Solicitors Regulation Authority

Pinkney Grunwells Lawyers LLP (Pinkney Grunwells Lawyers LLP)
64 Westborough, Scarborough , YO11 1TS
Licenced body
465469

Agreement Date: 13 October 2022

Decision - Agreement

Outcome: Regulatory settlement agreement

Outcome date: 13 October 2022

Published date: 27 October 2022

Firm details

Firm or organisation at date of publication

Name: Pinkney Grunwells Lawyers LLP

Address(es): 64 Westborough, Scarborough

Firm ID: 465469

Outcome details

This outcome was reached by agreement.

Decision details

1. Agreed outcome and Undertakings

1.1 Pinkney Grunwells Lawyers LLP ('the firm') a licensed body authorised and regulated by the Solicitors Regulation Authority (SRA), agrees to the following outcome to the investigation:

a. Pinkney Grunwells Lawyers LLP 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. Pinkney Grunwells Lawyers LLP 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

We carried out an investigation into the firm following a referral from our AML Proactive Supervision Team, which started as a proactive inspection at the firm in April 2020. The purpose of the inspection was to assess the firm's compliance with The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs 2017).

2.1 Our investigation identified areas of concern in relation to compliance with the 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 MLRs 2017 came into force on 26 June 2017, requiring relevant persons (firms that did work 'in-scope' of the MLRs 2017) among other things, to have in place a compliant AML practice-wide ('firm-wide') risk assessment (Regulation 18 of the MLRs 2017), and policies, controls and procedures (PCPs) to prevent money laundering (Regulation 19).

2.3 We published a warning notice to the profession on 7 May 2019 (updated 25 November 2019), highlighting the requirement to have a firm-wide risk assessment in place.

2.4 The firm incorrectly made a declaration to us, on 9 January 2020, that its firm-wide risk assessment was compliant. This was in response to an exercise we carried out requiring the firm to declare whether it had a compliant firm-wide risk assessment in place under Regulation 18 of the MLRs 2017.

2.5 The firm-wide risk assessment the firm had in place at the commencement of our AML inspection in April 2020 was not compliant. In accordance with Regulation 18 of the MLRs 2017, there are five key risk areas which must be assessed. These are: clients, jurisdictions, products/services, delivery channels and transactions. The transactional risks faced by the firm had not been addressed in the documents provided at the commencement of the inspection in April 2020. In addition, the firm-wide risk assessment failed to have sufficient regard for the Legal Sector Affinity Group guidance, our sectoral risk assessment and warning notice.

2.6 We provided guidance to the firm at the conclusion of our inspection. This included revising the firm-wide risk assessment to include specific risks the firm faced to strengthen its AML controls and comply with the MLRs 2017.

2.7 The firm didn't have a compliant firm-wide risk assessment in place until after our AML Proactive Supervision Team sent an outcome letter on

11 December 2020. Therefore, the firm only complied with the requirement to have a firm-wide risk assessment in place, more than three years after the requirement was introduced by the MLRs 2017 on 26 June 2017.

2.8 The firm did not have in place compliant AML 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 effectively manage the risks of money laundering and terrorist financing. Those PCPs were not compliant until after our inspection had concluded because the following was omitted:

- 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
- reference to the Legal Sector Affinity Group guidance
- how the firm identifies and verifies the various types of clients such as individuals, companies and trusts
- when customer due diligence held for clients is renewed
- the position on use of simplified due diligence ('SDD') and circumstances when this would be applied
- the firm's position on source of funds/source of wealth checks and the circumstances when this would be requested
- the position on reliance and circumstances in which the firm would rely on another regulated person
- the position on transactions in high-risk jurisdictions.

2.9 The firm carried out screening of relevant employees only upon their appointment, however Regulation 21 of the MLRs 2017 requires a firm, where appropriate to its size and nature, to carry out screening of relevant employees both on appointment and during employment.

