

Introduction to Anti Money Laundering

What is the purpose of AML?

AML is mainly about making the commission of crime harder by making it more difficult and complicated to do anything with the proceeds of that crime. It also gives the authorities a second chance to detect crime as they don't have to detect the crime itself and can follow the trail of money.

Some crimes generate a huge amount of cash and this can in itself become a problem. In the classic days of the Columbian drug cartels the large amounts of cash and US limits on its use made the conversion of that cash into funds which could be used easily very difficult. As a result as much as 10% of the money being made was lost every year just by being eaten by rats while in storage. This is an extreme example but demonstrates how effective money laundering control can substantially reduce the value of committing the crime in the first place. While the vast profits from drug dealing make these losses acceptable other offences have far more modest profits and so losing the benefit of the money is more problematic.

AML legislation also allows for money to be taken by the state if they can show it is earned by criminality. If someone has been convicted of multiple serious offences which lead to financial gain then very little evidence needs to be provided and the individual will then need to prove that all money they have is legitimate.

In some cases AML compliance can be very concerning for professionals. This is because all money is comingled. There is no concept of a person having some "clean" money and some "dirty" money. Once some of your money is tainted all of it is at risk. This is a particular problem for pooled client accounts and situations where money from multiple people is held together.

For professionals AML compliance is largely about risk. There is no expectation that you will actively detect and prevent all crime, or indeed any crime at all. Your role is to assess and control risk and put obstacles in the way of criminals. However, that does not mean that there is not risk. AML is very important in the property sector because the laundering of criminal funds is rife in relation to property. A great deal of money invested in UK property comes from illicit sources and therefore it is important to take it seriously.

AML and the Proceeds of Crime Act

There are actually two linked pieces of legislation in the AML space. The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (AML Regs) and the Proceeds of Crime Act 2002 (POCA)

The AML Regs generally derive from EU Directives but are now enshrined in UK law. There have been several EU Anti Money

Laundering Directives. The UK formally adopted all of these up to and including the 4th one (4MLD). Although we did not formally adopt the 5th AML Directive as we were leaving the EU the UK in fact largely complies with it anyway. How the UK will deal with the 6th directive remains to be seen but we will likely need to do something as the EU considers AML compliance to be a key issue among its trading partners. Therefore compliance with 6MLD is likely to be a requirement to keep trading with the EU especially in relation to financial services.

POCA is not based on EU legislation and is a UK derived Act. However, the UK is a leader in AML legislation and countries also have a great deal of international cooperation in these areas and so our regime is very similar to that used by other countries.

The AML regs are mainly focused on risk assessment and proper identification of individuals. They require the proper risk assessment of regulated businesses and of individual clients and also mandate the carrying out of proper client due diligence. POCA by contrast is more focused on not being involved in ML activity and also sets up the suspicion reporting process. Specifically, it makes it an offence to conceal, convert, transfer or disguise criminal property or to remove it from the UK. It is also an offence to be involved in an arrangement which facilitates the acquisition, retention, use or control of criminal property.

It is not a requirement of POCA that someone is aware of their involvement in unlawful money laundering activity. It is enough that a reasonable person would have been suspicious of the activity.

The AML Regs and POCA are obviously closely connected but they are also separate. So not everyone is covered by the AML regs. For example, letting agents who are not involved in high value lettings do not fall within its ambit. However, everyone is covered by POCA and it's always an offence to launder criminal funds in a situation where you were, or should have been, aware that they were derived unlawfully.

Agents are often blind to risk, especially if they are from smaller firms or from firms in more rural areas. They think that they are too small to be of interest to money launderers or that their clients are more likely to be clean. This is the wrong approach. Money launderers look for smaller firms in the expectation that their business will be worth more to the firm and so they will want to avoid asking hard questions. Money launderers will often seek to build friendly relationships with legitimate small-scale transactions before then seeking to use the fact that they are "known" to support more questionable transactions.

The Key Principles

The core aspects of AML work are:

- Considering the risk profile of the firm
- Considering the risk of each client as against the firm risk profile
- Carrying out appropriate ID checks
- Checking for politically exposed persons (PEPs) and treasury sanctions
- Considering the source of funds
- Reporting suspicious activity where necessary

The AML Regs only apply to lettings agency in relation to higher value properties. These are where the rent is over €10,000 pcm. That is about £8350 at the current exchange rate. However, this includes wherever that figure is exceeded for a significant part of the tenancy. So, it will not matter if it is below €10,000 for the entire time except for a few days due to an exchange rate fluctuation. But consideration will need to be given to rent increase clauses and renewals and the risk of tenancies that are fractionally below the threshold moving above it for an extended. In practice, this means that tenancies over about £7500 pcm are likely to need to be dealt with as if they were within the AML Regs.

Also remember that POCA applies to all lettings agency, even if the AML Regs do not.

When to do ID checks

AML checking should be done before a business relationship is formed. When dealing with vendors or landlords this is easy. Checks should be done before signing a terms of business and entering into a business relationship.

For purchasers and tenants it is a bit more complex. For a purchaser the AML Regs have decreed that the business relationship is formed when an offer is taken by the agent and passed to the vendor. For letting agents AML only applies to high-value properties. Prospective tenants must definitely be checked for AML purposes before a tenancy is entered into. However, HMRC guidance demands the checks at an earlier stage. This has been subject to some variation. At one stage HMRC were saying that AML checks had to be done before any money, including a holding deposit was taken from a tenant. They seem to be dialling this back now and saying it is something that must be done as a part of the overall referencing process. ie. AML ID checks can be done alongside taking a holding deposit and conventional referencing. Provided that the transaction is low risk and it is being done with the rest of the reference this is acceptable.

Suspicion Reporting

POCA rules rely heavily on the concept of suspicion of unlawful money laundering activity and the reporting of it. Where you have a reasonable suspicion of money laundering it must be reported to your internal money laundering officer. All regulated businesses must have one.

Once you have reported it then you have done what you are required to do. It is then the responsibility to the designated officer to make a report to the NCA if they think it right to do so.

The test for suspicion is not whether you as an individual were suspicious. The test is whether a reasonable person in possession of the facts would have had a suspicion. If they would then you should too. This does not require you to play detective and is not a justification for prejudice but it also does not allow you to turn a blind eye to things that should have been looked into. Suspicion is where you have a reasonable concern that things are not quite right. Whether with the ID being proffered or the provenance of funds or some other aspect. Hesitancy over ID, strange ID, lack of explanation for funds, or refusal to explain where funds are coming from are all things that should raise suspicion.

Summary

The core aspects of AML work are:

- AML matters. It helps detect crime and reduces the value of committing it.
- Nobody can truly say that they are not at risk. If they do then they are not fully understanding and fulfilling their obligations.
- All estate agents and some letting agents have clear responsibilities under the AML regimes.
- Suspicion is a key part of AML detection. You must be alert for suspicious scenarios and be aware of how and to whom to report them.