transaction and did not have a client/matter risk assessment in place, as required by Regulation 28(12)(a)(ii) of the MLRs 2017 for this particular transaction. The firm was therefore unable to demonstrate to the SRA the extent of the measures it had taken, in view of the risks of money laundering and terrorist financing, as required by Regulation 28(16) of the MLRs 2017.

Admissions

3.1 Clarkes LLP admits, and the SRA accepts, that by failing to comply with relevant money laundering legislation, the firm: Up to 25 November 2019

- a. failed to behave in a way that maintains the trust the public places in the firm and in the provision of legal services, in breach of Principle 6 of the SRA Principles 2011
- b. failed to comply with its legal and regulatory obligations, in breach of Principle 7 of the SRA Principles 2011.
- c. failed to carry out the business effectively and in accordance with proper governance and sound financial and risk management principles, in breach of Principle 8 of the SRA Principles 2011.
- d. failed to achieve 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.
- e. failed to achieve Outcome 7.3 of the SRA Code of Conduct 2011, which states that you identify, monitor and manage risks to compliance with all the Principles, rules and outcomes and other requirements of the Handbook, where applicable.
- f. failed to achieve 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.

From 25 November 2019 to February 2022 (when the SRA Standards and Regulations came into force, until the firm brought itself into AML compliance):



- g. failed to act in a way that upholds public trust and confidence in the solicitors profession and in legal services provided by authorised persons, in breach Principle 2 of the SRA Principles 2019.
- h. failed to comply with all of the SRA's regulatory arrangements, as well as with other regulatory and legislative requirements, in breach of Rule 2.1 of the SRA Code of Conduct for Firms 2019.

Why the agreed outcome is appropriate

4.1 The conduct showed a disregard for 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 an adequate practice-wide (firm-wide) risk assessment and adequate policies, controls and processes at the firm. The lack of compliance showed an AML control environment failing at the firm:

- a. 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.
- b. there has been no evidence of harm to consumers or third parties and there is now a lower risk of repetition.
- c. the firm has assisted the SRA throughout the investigation, admitted the breaches and has shown remorse for its actions and remedied the breaches.
- d. the firm did not financially benefit from the misconduct.

4.2 Rule 4.1 of the SRA 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 what is stated in Rule 4.1 and on that basis a financial penalty is appropriate.

4.3 In deciding the level of the financial penalty reference is made to The SRA's Approach to Setting an Appropriate Financial Penalty (issued 13 August 2013 and updated on 25 November 2019). Following the three-step fining process, the SRA has determined the following:

- a. The nature of the misconduct was low/medium because the conduct was reckless. There was a failure on the part of

Clarkes LLP to comply with statutory obligations, as imposed by statutory Money Laundering Regulations, and a failure to comply with the SRA's rules that were in force at the time. The Guidance gives this level of impact a score of one.

- b. The SRA considers that the impact of the misconduct was medium because there was a failure to have in place a compliant practice-wide risk assessment and compliant policies, controls and procedures, as obliged by statutory legislation. The lack of adequate training or consideration as to source of funds, in the exemplified transaction, caused further breaches of the relevant statutory legislation. The Guidance gives this level of impact a score of four.

The associated 'Conduct band' is "B", owing to the total score of 5 (1+4) from sub-paragraphs above, giving a penalty bracket of £1,001 to £5,000.

4.4 However, in deciding the level of fine within this bracket, the SRA has considered the mitigation which Clarkes LLP has put forward. The SRA considers that on the basis of the mitigation offered, and the continuing compliance now at the firm, a basic penalty of £2,000 is appropriate.

Publication

5.1 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.

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

Acting in a way which is inconsistent with this Agreement

6.1 Clarkes LLP agrees that they will not act in any way which is inconsistent with this agreement, such as by denying responsibility for the conduct referred to above. That may result in a further disciplinary sanction. 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 contained within the SRA Standards and Regulations 2019 (such SRA Principles having been in force since 25 November 2019).

Costs

7.1 Clarkes LLP 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

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