Solicitors Regulation Authority

Martin Chater trading as Morton Chater Solicitors (Morton Chater Solicitors)

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Recognised sole practitioner
627801

Agreement Date: 11 July 2023

Decision - Agreement

Outcome: Regulatory settlement agreement

Outcome date: 11 July 2023

Published date: 13 July 2023

Firm details

No detail provided:

Outcome details

This outcome was reached by agreement.

Decision details

1. Agreed outcome

1.1 Morton Chater Solicitors, a recognised sole practice, authorised and regulated by the Solicitors Regulation Authority (SRA), agrees to the following outcome to the investigation:

a. Morton Chater Solicitors 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. Morton Chater Solicitors will pay the costs of the investigation of £600, pursuant to 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 Morton Chater Solicitors (the firm), following a proactive AML inspection.

2.2 The investigation identified areas of concern in relation to compliance with Money Laundering, Terrorist Financing (Information on the Payer) Regulations 2017 (MLRs 2017), the SRA Principles 2011, the SRA Code of Conduct 2011, 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 19 October 2022 and therefore failed to have sufficient regard for the SRA's warning notice (first issued on 7 May 2019) on the same.

2.4 The firm also incorrectly made a declaration to us, on 25 January 2020, that its risk assessment was compliant, in line with the requirements of Regulation 18 and in line with relevant guidance, when it was not. The risk assessment the firm had in place failed to adequately consider:

- The firm's customers,
- the countries or geographic areas in which the firm operates,
- the products or services which the firm provides,
- delivery channels and
- the firm's transactions.

2.5 The firm did not have in place compliant AML policies, controls and procedures (PCPs), as required by Regulation 19 of the MLRs 2017.The firm is required to have established and maintained such policies and procedures, to mitigate and manage effectively the risks of money laundering and terrorist financing. Those PCPs were not compliant until 19 October 2022 because they did not address (but not limited to):

- how to identify and scrutinise complex and/or unusual large transactions,
- how to identify and scrutinise transactions that have no apparent economic or legal purpose,
- how to identify and scrutinise an unusual pattern of transactions, and
- ongoing monitoring to include, how ongoing monitoring is conducted by fee earners on an ongoing basis and at what intervals customer due diligence is being reviewed or re-evaluated.

2.6 Our investigation revealed breaches of Regulation 28(12)(a)(ii) of the MLRs 2017. Four files were reviewed which did not have a documented client or matter risk assessment on file. The firm is required to have client and matter risk assessments to identify and assess the level or risk arising

in any particular matter or for any particular client. Assessing the level of risk will inform the relevant level of due diligence and monitoring that should be applied on each matter.

3. Admissions

3.1 The firm admits, and the SRA accepts, that by failing to comply with money laundering legislation up to 19 October 2022, the firm has:

From 26 June 2017 to 25 November 2019 (when the SRA Handbook 2011 was in force)

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 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.

c. 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.

d. 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.

e. 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 (when the SRA Standards and Regulations came into force):

f. 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 of Principle 2 of the SRA Principles 2019.

g. 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.

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 an adequate practice-wide (firm-wide) risk assessment prior to 19 October 2022, especially when considering that over 60% of its work was 'in-scope' of the MLRs 2017 (Regulation 12(1)(a) – conveyancing; a high-risk area of work, as highlighted by the Government's National Risk Assessment and our Sectoral Risk Assessment) and:

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 did not financially benefit from the misconduct.

d. the firm recognises that it failed in its basic duties regarding statutory money laundering regulations and regulatory compliance, as identified during our inspection and subsequent investigation.

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. Following the three-step fining process, the SRA has determined the following:

a. the nature of the misconduct was high because the conduct was reckless. There was a failure on the part of the firm 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 three.

b. We consider that the impact of the misconduct was low. While there is no evidence that any clients were directly

affected by the firm's failure to have the proper risk assessment in place, the risk assessment is necessary to safeguard against the firm being used to facilitate money laundering. Therefore, the conduct had the potential to cause risk of harm to others.

The Guidance gives this level of impact a score of two.

The associated 'Conduct band' is "B", owing to the total score of 5 (3+2) 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, we have considered the aggravating circumstances, and deemed no discount applicable. We consider that a basic penalty towards the middle of the bracket, of £2,000 is appropriate. `

5. 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.

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

6.1 The firm 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). 7. Costs 7.1 The firm 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.