Solicitors Regulation Authority

Nigel J Humes & Co
3-5 High Chare, Chester Le Street , DH3 3PX
Recognised body
206455

Agreement Date: 24 October 2023

Decision - Agreement

Outcome: Regulatory settlement agreement

Outcome date: 24 October 2023

Published date: 2 November 2023

Firm details

No detail provided:

Outcome details

This outcome was reached by agreement.

Decision details

1. Agreed outcome

1.1 Nigel J Humes & Co, a recognised sole practice, authorised and regulated by the Solicitors Regulation Authority (SRA), agrees to the following outcome to the investigation:

a. Nigel J Humes & Co will pay a financial penalty in the sum of £1,745 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. Nigel J Humes & Co will pay the costs of the investigation of £600, under Rule 10.1 and Schedule 1 of the SRA Regulatory and Disciplinary Procedure Rules.

Reasons/basis

2. Summary of Facts

2.1 We carried out an investigation into Nigel J Humes & Co (the firm) following a deskbased review by our AML Proactive Supervision team. The desk-based review 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.

2.2 The firm did not have in place a compliant firm-wide risk assessment (FWRA) between 26 June 2017 and 28 April 2023, as required by Regulation 18 of the MLRs 2017. The firm is required to have a FWRA which includes details of the firm's assessment of risks in five key areas. The firm did not put in place a FWRA until November 2022 and this document was not compliant with the MLRs 2017, as it did not cover each of the five key risk areas in sufficient detail and several of the columns within its FWRA had been left blank. On 28 April 2023, an updated FWRA was provided to us, which is compliant with the MLRs 2017.

2.3 In response to our risk assessment declaration exercise, the firm provided the SRA with inaccurate information, on 14 January 2020, that its FWRA was compliant with requirements of Regulation 18 of the MLRs 2017, when it did not have a FWRA in place.

2.4 The firm failed to have in place compliant policies, controls and procedures (PCPs) between 26 June 2017 and 28 April 2023, in breach of Regulation 19 of the MLRs 2017. The firm is required to have established and maintained PCPs, to mitigate and manage effectively the risks of money laundering and terrorist financing. The firm did not put PCPs in place until November 2022. Those PCPs were not compliant with the MLRs 2017, as they did not cover multiple mandatory areas set out in the regulations. On 28 April 2023, updated PCPs were provided to us, which are compliant with the MLRs 2017.

2.5 The firm failed to have in place and utilise client/matter risk assessments (CMRA), until at least November 2022, in breach of Regulation 28(12)(a)(ii) and Regulation 28(13) of the MLRs 2017. A well-documented client and matter risk assessment process helps ensure compliance, deter fraud, identify potential risks and provides valuable insights into the firm's client base and its activities. On 28 April 2023, the firm provided details of its new client/matter risk assessment process and forms to us, which are compliant with the MLRs 2017.

2.6 In two matters reviewed by our AML Officer, as part of his desk-based review, the firm failed to obtain and/or maintain a record of identification documents, and in doing so had failed to meet the requirements of Regulation 28(2) of the MLRs 2017.

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 7.5 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 at least November 2022, the firm has breached:
d. 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.
e. 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.
f. Paragraph 3.3(a) of the SRA Code of Conduct for Firms – which states that you respond promptly to the SRA and provide full and accurate explanations, information, and documents in response to any request or requirement.

4. 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 adequate AML documentation and controls.

4.2 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.

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

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 a low risk of repetition.
c. The firm has assisted the SRA throughout the investigation, admitted the breaches and has shown remorse for its actions.
d. The firm did not financially benefit from the misconduct.
e. The firm recognises that it failed in its basic duties regarding statutory money laundering regulations and regulatory compliance, as identified during our desk-based review.
f. Save for the misconduct identified in this agreement, the firm has an otherwise unblemished regulatory record.

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 financial penalty

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

5.2 Having regard to the Guidance, we and the firm, Nigel J Humes & Co, agree that the nature of the misconduct was more serious. This is because over 80% of the firm’s work is ‘in-scope’ of the MLRs 2017 (owing mainly to the conveyancing work the firm undertakes). As a result, the firm should have ensured that it met its obligations under MLRs 2017, by having a FWRA and PCPs in place as well as completing CMRA. Further, when Mr Humes completed the declaration on behalf of his firm, he knew (or ought to have known) that a FWRA was required. Despite knowing this, the firm’s FWRA, as well as its PCPs and CMRA procedure, were not put into place until prompted by us. The Guidance gives this type of misconduct a score of three (3).

5.3 We and the firm agree that the impact of harm or risk of harm was medium. The documents that the firm was required to have in place, in accordance with Regulations 18, 19 and 28 of the MLRs 2017, were not put in place until at least November 2022. This left the firm vulnerable to the risks of money laundering, particularly when acting in conveyancing transactions. The firm did not have effective arrangements to manage compliance with the money laundering regulations, which left it at risk of being used to launder money and in turn increased the risk of harm. The Guidance gives this type of misconduct a score of four (4).

5.4 The 'nature' of the conduct and the 'impact of harm or risk of harm' added together, give a score of seven. This places the penalty in Band 'C', as directed by the Guidance.

5.5 We then determine which band within the bracket the penalty should be placed into. We and the firm agree the financial penalty to be in Band C1, which determines a basic penalty of 1.6% of annual domestic turnover (firms).

5.6 For 2022/23, Nigel J Humes & Co had an annual domestic turnover of £155,803. The basic penalty is therefore £2,490 (£155,803 x 1.6/100).

5.7 We have also considered mitigating factors and consider that the basic penalty should be discounted by 30%. This is to take account of the following factors as indicated by the Guidance:

a. Making an early admission – the firm has admitted to us that its FWRA declaration was incorrect. At the time of the desk-based review, the firm admitted to our AML Officer that its FWRA, PCPs and CMRA process had only recently been prepared. The firm clearly regrets its actions and has put in substantial effort to bring itself into compliance.
b. Cooperating with our investigation – the firm has fully cooperated with our investigation and has put in place improved procedures as recommended by us.

5.8 The adjusted penalty is therefore £1,745.

5.9 Nigel J Humes & Co does not appear to have made any financial gain or received any other benefit as a result of its conduct, that exceeds the level of the basic penalty. Therefore, no adjustment is necessary and the financial penalty is £1,745.

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 Nigel J Humes & Co agrees that it will not act in any way which is inconsistent with this agreement, such as by denying responsibility for

the conduct referred to above. This may result in a further disciplinary sanction.

7.2 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.

8. Costs

8.1 Nigel J Humes & Co agrees to pay the costs of the SRA's investigation in the sum of £600. Such costs are due within 28 days of a statement of costs due being issued by the SRA.

Search again [https://www.sra.org.uk/consumers/solicitor-check/]