Solicitors Regulation Authority

Ferguson Bricknell (Ferguson Bricknell)
122B London Road, Headington, Oxford , OX3 9AG
Recognised body
048239

Closure Date: 30 December 2024

Decision - Closure

Outcome: Intervention

Outcome date: 30 December 2024

Published date: 3 January 2025

Firm details

No detail provided:

Outcome details

This outcome was reached by SRA decision.

Decision details

To intervene into Ferguson Bricknell (the firm)

Reasons/basis

1. it is necessary to intervene to protect the interests of clients of the firm (paragraph 32(1)(e) of Schedule 2 of the Administration of Justice Act 1985 (as amended)).
2. Alternatively, to intervene into the firm because the partnership law practice has ceased to exist and no further recognition of it has been granted (paragraph 34(1) of Schedule 2 of the Administration of Justice Act 1985)).

Intervening agents

Chris Evans of Lester Aldridge LLP, Russell House, Oxford Road, Bournemouth, BH8 8EX has been appointed as the intervening agent.

For enquiries please call 01202 786 341 or email interventions@la-law.com [mailto:interventions@la-law.com]

Agreement Date: 13 January 2023

Solicitors Regulation Authority

Decision - Agreement

Outcome: Regulatory settlement agreement

Outcome date: 13 January 2023

Published date: 17 January 2023

Firm details

Firm or organisation at date of publication

Name: Ferguson Bricknell

Address(es): Chester House, George Street, OXFORD

Firm ID: 48239

Outcome details

This outcome was reached by agreement.

Decision details

1. Agreed outcome

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

a. Ferguson Bricknell will pay a financial penalty in the sum £20,000, 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
c. Ferguson Bricknell 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.

Reasons/basis

2. Summary of Facts

2.1 We carried out an investigation into Ferguson Bricknell (the firm). The investigation included an onsite forensic investigation at the firm to review the firm’s overall anti-money laundering (AML) compliance.

2.2 The 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.

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 29 July 2022 and therefore failed to have sufficient regard for the SRA's warning notice (first issued on 7 May 2019) and updated on 25 November 2019 on this topic.

2.4 The firm also incorrectly made a declaration to us on 31 January 2020, that its firm-wide risk assessment was compliant Regulation 18 and in line with relevant guidance, when it was not. The MLRs 2017 set out five key risk areas which must be assessed. These are clients, jurisdictions, products/services, delivery channels and transactions. The firm had not fully assessed its product/services risks, because it did not include the risk from its conveyancing work in the firm-wide risk assessment provided at the commencement of our investigation. The risks associated with conveyancing and controlling client money, a significant area of work for the firm accounting to (circa) 75% of its fee income, should have been addressed on the firm-wide risk assessment but had been omitted.

2.5 In addition, the firm-wide risk assessment failed to have sufficient regard to for the Legal Sector Affinity Group guidance (firstly the 2018 and latterly the 2021 guidance), our sectoral AML risk assessment and the warning notice.

2.6 The firm did not put in place a compliant firm-wide risk assessment until 29 July 2022 after our onsite investigation had concluded. Therefore, the firm only complied with the requirement to have a compliant firm-wide risk assessment in place, more than five years after the requirement was introduced by the MLRs 2017 on 26 June 2017.

2.7 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 1 August 2022, after our onsite investigation had concluded.

2.8 The policy provided by the firm at the commencement of our investigation:

- was undated and did not state the author of the policy
- referred to outdated legislation, the MLRs 2007, throughout (the previous superseded iteration of the regulations) as opposed to the current MLRs 2017
- had not been regularly updated and/or maintained.

2.9 The firm breached Regulation 21(1)(c) of the MLRs 2017, which requires the firm to have established an independent audit function. This is based on the size of the firm and nature of the products/services provided. A significant area of work undertaken by the firm is residential conveyancing, which itself involves controlling monies through a client account. Both these aspects come within scope of the MLRs 2017 and are deemed high-risk, as highlighted by the UK Government's National Risk Assessments in October 2017 and latterly December 2020 and our own Sectoral Risk Assessments from 2018 and latterly January 2021, and risk being used potential money laundering.

2.10 During our investigation the firm confirmed it had not established an independent audit function and had therefore not examined and evaluated the adequacy and effectiveness of its policies, controls and procedures. In fact, a partner at the firm had been unaware of this requirement under the MLRs 2017. Had such audits been undertaken, it would have established that the firm's PCPs had not been maintained or updated (as above) and there was a failure to have a compliant firm-wide risk assessment in place (as above), which is integral to a firm's approach to its AML control environment.

2.11 This breach is further compounded in that the MLRs 2017 came into force on 26 June 2017. Only after our onsite investigation was an admission made that an audit would have been helpful to the firm to establish its compliance with the MLRs 2017.

2.12 The firm breached Regulation 24(1)(a)(i) and (ii) of the MLRs 2017. Appropriate measures should have been taken to ensure that all relevant employees at the firm received specific training in respect of the MLRs 2017. Our investigation also established that the firm had not maintained training records for its employees.

