

The 2010 MLROs Toolkit Conference Two

*Lessons from recent FSA Enforcement Cases
relating to Financial Crime and AML*

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FSA's Enforcement Approach

Credible Deterrence

- Use of Criminal Powers preferable to Civil Powers in Market Abuse
- Using full range of Powers
 - EU arrest warrants & cooperation with other regulators
 - Search raids and arrests
 - 7/10 prosecutions successful for insider dealing
 - Restraint and Confiscation
- Focus on SIF Individuals, inc MLROs

FSA's Approach to Money Laundering

Money Laundering Regulations 2007

- Supervisory Body – Registered Businesses
- Risked-Based Approach
 - “zero failure is not only impossible to achieve, aiming for it is the opposite of good regulation” - letter to the JMLSG dated 10 April 2006 written by Philip Robinson, then FCID Dir of FSA
- Power to Impose Civil Penalties
- Prosecute Officers of Registered Business

FSA's Approach to Money Laundering

FSA Handbook for Authorised Firms

- SYSC 3.2 and 6.3
- a Firm must
 - Counter risk that firm might be used to further financial crime
 - Identify, assess, monitor and manage money laundering risk
 - Comprehensive and proportionate systems and controls
 - Appoint MLRO - authority, independence, resources

FSA's Approach to Money Laundering

First Prosecution under POCA– Rollins Case

- Found Guilty of
 - Five counts Insider Dealing
 - Four counts Money Laundering under **POCA**
- Defence previously argued that FSA had no power to prosecute under **POCA** – court said:
 - One of the objectives of the FSA as defined by FSMA is to reduce financial crime. It would therefore be perverse for Parliament to deprive the FSA of its power to prosecute financial offences.
- Criminal conduct “aggravated by the fact that he sought to hide his conduct from the FSA by laundering the proceeds”

The 2010 MLROs Toolkit Conference
Case Studies – Lessons Learned



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Case Study – Mortgage Fraud

Bates/Hill/Pace Financial - Facts

- 2 individuals, submitted false and misleading information to secure mortgages for themselves and their customers
- Bates (CF4 Partner)
 - diverted commission to himself and a colleague that should have been paid to Pace
 - recruited adviser known to have been dismissed for gross misconduct twice before disregarding obligation to monitor staff and not allow firm to be used to further financial crime
- Hill (CF 21 Investment adviser)
 - misconduct which allowed Firm to breach Principle 1
 - manufactured false documents to use in applying for customers' mortgages/selling to third parties to use for same
- Pace (the Firm)
 - no involvement in misconduct by Hill or Bates

Case Study – Mortgage Fraud

Bates/Hill/Pace Financial – Penalties

- Bates fined £265K including £75K disgorgement and banned
- Hill fined £150k and banned
- Both also imprisoned for financial crime offences (inc money laundering) after prosecution by South Yorkshire police
- Pace - no penalty and still authorised
 - Other partners were not aware of Bates's fraudulent arrangements



Case Study – Mortgage Fraud

Bates/Hill/Pace Financial – Lessons

- FSA awaited the outcome of criminal proceedings before concluding its investigation
- Firm was implicated – Hill knowingly concerned in firm's breach of Principle 1
- Why was the firm not sanctioned for
 - allowing itself to be used for financial crime and/or
 - the fact that it breached Principle 1?
- FSA project - 96 mortgage brokers banned



Case Study - Theft

White/Seymour Pierce - Facts

- Employee committed fraud
 - Stole £153K from employer and private clients
 - Hid £145K in a dormant account and transferred personal trading loss to a company account
 - Misused senior position and exploited weaknesses in the firm's system to commit fraud
- Firm failed to establish effective controls to prevent employee committing fraud
 - Internal fraud risk not properly assessed
 - Effective controls to mitigate risks not implemented

Case Study - Theft

White/Seymour Pierce - Penalties

- White
 - Banned
 - Not an Approved Person so no power to fine
- Seymour Pierce
 - Fined £220K (before discount) for breach of Principle 3: management and control
 - Returned client money to victims of White's fraudulent activities



