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Dear Mr Swanney

Introduction

The National Federation of Property Professionals (NFOPP) is an umbrella organisation for a number of trade bodies /self regulatory organisations, which have a combined membership of just under 14,000 property professionals. NFOPP's divisions are:

- National Association of Estate Agents;
- Institute of Commercial Business Agents;
- Association of Residential Lettings Agents; and
- National Association of Valuers and Auctioneers.

NFOPP's over-arching aims are to support its members by promoting the highest standards of professionalism and integrity amongst those working within the property industry, and to encourage members of the public to proactively choose its members when they are involved in any kind of property transaction.

NFOPP is responding to this consultation as the JMLSG's guidance may impact upon its members in the following ways:

- The guidance for financial services firms (firms) may influence the guidance which applies to members of the divisions of NFOPP; and
- The guidance may affect how firms treat property professionals as customers, which may impact upon the services which property professionals can deliver.

We have identified two related issues of concern to property professionals, which may also be of concern to other sectors who hold pooled accounts with firms. The Money Laundering Regulations 2007 apply inconsistently to property professionals, but regardless of this all property professionals are unlikely to have undertaken customer due diligence on the beneficial owners of funds held in pooled accounts with firms . We have attached an Annex which outlines the position.

Proposed amendments to Part 1

Chapter 5- Pooled Accounts

Members of the divisions of NFOPP who hold money which relates to clients' transaction must hold it in a separate account with a firm. This prevents money held by members but which does not belong to members being mixed with their own funds. This is important for the protection of consumers because it allows reconciliations to check that correct funds are available and that they have not been misappropriated or misapplied to other accounts. In practice separate accounts may be used for separate clients or separate transactions, or funds relating to multiple transactions or multiple clients may be pooled into a single account.



Holding third party funds in separate account(s) is a requirement for members of the NFOPP, including lettings agents who belong to ALRA. In fact having separate accounts is a legal requirement for all estate agents¹. However, as we understand it there is no equivalent requirement for lettings agents who do not belong to a professional body. The Financial Services Authority does not require firms to ensure that their customers hold third party funds separately.

We note the proposed guidance that firms with landlords' pooled client accounts holding tenants service charges are not required to identify the beneficial owners, provided that the information on the identity of the beneficial owner is available, on request, to the financial services firm, paragraph 5.3.128. We question whether landlords' will be able to supply this information on request given they are not subject to the Money Laundering Regulations 2007. We are unsure what is meant by 'service charge', or whether the intention was to only cover funds for the maintenance of common areas.

We wish to raise the issue of pooled accounts held by estate agents and lettings agents. For the reasons we have outlined in our Annex it is also unlikely that estate agents, auctioneers, or lettings agents, could supply this information to firms on request.

Cash

There is a related issue of large cash deposits with firms which may be made by our members, who will be firms' account holder, or by third parties wishing to access our members' accounts.

We understand that when the deposit is made the firm may ask for identification of the beneficial owner, but for the reasons outlined in our Annex property professionals are unlikely to be in a position to provide this information.

We would welcome a meeting with representatives JMLSG to discuss these issues.

Yours sincerely

ELIZABETH RICHARDS
Head of Legal and Policy

¹ Section 14 of the Estate Agency Act (1979).

Property Professionals and the Money Laundering Regulations (2007)

ANNEX

Estate Agents

National Association of Estate Agents and Institute of Commercial Business Agents

Money Laundering Regulations 2007

Residential and commercial sales agents must comply with the Money Laundering Regulations 2007, including undertaking customer due diligence on their clients², who are very likely to be sellers of property. As buyers are unlikely to be estate agents' clients it is unlikely they will have been subject to customer due diligence by the agent.

Pooled Accounts

It is highly likely that the majority or all of funds in estate agents' pooled accounts belongs to buyers³.

Conclusion

Estate agents are unlikely to have undertaken customer due diligence on the beneficial owners of the funds held in their pooled accounts.

Auctioneers

National Association of Valuers and Auctioneers

Money Laundering Regulations 2007

Auctioneers must comply with the Money Laundering Regulations 2007 as they fall within the statutory definition of an estate agent. Auctioneers must undertake customer due diligence on their clients, who will usually be the sellers of real property or chattels being auctioned. However, on occasion auctioneers may also act for buyers, e.g. a auction house may be instructed by a buyer to make a proxy bid at a live auction which the buyer does not attend themselves.

Chattels auctioneers may come within the definition of a High Value Dealer in ML Regulation 3 (12) if they receive, in respect of any transaction, a payment or payments in cash of at least 15000 euro.

Pooled Accounts

If a buyer's bid is successful they are commonly required to instantly provide a deposit or the full purchase and these funds are handled by the auctioneer. These funds may be paid into a client account held by the auctioneer, or alternatively after initial receipt by the auctioneer the funds may be paid to the seller or to the sellers' solicitor.

² Although ML Regulation 5 refers to customers, agents tend to describe the party who instructs them as their client, and they tend to use the term customer to describe both the party who instructs them and counterparties.

³ Deposit funds belong to the buyer until contracts are exchanged, even if the funds are transferred to the sellers' solicitor before this stage is reached.

Conclusion

Auctioneers are unlikely to have undertaken customer due diligence on the beneficial owners of the majority of the funds held in their pooled client accounts. An exception to this would be in circumstances when a chattels auctioneers who is a High Valuer Dealer acts for a buyer as in this situation the auctioneer would undertake customer due diligence on the buyer who may pay them funds held in the auctioneers' pooled account.

Lettings Agents

Association of Residential Lettings Agents

Money Laundering Regulations 2007

Neither lettings agents nor landlords come within in the scope of the Money Laundering Regulations 2007 as a result of their core business of letting properties. However both may come into the scope of the Money Laundering Regulations as a High Value Dealer in ML Regulation 3 (12) if they receive, in respect of any transaction, a payment or payments in cash of at least 15000 euro.

Pooled Accounts

The funds held in lettings agents' pooled accounts may have a range of beneficial owners, but we anticipate that the majority will be owned by tenants. These tenants may have been subject to a restricted form of due diligence by the agent, such as referencing to ensure credit worthiness.

Conclusion

Lettings agents are unlikely to have undertaken customer due diligence on the beneficial owners of the majority of the funds held in their pooled accounts.