

AML: enforcement trends

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Aims

- Highlight what we are seeing in firms and issues at client and file level
- Offer insights into our enforcement action
- Show the cases which have resulted in financial penalties

NCA Publication

The NCA's UK Financial Intelligence Unit, in a recent August 2023 publication, confirmed:

- 'Professional Enablers pose a significant risk to the integrity of the UK's legitimate economy and reputation . . . highlighting their role at the heart of serious and organised crime impacting the UK. Their specialist skills, knowledge and expertise are exploited by criminals to launder the proceeds of crime . . .'

NCA Publication

- ‘Individual or organisation that is providing professional services that enable criminality. Their behaviour is deliberate, reckless, improper, dishonest and/or negligent through a failure to meet their professional and regulatory obligations.’

Dedicated AML teams since 2019

We have three bespoke teams:

- AML Policy
- AML Proactive Supervision
- AML Investigations

Issues at firm level

- Lack of controls
- Inadequate firm-wide risk assessments and policies and procedures
- Failing to train and supervise staff
- Not paying sufficient regard to warning notices and guidance

Firm-wide risk assessments

Firm-wide risk assessments (FWRA):

- A requirement since 2017
- Some firms still don't have one
- Risk assessment must reflect size and nature of business
- Your risk assessment must consider information we publish
- It must cover five key risk factors set out in the regulations

- Warning notice - www.sra.org.uk/AML-firm-risk-assessment
- Guidance and an editable template - www.sra.org.uk/risk-assessment-guidance
- Must be in writing, kept up-to-date and provided upon request
- Declaration made to us about FWRA compliance
- Templates are fine – but need to be tailored

PCPs

- Still seeing firms that don't have PCPs
- The 2003 regulations mandated procedures of internal control and communication
- The 2007 regulations reinforced that firms must establish and maintain appropriate and risk-sensitive policies and procedures

PCPs

- Legal Sector Affinity Group guidance, published in September 2017 (Treasury approval in March 2018)
- Where appropriate to the size and nature of firm, must establish an independent audit function
- Robust PCPs but not communicated to staff

Training

- Firms must make sure employees are regularly given training
- Firms must maintain a record in writing of the training given
- We see that targeted AML training is not being given to staff
- Staff not being trained well enough on the application of the firm's PCPs

Reports

- AML Investigations Team receives reports of potential breaches
- Half of reports come via AML Proactive Supervision Team
- Others from law firms, law enforcement, other agencies or regulators
- Last year, there were 249 AML related reports and 522 breach reasons

Reports

- Often, reports have more than one suspected breach
- Mixture of reports about a firm's AML controls but also breaches at client and file level
- Most significant reasons for reports:

Specific matter reason	Count
Failure to have proper AML policies and procedures	61
Failure to carry out a source of funds checks	60
Failure to carry out a risk assessment on client/matter	58
Failure to carry out a firm-wide risk assessment	48
Failure to carry out/complete initial CDD	47

Issues at client and file level

- Most common issue seen is inadequacy of customer due diligence (CDD) measures
- CDD is mandatory and vital to combatting money laundering
- Lawyers can facilitate money laundering by negligently failing to identify the risks or by deliberate, reckless, improper and dishonest actions

CDD

- Treat each client and matter appropriately from inception, so that CDD is adequate
- Firms must risk assess clients and matters and consider factors such as the purpose and size of the transaction
- Regulations state firms must be able to demonstrate the extent of the measures it has taken
- This will inform the level of CDD to be obtained

- Assessing and identifying risks from the outset is key
- Important factors in relation to CDD:
 - Identify and verify identity of the client
 - Perform ongoing monitoring of the transactions
 - Perform source of funds checks, when necessary
 - Undertake enhanced CDD (known as EDD) when relevant

Common issues

- Failing to know identity of the client – PEP? Sanctions?
- Not completing client and matter risk assessments
- Treating risk assessments as a ‘tick box’ exercise
- Failing to check source of funds
- Fee earners relying on centralised compliance departments
- Having systems and processes that allow events to happen unchecked

Case studies

Mrs A

- Failing to follow firm's PCPs
- Not assessing level of risk appropriately
- No source of funds checks
- £2,000 fine

Case studies

Firm B

- Failing to have a FWRA and incorrect declaration
- Inadequate PCPs
- No independent audit
- Failing to train staff
- Failing to perform client and matter risk assessments and source of funds checks
- £20,000 fine

Case studies

Mr C

- Failure to perform CDD adequately
 - Failure to perform EDD
 - Manifest incompetence
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- 12 months suspension of practicing certificate at SDT

Case studies

Firm D

- Issues with FWRA
- Incorrect declaration to SRA
- Remedied breach swiftly and reviewed PCPs
- Letter of Advice

Our new fining powers and financial penalties -
www.sra.org.uk/financial-penalties