Case Study - Theft

White/Seymour Pierce - Lessons

- SYSC 3.2.6R
 - Establish and maintain effective systems for countering risk that firm might be used to further financial crime
 - need to be able to prevent and detect
- Have to assume employees will commit fraud/theft if able to do so easily
- Fact that employee attempts to conceal fraud does not negate penalty
- Firms will be penalised, even when they have been the victim of the fraud
- Double loss – firm money stolen and had to reimburse customers

Case Study - Insurance Fraud

Aspden/Orion Direct Limited - Facts

- Four individuals in total
- Failings in relation to
 - committing and failing to prevent insurance fraud
 - unapproved person allowed to effectively direct and control an authorised firm (Barrie Aspden)
 - his wife, sister-in-law and family friend (Paul Willment) were named as directors, but took no active part in managing the business
- BA misused £300K of Orion client money
- Several hundred customers at risk of being uninsured

Case Study - Insurance Fraud

Aspden/Orion Direct Limited - Penalties

- BA
 - banned only
 - no power to fine someone who is not an Approved Person
- Wife/sister-in-law (CF1)
 - fined £35K, but for financial hardship, for failure to act with due skill, care and diligence
 - banned
- PW (CF1/2)
 - fined £50K for failure to act with due skill, care and diligence
 - banned

Case Study - Insurance Fraud

Aspden/Orion Direct Limited - Lessons

- **Financial Services Act 2010** - from 06/08/10
can fine an individual acting in Controlled Function without approval
- What are your regulatory responsibilities
- Are you exerting a significant influence?
- Question what other directors are doing
- Exercise appropriate amount of control over activities – delegate, but do not abdicate your role



Case Study - Sanctions Failings

RBS Group - Facts

- Various companies within RBS Group (inc RBS and NatWest) failed to have adequate systems and controls in place to prevent funds or financial services being made available to those on the sanctions list
- Breach **Money Laundering Regulations 20(1)**
 - Did not properly consider what policies and procedures were required to comply with sanctions obligations
 - Did not adequately screen customers/payments against HM Treasury sanctions list
 - Could have facilitated terrorist financing

Case Study - Sanctions Failings

RBS Group – Penalty and Lessons

- Fine of £8m (before discount) - first fine under **2007 Regs**
- Biggest fine in pursuit of financial crime objective
- Actual harm not necessary – inadequate systems and controls is enough
- Ensure policies are in place across the Group – particular care when transferring responsibilities
- Take action to mitigate identified deficiencies in a timely manner
- Check that software performs as required

Case Study – Money Laundering

Chattopadhyay/Alpari (UK) Ltd - Facts

- Firm
 - Failed to have in place adequate anti-money laundering systems and controls
 - Did not carry out assessments of the money laundering and financial crime risks to which it was exposed
 - Failed to carry out satisfactory customer due diligence at account opening or monitoring after
 - No adequate screening against the sanctions list or consideration of PEP status
 - Client base included higher risk jurisdictions and lack of face to face contact
 - Inadequate compliance and AML function
- Chattopadhyay (CF10/11)
 - Accountable for these failings as he was responsible for money laundering and compliance oversight

Case Study – Money Laundering

Chattopadhyay/Alpari (UK) Ltd - Penalties

- Alpari
 - £200K (before discount for early settlement) for breach of Principle 3: management and control
- Chattopadhyay
 - £20K (before discount for early settlement) for breach of AP Principle 7: reasonable steps for firm to comply with relevant regulatory standards
 - Undertaking not to make application for MLRO/compliance role for 3 years

Case Study – Money Laundering

Chattopadhyay/Alpari (UK) Ltd - Lessons

- Importance of JMLSG Guidance and previous FSA enforcement action
- MLROs/Compliance face enforcement action even where the firm placed too much responsibility on them
- Incumbent upon MLRO to ensure they have capacity and resources to fulfil role
- *SYSC 3.2.6IR (6.3.9R)*
 - Firms must ensure that MLRO has access to resources and information sufficient to enable him to carry out responsibility





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