



Comments for the Government’s review of the impact on business of the current anti-money laundering and terrorist finance regime, and specifically the role of supervisors in that regime from the National Association of Estate Agents (NAEA)

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Background

National Association of Estate Agents (NAEA) is the UK’s leading professional body for estate agency personnel, being part of a group representing 14,600 members who practice across all aspects of property services both in the UK and overseas. These include residential and commercial sales and lettings, property management, business transfer, auctioneering and land. The NAEA is a sister organisation to the Association of Residential Letting Agents (ARLA).

NAEA is dedicated to the goal of professionalism within all aspects of property, estate agency and land. Its aim is to reassure the general public that by appointing an NAEA member to represent them they will receive in return the highest level of integrity and service for all property matters. Both NAEA and ARLA members are bound by a vigorously enforced Code of Practice and adhere to professional Rules of Conduct. Failure to do so can result in heavy financial penalties and possible expulsion from the Associations.

Comments

NAEA members are regulated by a body called NFOPP (National Federation of Property Professionals) Regulation. The body regulates individual members of NAEA and companies which fall within the jurisdiction of NAEA. All individual members are required to adhere to professional standards and follow relevant guidance. All companies are required to meet certain company obligations.

NFOPP Regulation regulates a company (legal entity) when it has a principal (sole trader), partner (partnership or LLP) or director (limited company) who is a member of NAEA and is active in a business area relevant to the member’s work – such as residential property sales, residential property management, Block Management or land and new homes. We call this a PPD (Principal, Partner or Director) firm.



In relation to money laundering 2,717 PPD firms are registered with the HMRC. Furthermore, NFOPP Regulation has co-authored guidance for NAEA members with the Royal Institution of Chartered Surveyors, Association of Relocation Professionals and the Association of Residential Managing Agents.

The guidance, which covers the Money Laundering Regulations (2007), the Proceeds of Crime Act (2002) and the Terrorism Act (2000), has been formally approved by HM Treasury. If members fall foul of the rules they could face an NFOPP Regulation disciplinary process which could involve expulsion from NAEA and a fine of up to 5 million euros.

In addition to the guidance NAEA meets with HMRC on a quarterly basis and we host a number of free masterclasses around the country to ensure members are aware of the legislation. Speakers include representatives from HMRC, the National Trading Standards Estate Agency Team, National Crime Agency and the Property Ombudsman.

NAEA has also asked every PPD to complete a form identifying the nominated Money Laundering Reporting Officer (MLRO) and Deputy and their contact details. We intend to communicate with relevant staff with important legislation updates and useful information. So far the take up has been low, but we are continuing to push this initiative with our members.

This year the cost of registering with HMRC for estate agents is a £100 non-refundable application charge for registering for anti-money laundering supervision (new customers) and an additional £110 premises fee on top of the application charge for each premises listed on the application. For existing customers the renewal fee is £110 for each premises listed on the application at the time of renewal. From 1st April next year the application charge will remain at £100 but the fees for premises and renewals will both rise to £115.

However, whilst estate agents must register with HMRC, it does not carry out a 'fit and proper' test for estate agency businesses as the regulations do not provide them with the legal powers to do so.

Under Money Laundering Regulations estate agents must ensure that the due diligence they carry out is appropriate for the level of risk in order to minimise the threat of their business being used to launder money. Like other industries estate agents have to consider the level of identification, verification and monitoring needed to check for anti-money laundering.



However, in London it is common practice for an estate agent to take on an instruction and to use sub-agents to find a buyer. Therefore many sub-agents in London are concerned that under the current rules they can't rely on the main agent's own due diligence and must carry out their own checks. As a result this means multiple checks have to be carried out on directors and the agency's other clients. It also means different agents contacting sellers on multiple occasions to carry out checks. Ideally, sub-agents need to be able to share the anti-money laundering check information on clients from the main agent whilst being cognisant of Proceeds of Crime Act and the necessity to report.

The rules also require estate agents to identify the existence of a beneficial owner and understand how they operate. However, there is no legal requirement for the (ultimate) owners of property to be publically available in the Land Registry. The Land Registry currently only lists legal owners (including UK companies and entities registered in tax havens). However, the Land Registry must also include overseas companies and be able to distinguish between residential and commercial properties in order to make it easier for estate agents to verify and ascertain information on the seller as well as the buyer.

When an estate agent receives or holds a clients' money this is required to be kept in a separate client bank or building society account or accounts. However we know that some banks, who also have client due diligence obligations under the Money Laundering Regulations 2007, are unilaterally changing the status of these accounts from client to office, but estate agents are not being informed. The banks previously did not make the connection and as a result new businesses are at a disadvantage. In addition to this, where estate agents hold a tenancy deposit and they can't put money into a client account they would be in breach of Tenancy Deposit legislation.

Although the Review does not cover the burdens associated with requirements to report suspicious activity to the National Crime Agency (NCA) through the Suspicious Activity Report regime, we feel it is important to mention the requirements on estate agents and how it affects their businesses. Under the rules estate agency staff must raise an internal report where they know or suspect another person is engaged in money laundering and report to the MLRO as soon as possible, who is to then file the information with the National Crime Agency if they feel there is enough suspicion or knowledge to suspect money laundering, even if no transaction has taken place.



The business must then seek consent from the NCA before proceeding with a suspicious transaction or entering into arrangements. Consequently, there is a lot of administration involved in the process with estate agents having to keep records of suspicious activity reports and any other internal or external reports and decisions as well as customers due diligence checks and business transactions for at least 5 years.

In order to do this estate agents must ensure all staff are aware of, for example, the risks of money laundering, the relevant legislation and their obligations. From a business point of view staff training is essential, particularly when taking on new staff, and this could take a few days or up to a week each month to ensure they fully understand the Money Laundering Regulations. The regulations also advise staff training at least every 2 years.

The guidance from HMRC (Money Laundering Regulations 2007: supervision of Estate Agency Businesses) should include working examples of estate agents who have given reports to the NCA and the outcome to better explain to staff and MLROs about how long the process can take and what happens if the report is acted upon or not.

If the process could include priority and non-priority reporting to the NCA this may lead to greater detail being provided as well as more initial reports filed. A more integrated approach with mortgage advisers, solicitor and estate agents working together to gather information may also help.