Solicitors Regulation Authority

Duffield Harrison LLP (Duffield Harrison LLP)
Rathmore House, 56 High Street, Hoddesdon , EN11 8EX
Recognised body
383068

Agreement Date: 28 January 2025

Decision - Agreement

Outcome: Regulatory settlement agreement

Outcome date: 28 January 2025

Published date: 3 February 2025

Firm details

Firm or organisation at date of publication

Name: Duffield Harrison LLP

Address(es): Rathmore House, 56 High Street, Hoddesdon, EN11 8EX

Firm ID: 383068

Outcome details

This outcome was reached by agreement.

Decision details

1. Agreed outcome

1.1 Duffield Harrison LLP (the Firm), a recognised body, agrees to the following outcome to the investigation of its conduct by the Solicitors Regulation Authority (SRA):

a. it is fined £25,000,
b. to the publication of this agreement, and
c. it will pay the costs of the investigation of £1,350.

2. Summary of Facts

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

2.2 Our 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.

Firm-wide risk assessment (FWRA)

2.3 Between 26 June 2017 and December 2019, 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 Regulations 18(1) and 18(4) of the MLRs 2017.

2.4 In a questionnaire sent to the firm, we asked “When was your regulation 18 MLR 2017 firm-wide risk assessment first drafted?” to which the firm responded, “December 2019”.

2.5 On review of the FWRA the firm had in place from December 2019 onwards, we are satisfied that the firm has been meeting the requirements of Regulation 18 of the MLRs 2017 since its first implemented FWRA.

Policies, Controls and Procedures (PCPs)

2.6 Between 26 June 2017 and 31 January 2023, the firm 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.

2.7 The PCPs provided to us as part of our desk-based review were not compliant with the MLRs 2017, because they did not cover multiple mandatory areas set out in the regulations.

2.8 We gave the firm one month to put in place compliant PCPs, in line with Regulation 19 of the MLRs 2017. The policy provided in response is dated 1 February 2023 and this meets the requirements of Regulation 19 of the MLRs 2017.

Client and Matter Risk Assessments (CMRAs)

2.9 Until at least 2021, being the 'relevant person' with ultimate responsibility for compliance with the prevailing anti-money laundering regulations, and as exemplified in all six (100%) of the client matters selected for review, the firm failed to adequately conduct risk assessments of the client and/or matter, in accordance with Regulations 28(12) and 28(13) of the 2017 MLRs.

2.10 The firm failed to maintain records of its risk assessment under Regulation 28 of the MLRs 2017. Therefore, the firm was unable to demonstrate that the extent of the measures it had taken to satisfy the requirements of Regulation 28 were appropriate, as required by Regulation 28(16) of the MLRs 2017.

2.11 As part of the desk-based review, we wrote to the firm and requested specific documents from six sample files, which included the CMRA.

2.12 The firm provided the documents requested and stated, “In relation to file risk assessments, I have attached a copy our previous risk assessment forms which it had come to my attention were not being utilised in all cases.”

2.13 The sample files provided all commenced from 2021 onwards. When the AML Proactive Supervision team reviewed the documents, we could not locate any documentation on any of the six files, that risk assessed the client and/or the matter in line with Regulation 28 of the MLRs 2017.

2.14 The above 100% failure to undertake CMRAs within files selected for review, and acceptance that such assessments were not being undertaken by the firm (or those at the firm), indicates that the firm failed adequately to conduct risk assessments of its clients and/or matters.

2.15 The firm had also been unable to demonstrate that the extent of the measures it had taken to satisfy the requirements of Regulation 28 were appropriate.

2.16 The firm has since demonstrated that CMRAs were being done on files, since at least 2012, albeit were not present on the six files selected for review. Regulation 19(3)(e) of the MLRs 2017 says firms must monitor and manage compliance with the firms' PCPs, but, with no CMRAs on the six files selected, this was not being done.

2.17 Further, at the time of the desk-based review we were encouraged to see that a new CMRA had recently been put in place and communicated to all fee earners. We are therefore satisfied that the firm is now meeting its obligations under Regulations 28(12), 28(13) and 28(16) of the MLRs 2017.