2.10 The firm had not complied with Regulation 21(1)(c) of the MLRs 2017 to undertake an independent audit.

2.11 The firm had informed us, during our inspection, that staff training had been implemented and undertaken, however, the firm could not provide a record of what training had been provided and who had received it, contrary to Regulation 24(1)(b) of the MLRs 2017. This breach was rectified by May 2022 and a central record is now kept and updated.

2.12 We reviewed of a sample of client files as part of our inspection. On one transaction, which involved a long-standing client of the firm, there had been insufficient client identification and verification obtained prior to the commencement of the matter. Open-source research undertaken by our Regulatory Manager during the AML Proactive inspection on Companies House records, identified that ID or verification for the

persons in significant control (‘PSCs’) at the company had not been obtained by the fee-earner on the file. When the fee earner undertaking the matter was asked about the PSCs, they were unaware of who these were and confirmed that they had not checked this. We were also concerned about the CDD documentation held or collected in this matter. We identified concerns about the manner and timing of collating updated CDD evidence required for companies, ongoing monitoring of existing clients and renewing or keeping CDD information at the firm up to date.

2.13 On another client matter we reviewed, the firm failed to conduct adequate ongoing monitoring and scrutinise the transaction, including necessary source of funds checks, as required by Regulation 28(11)(a) of the MLRs 2017. The firm was instructed to act on a purchase which was part funded by mortgage, with the remaining balance being provided by the clients. However, the bank statement showed a minimal balance in the client’s bank account. The client details form was also not completed properly, and the source of funds section was blank. An up-to-date bank statement was requested from the client by the fee-earner only upon our direct instruction that the fee-earner should do so. This established and evidenced the additional and remaining balance which the client would fund the purchase with.

2.14 The issues identified during the client file reviews highlighted that source of funds evidence was not collated by fee-earners. 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.

2.15 In addition to this, the LSAG guidance sets out that under Regulation 40 of the MLRS 2017 firms must keep records of CDD and supporting records to enable the transaction to be reconstructed. This includes information and documentation obtained in connection with source of funds checks and the process of the transaction itself. The firm had not followed the LSAG guidance in the sample client file matters reviewed during the AML inspection to ensure compliance with Regulation 40.

2.16 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.

3. Admissions

3.1 The firm admits and we accept, that by failing to comply with money laundering legislation, the firm has:

SRA Handbook from 6 October 2011 to 25 November 2019 (when the SRA Handbook 2011 was in force)

i. 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.
ii. 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.
iii. 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.
iv. ailed 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.
v. 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)
vi. 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.
vii. 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.
viii. 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.

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 transactions that could have led to money laundering (and/or terrorist financing). This could have been avoided had the firm established a fully compliant practice-wide (firm-wide) risk assessment and adequate policies, controls and processes (and previously policies and procedures), especially when considering that circa 40% 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).

4.2 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.

4.3 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 did not financially benefit from the misconduct.
d. the recognises that it failed in its basic duties regarding statutory money laundering regulations and regulatory compliance, as identified during our inspection and subsequent investigation.
e. the firm has assisted us throughout the investigation, admitted the breaches and has shown remorse for its actions and remedied the breaches.

4.4 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.

4.5 In deciding the level of the financial penalty reference is made to the guidance on The SRA's Approach to Financial Penalties. Following the three-step fining process, we have determined the following:

a. the nature of the misconduct was low/medium 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 our rules that were in force at the time. The Guidance gives this level of impact a score of one.
b. We consider that the impact of the misconduct was medium because there was a failure to have in place a compliant practice-wide (firm-wide) risk assessment, compliant policies, controls and procedures (previously known as policies and procedures), as obliged by statutory legislation. The Guidance gives this level of impact a score of four.

The associated ‘Conduct band’ is “B”, owing to the total score of 5 (1+4) from sub-paragraphs above, giving a penalty bracket of £1,001 to £5,000.

4.6 However, in deciding the level of fine within this bracket, we have considered the aggravating and mitigating circumstances, and deemed no discount applicable. We consider that a basic penalty 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 We consider 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 Pinkney Grunwells Lawyers LLP 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. 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 Pinkney Grunwells Lawyers LLP 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.

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