Solicitors Regulation Authority

Austins LLP (Austins LLP)
175 High Street, Berkhamsted , HP4 3AP
Recognised body
439384

Agreement Date: 26 February 2024

Decision - Agreement

Outcome: Regulatory settlement agreement

Outcome date: 26 February 2024

Published date: 18 March 2024

Firm details

No detail provided:

Outcome details

This outcome was reached by agreement.

Decision details

1. Agreed outcome

1.1 Austins 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 £4,293
b. to the publication of this agreement
c. it will pay the costs of the investigation of £600.

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. Policies, Controls and Procedures (PCPs)

2.3 Between 26 June 2017 and February 2023, the firm had PCPs in place which were not compliant with Regulation 19 of the MLRs 2017.

2.4 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.

2.5 On 17 July 2023 the firm provided a copy of its updated PCPs, which were dated February 2023. These are compliant with Regulation 19 of the MLRs 2017. Client and Matter Risk Assessments (CMRA)

2.6 Between 26 June 2017 and February 2023, the firm failed to conduct an adequate Client and Matter Risk Assessment (CMRA) process, as required by Regulation 28 of the MLRs 2017.

2.7 Based on the information provided, in the desk-based review, it was found that clients and matters were not being risk assessed adequately, as we could not find any documented client and matter risk assessments on the files we reviewed.

2.8 On 17 July 2023 the firm provided documents showing that a new client and matter risk assessment process was implemented in February 2023. This process is compliant with Regulation 28 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 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 7.2 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 February 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, we have taken into account the admissions made by the firm and the following mitigation:

a. The firm acted quickly to rectify the inadequacies and is now fully compliant with the MLRs 2017.
b. The firm has cooperated with our AML Proactive Supervision and Investigation teams.
c. There has been no evidence of harm to consumers or third parties and there is a low risk of repetition.
d. The firm did not financially benefit from the misconduct.

4.3 We consider that a fine is the appropriate outcome because:

a. 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.
b. 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.
c. 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 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 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, we and the firm agree that the nature of the misconduct was less serious because we accept that some AML firm controls were in place, such as a firm-wide risk assessment (which only required minor guidance, following our desk-based review). However, this does not negate the fact that although there was no direct loss to clients, the firm's failure to ensure it had proper and compliant documentation in place, for over five years since the MLRs 2017 came into force, put it at greater risk of being used to launder money. The Guidance gives this type of misconduct a score of one.

5.3 We consider that the impact of the misconduct was medium. The firm failed to ensure that it had fully compliant PCPs in place, in breach of Regulation 19 of the MLRs 2017. Further, the firm failed to utilise an adequate CMRA process, in breach of Regulation 28 of the MLRs 2017. The firm failed to ensure that it was fully compliant with its statutory obligations until February 2023, although it is acknowledged (and justifying an assessment of 'medium' as opposed to 'high') that some documents were in place earlier. The Guidance gives this level of impact a score of four.

5.4 The firm has an annual domestic turnover of £670,796. This means that, for the purposes of the Guidance, it is not a firm of greater means. The nature and impact scores add up to five. Therefore, the Guidance recommends a broad penalty bracket of £2,683 to £8,049 which equates to 0.4% to 1.2% of annual domestic turnover.

5.5 While the inadequacies did persist over a period of five years, we do not consider that the inadequacies with the AML documents posed a more serious risk. There is evidence by the firm of attempts to mitigate the risk of money laundering, given that documents were in place yet needed adapting to meet the requirements of the regulations. We therefore consider a basic penalty in the middle of the bracket to be appropriate. Band B2 determines a basic penalty of 0.8% of annual domestic turnover amounting to £5,366.

5.6 In deciding the level of fine within this bracket, we have considered the mitigation at paragraph 4.2 above. We consider that the basic penalty should be reduced by 20% to £4,293.

5.7 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 £4,293.

6. Publication

6.1 We consider 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 our investigation in the sum of £600. Such costs are due within 28 days of a statement of costs due being issued by the SRA.

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