3. Admissions

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

From 26 June 2017 to 24 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 that 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 31 January 2023, 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 2019 – 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 which it has put forward:

a. The firm has now been able to produce evidence that a client and matter risk assessment form was available and in use from 2008, albeit this may not have been utilised, completed and present on all matters.
b. The firm is now acknowledged to be compliant by the SRA and has been for some time.

c. The firm apologies unreservedly for the breaches, which were not deliberate, and has invested into appropriate support from a compliance perspective to ensure there is no repetition of the breaches.
d. There has been full co-operation throughout the investigation process.
e. There is no evidence that the shortcomings caused any loss or damage or allowed the firm to represent someone involved in money laundering and/or terrorist financing.
f. The firm has not gained financially as a result of the breaches.
g. There is no history of previous breaches.

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

a. 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.
b. 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 A fine is 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.

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 the firm's failure to ensure it had proper AML controls in place, for nearly six years, shows a persistent disregard of the firm's regulatory obligations and of core regulation governing the firm's work. There was a pattern of misconduct. This is also more serious given that the lack of monitoring of the compliance with the firm's own AML procedures, resulted in an impact at file level, with all of the files we reviewed being deficient with regard to AML standards.

5.3 The SRA considers that the impact of the misconduct was medium (score of four). The firm failed to ensure that it had adequate PCPs in place until 2023, in breach of Regulation 19 of the MLRs 2017. The firm's

conduct left it vulnerable to the risks of money laundering, particularly when acting in conveyancing transactions (the firm's biggest area of work). The nature of conveyancing is considered high-risk, owing to the risk of abuse of the system by criminals. The firm left itself without effective arrangements in place to manage compliance with the MLRs 2017 for a period of nearly six years.

5.4 The nature and impact scores add up to seven. The Guidance indicates a broad penalty bracket of between 1.6% and 3.2% of the firm's annual domestic turnover is appropriate.

5.5 In deciding the level of fine within this bracket, the SRA has considered the mitigation at paragraph 4.2 above which the firm has put forward, including remorse for its actions, full and frank admissions, remedying the breaches swiftly (once identified) and co-operating with the SRA's AML Proactive Supervision and Investigation teams. We consider that the basic penalty should be reduced to reflect the mitigation put forward.

5.6 The SRA considers a basic penalty at the lower end of the bracket to be appropriate.

5.7 Based on the evidence the firm has provided of its annual domestic turnover for the most recent tax year, this results in a basic penalty of £40,553.

5.8 The SRA considers that the basic penalty should be reduced to £26,359. This reduction reflects the mitigation set out in paragraph 5.5.

5.9 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 fine is £26,359.

5.10 However, the agreed fine is £25,000. This is the maximum financial penalty the SRA can impose for recognised bodies. The above calculation, using the firm's turnover and discount adjustment for mitigating factors, results in a financial penalty amount of £26,359. This exceeds our powers by £1,359.

5.11 The SRA's fining guidance states that “This guidance cannot fetter the discretion of our authorised decision makers who are able to impose fines up to our statutory limits. This means there may be exceptional cases where an authorised decision maker departs from the guidance and in these rare cases, full reasons would be given.”

5.12 The authorised decision makers consider this is a matter which is suitable for exercising such discretion. The matter should be considered exceptional, on the basis that it would be wholly disproportionate to presume that the only way of effectively concluding this matter is by issuing proceedings at the Solicitors Disciplinary Tribunal (which itself has

unlimited fining powers). Such proceedings would undoubtedly attract increased legal costs and excessive and unnecessary delays and resource impact.

5.13 A financial penalty of £25,000 would still have the effect of setting a credible deterrent and upholding public confidence in the regulatory and disciplinary process. Public confidence is adequately met with the imposition of a fine of £25,000.

5.14 A referral to the Solicitors Disciplinary Tribunal at this late stage, after full and frank admissions have been made, would only increase the time, cost and delay, and it would not serve the public interest to do so.

6. Publication

6.1 The SRA considers it appropriate that this agreement is published in the interests of transparency in the regulatory and disciplinary process. The firm agrees to the publication of this agreement.

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 2 and 5 of the Principles and paragraph 3.2 of the Code of Conduct for Firms.

8. Costs

8.1 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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