Joint Money Laundering Steering Group proposed Pooled Client Accounts piece within Part I

Chapter 5

Response from Propertymark

June 2020

Background

1. ARLA Propertymark is the UK's foremost professional and regulatory body for letting agents, representing over 9,500 members. ARLA Propertymark agents are professionals working at all levels of letting agency, from business owners to office employees.

2. NAEA Propertymark is the UK's leading professional body for estate agency personnel, representing more than 11,000 offices from across the UK property sector. These include residential and commercial sales and lettings, property management, business transfer, auctioneering and land.

Feedback

Definition

3. Propertymark agrees that the definition of a Pooled Client Account is a bank account opened with the firm by a customer to administer funds that belong to their own clients.

4. We also agree that there are two primary vectors of risk. Firstly, when the customer's clients misuse a Pooled Client Account without the knowledge of the customer. Secondly, when the customer is complicit in using its Pooled Client Account for Money Laundering and Terrorist Financing purposes, either willingly or under duress.

Purpose

5. Whilst not directly linked to this area of guidance as a whole, we believe that section 1.2 Purpose should reference two pieces of legislation that effect the work of letting agents and be added to the list of information that firms[1] may need to establish. Firstly, the Money Laundering and Terrorist Financing (Amendment) Regulations 2019[2]. Secondly, Client Money Protection rules. Under the Money Laundering Regulations the scope of regulated businesses in the property agency sector was expanded in January 2020 to only include the letting agency sector for high value transactions with a monthly rent of 10,000 euros (or equivalent amount) or more, whereas all letting agents in England, Wales and Scotland must adhere to Client

[1] In our response, firms mean financial institutions, such as banks and building societies that provide client accounts.

[2] http://www.legislation.gov.uk/uksi/2019/1511/contents/made

Money Protection rules.[3] Within the current framework for Pooled Client Accounts letting agents find it very difficult to open client accounts with no legal requirement for all letting agents to register with HMRC for Anti-Money Laundering Supervision. This makes it very difficult for letting agents to adhere to the Client Money Protection rules. Furthermore, the Client Money Protection providers require client accounts to safeguard themselves in the event a business goes into administration, but the client account remains intact. This is important because the bank or administrators can offset the businesses' losses from client funds in a business account but cannot if the funds are in a client account. This increases the risks to the Client Money Protection schemes and therefore the schemes will only accept agents with the client funds held in Pooled Client Accounts. Unless these regulations are explicitly stated in the guidance, we are concerned that firms will continue to be unable to distinguish between those letting agents who need to comply with Anti-Money Laundering requirements and all letting agents who are required to comply with the Client Money Protection rules. This must be made clear to firms so they can distinguish between these two regulations whilst taking reasonable measures to establish and document the purpose of the Pooled Client Accounts.

Risk Assessment

6. Under 1.3 Risk Assessment and bullet point one, clarification is needed on the 'government schemes' the guidance is referring to. For letting agents, we understand this to mean a government-approved Tenancy Deposit Scheme[4] or a government-approved Client Money Protection scheme.[5] However, under the requirements of the Client Money Protection rules, the client account should include unprotected deposits, such as those not registered or those that fall outside of the requirement to be registered. To provide greater clarity for firms and increase their knowledge of letting agents as customers, 'government schemes' should be clarified in the guidance document.

7. Under 1.3 Risk Assessment and bullet point two, this should reference the requirement for letting agents in England, Scotland, and Wales to belong to a Client Money Protection scheme under 'domestic' or 'used for activity that is not within the scope of the ML Regulations.' We know from our members that because all letting agents are not in the regulated sector for Anti-Money Laundering, firms have been reluctant to offer client accounts due to the perceived risks. However, under the Client Money Protection rules, letting agents need to open client accounts in order to comply. Greater detail contained in this guidance will ensure letting agents can open accounts and firms can apply appropriate due diligence.

[3] https://www.gov.uk/client-money-protection-scheme-property-agents
[4] https://www.gov.uk/tenancy-deposit-protection
[5] https://www.gov.uk/client-money-protection-scheme-property-agents

Written Agreement

8. Due to the General Data Protection Regulations we are concerned about the requirements from firms for 'customers to agree to provide, upon request, information on the identity of the owners of the funds held in the Pooled Client Account.' This will impact letting agents in two ways. Firstly, it will impact on the wording in tenancy agreements. Secondly, it will impact on the Terms of Business between letting agents and landlords. We believe this section of the guidance should be reviewed to reflect the workings of the private rented sector and how they interact with data protection rules.

Due Diligence

9. Under section 1.5 Due Diligence, the wording at bullet point two is too broad and does not reflect the current legislative environment that letting agents are operating in. The guidance is asking letting agents to carry out Customer Due Diligence to the level as set out in the Money Laundering Regulations when all letting agents are not legally required to do so. There are three solutions. Firstly, the guidance must outline to firms the distinction between regulated and non-regulated letting agent businesses for Anti-Money Laundering supervision. Secondly, the guidance must outline to firms that for those letting agents not regulated for Anti-Money Laundering supervision it is only best practice that they carry out due diligence on all their customers. Consequently, many letting agents will not be able to 'sufficiently enhance their practices so that the firm is satisfied that the customer can provide, upon request, evidence of the identify of the owners of funds in the Pooled Client Accounts.' Thirdly, whilst the current legislative framework means that a majority of letting agents do not fall within the regulated sector for Anti-Money Laundering supervision they must be deemed as low risk customers. Unless these changes are made firms will not receive the reassurances they need in order to know that the checks are being policed correctly and where the money is coming from.