Christopher Convey

When is Enhanced Due Diligence (EDD) required to be untaken upon an existing client?

That was the central question in a recent case brought by the Solicitors Regulatory Authority (the SRA) before the Solicitors Disciplinary Tribunal (the Tribunal) in relation to the 2007 *Money Laundering Regulations* (the *Regulations*), *SRA v Morris & CANDEY*.[1] The SRA claimed that the Respondent firm had failed to undertake the required EDD in respect of its client upon being informed that it was due to receive substantial funds (£24m) into its client account in June 2015. The monies were the proceeds of an arbitration award and Court proceedings in the Middle East. The SRA alleged that the firm had committed three separate breaches of the *Regulations* and as a result breached the solicitor's Code of Conduct. A former partner of the Respondent, Richard Morris, admitted, breaching the Regulations and to also permitting the firm's client account to be used as a banking facility. The firm were not charged with the latter contravention.

The hearing of the charges before the Tribunal took place between 13 and 17 May 2024. The Tribunal heard evidence from the SRA's investigator, Mr Morris and three of the firm's partners including the partner who served as its MLRO and MLCO. The Tribunal issued its full judgment on 13 January 2025.[2]

The client on whose behalf Mr Morris was acting had been introduced to firm in 2014 by another partner in the firm. The client, Company A, operated the family office of Person C. Person C had previously been in a relationship with Person F. Person F was a convicted fraudster, having been earlier involved in a multi-million pound fraud. Person F provided input into the affairs of Client A, but did not provide instructions to Mr Morris or the firm. Following the settlement of litigation in Qatar and Saudi Arabia, the firm received approximately £24m into its client account. The monies were subsequently defrayed to a number of different payees. The SRA alleged that both Mr Morris and the firm were obliged to apply EDD prior to receipt of the client monies and in failing to do so had breached the *Regulations*. In support of its allegations against the firm and its former partner, the SRA further alleged that there had been a failure to obtain adequate source of funds information.

Whilst Mr Morris admitted a breach of the *Regulations* the firm denied the allegations against it and asserted that it was not under an obligation to apply EDD measures or to cease dealing with the client's funds in the absence of such measures being satisfied.

As noted by the Tribunal, this was not a matter in which the application of EDD measures was mandatory, such as in the case of a politically-exposed person.[3] Where EDD measures are not mandatory, the Regulations require their application on a case by case basis, determined as a question of fact for each transaction, applying a risk-based approach. It is only where the assessed risk of money laundering requires it that EDD should be carried out.[4] To do otherwise is to improperly hamper the ordinary course of business – the very thing that the risk-based approach is designed to prevent.

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[1] https://solicitorstribunal.org.uk/case/12515/

[2] Case No. 12515-2023

[3] Judgment, §27.33

[4] §30.23-30.24

The firm's case was that the SRA, in asserting that EDD should have been applied, had considered factors that were not relevant to a risk of *money laundering*, namely the size of funds, the fact that the funds were coming from abroad, the fact that the funds derived from litigation in which the firm was not instructed and the admission of Mr Morris in interview that, in hindsight, *he* believed that EDD should have been applied.[5] Whilst it had considered the association of Client A to Person F, that was a solitary factor and not one that, on its own, could justify the application of EDD measures. Whilst Mr Morris had raised concerns with colleagues in the firm, he had not raised any concerns with the MLRO. He had only raised concerns in conversation with a different partner in the firm about the fact of sizable funds arriving from Qatar, a jurisdiction unfamiliar to him. He did not raised concerns as to the funds being the proceeds of criminal conduct.[6] There was therefore no basis upon which the firm should have applied EDD measures or have failed for not so doing. It was also to be noted that had there been any perceived risk of money laundering on the individual's part he had not made a report to the firm's MLRO.

Giving its ruling on 27 September 2024, the Tribunal agreed with the argument of the firm that there was no evidence upon which to conclude that Mr Morris had sought to alert the firm that he had concerns about *money laundering*. As such, there was no basis for the firm to have a suspicion of money laundering or to trigger EDD measures. The source of funds information obtained by the firm prior to receipt of funds was adequate. [7]

The Tribunal dismissed all of the charges against the firm and the two money laundering related charges against Mr Morris. Whilst it noted he had admitted those charges, it found that it was not bound by them and, further noting that Mr Morris had represented himself, it concluded, on the basis of the submissions made on behalf of the firm, that the charges against him should also be dismissed.[8]

His admission to the charge of permitting the firm's account to be used as a banking facility was found to be properly made and remained.[9]

The Tribunal's decision highlights the importance of considering the purpose and aim of anti-money laundering regulations – to prevent money laundering and to address the situation where funds are known or suspected to be derived from criminal conduct.

The SRA's case failed to properly assess the type and level of risk that existed at the time and applied a blanket, rather than risk-based approach to the measures it claimed were required to satisfy the *Regulations'* requirements. As the Tribunal found, the application of EDD can only be justified, on a risk-based approach, where the risk factors present *require* it to be carried out.

Christopher Convey was instructed on behalf of the firm.

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[5] §30.31
[6] §27.40 & §30.35
[7] §27.42-27.43
[8] §27.44
[9] §28.10