2.13 Our investigation established that one of the partners had not received any AML training on the MLRs 2017, countering the funding of terrorism, suspicious transactions, or internal policies, procedures and controls. The money laundering reporting officer (MLRO) had not undertaken any additional training to support them in their role either.

2.14 Our investigation revealed that the only AML training employees received, was in the form of a personal compliance booklet (Anti-Money Laundering Booklet), that was sent to all employees on 24 January 2022, and which was dated 2016/2017 (referencing the outdated and superseded MLRs 2007). As already detailed, employees had a non-compliant and out of date AML policy to refer to, for any additional training needs. Of further concern was that a partner of the firm was not aware that the policy existed. This itself demonstrates a lack of adequate training practices at the firm.

2.15 We reviewed a sample of client files as part of our onsite investigation. The client file review established the firm to be in breach of

Regulation 28(11)(a) of the MLRs 2017 as the client files contained:

- weak ongoing monitoring (if at all) of transactions
- absence of timely source of funds checks, in circumstances where such checks were necessary on all of the client files sampled during the investigation
- failure to ensure that a form accompanying the client care letter to verify source of funds was completed by the client and returned
- retrospective source of funds checks undertaken with the client on one matter only, during the course of our investigation and not prior
- no source of funds checks on where funds were received from third-party sources and the absence of any due diligence undertaken to verify the provenance of those funds
- Despite referring to “danger signs to watch for”, including “payment by way of a third party cheque or money transfer”, in the firm’s AML policy, our examination of client files uncovered instances of monies received from third parties other than the stated client.

2.16 Failure to properly identify where funds have derived from could put the firm at risk of committing a Section 327 offence under the Proceeds of Crime Act 2002.

2.17 The firm failed to have sufficient regard for our warning notice on Money Laundering and Terrorist Financing, which was first issued on 8 December 2014 and updated on 2 March 2018 (to take account of the new MLRs 2017 coming into force) and updated again on 25 November 2019 (to take account of new SRA Standards and Regulations, which replaced the SRA Handbook 2011). The firm failed to identify warning signs listed within the warning notice, specifically the unusual source of funds and unexplained payments from third parties.

2.18 Our investigation revealed breaches of Regulation 28(12)(a)(ii) of the MLRs 2017. Examination of the sample client files established that there had been no client or matter risk assessments undertaken. Of the matters reviewed, there was no documentary evidence to demonstrate how the firm had identified and assessed the level of risk arising in any particular matter or for any particular client. This was a considerable failing on the part of the firm. A well-documented client and matter risk assessment helps ensure compliance, deter fraud, identify potential risks and provides valuable insights in the firm’s client base and their activities.

2.19 The firm was also in breach of Regulation 40 of the MLRs 2017. This is a requirement upon the firm to keep copies of any documents obtained to satisfy the customer due diligence (CDD) requirements of Regulation 28. Records must be kept for five years, up to a maximum of ten years. The sample client files reviewed revealed that the firm did not retain the hard copy file of such documents, in breach of Regulation 40. The update in the firm’s current policy now states that CDD collated must be kept for a minimum of five years.

3. Admissions

3.1 The firm admits, and the SRA accepts, that by failing to comply with money laundering legislation, 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 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 (when the SRA Standards and Regulations came into force):
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 of 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.
i. failed to keep up to date with and follow the law and regulation governing the way you work, in breach of Rule 3.1 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).

4.2 This could have been avoided had the firm established an adequate practice-wide (firm-wide) risk assessment prior to 29 July 2022. Especially when a substantial percentage of the firm’s fee income is

derived from conveyancing, which is ‘in-scope’ of the MLRs 2017 (Regulation 12(1)(a)) and a high-risk area of work, as highlighted by the Government’s National Risk Assessment and our Sectoral Risk Assessment.

4.3 It was incumbent on the firm to meet the requirements in the regulations. 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. This is reinforced by the warning notices we have issued, to alert the profession and those acting in scope of the MLRs 2017, to play their part in preventing and detecting money laundering and terrorist financing.

4.4 The lack of compliance showed an AML control environment failing at the firm, 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.
c. the firm has assisted the SRA with its investigation.
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 investigation.

4.5 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.

4.6 In deciding the level of the financial penalty reference is made to The SRA’s Approach to Financial Penalties (first issued in August 2013 and updated in July 2022). 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 and as demonstrated with the breaches identified formed a wider pattern of misconduct. 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 nature score as High and a score of three for the identified misconduct.
b. we consider that the impact of the misconduct was medium because there was a failure in several areas in respect of the MLRs

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2017 and which had a potential to cause moderate loss or have a moderate impact. The guidance gives this level of impact a score of four. The associated ‘Conduct band’ is “C”, owing to the total score of 7 (3+4) from sub-paragraphs above, giving a penalty bracket of £5,001 to £25,000.

4.7 In deciding the level of fine within this bracket, we have considered the substantial aggravating circumstances, and absence of mitigating factors and deemed no discount applicable. We consider that a basic penalty towards the latter end of the bracket, of £20,000, is appropriate, to reflect the seriousness of the identified breaches.

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 £1,350. Such costs are due within 28 days of a statement of costs due being issued by the SRA.

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