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# ANTI-MONEY LAUNDERING FAQS FOR ESTATE AGENTS



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This FAQ has been created to provide guidance to companies which subscribe to the LonRes network.

This document contains our high level opinion in respect of anti-money laundering obligations imposed upon estate agents by the Money Laundering Regulations 2007 and other relevant legislation. This note is not intended to be an absolute statement of the legal position which may apply in a given situation. Where a specific set of circumstances arise, legal advice should be obtained.



# 1. GENERAL

## 1.1 What is the purpose of the Money Laundering Regulations 2007 (“MLR”)?

The MLR set out what relevant businesses, such as estate agents, must do to prevent their services from being used for money laundering or terrorist financing purposes.

The MLR came into effect on 15 December 2007 and have subsequently been amended.

## 1.2 What is customer due diligence (“CDD”)?

Regulation 5 MLR defines CDD as:

- identifying the customer and verifying the customer’s identity on the basis of documents, data or information;
- identifying any beneficial owner and taking adequate measures, on a risk sensitive basis, to verify the identity of any beneficial owner; and
- obtaining information on the purpose of a business relationship.

CDD must be applied when a relevant business establishes a business relationship, carries out an occasional transaction, suspects money laundering or terrorist financing and/or doubts the veracity of documents/information previously obtained. The identity of the customer must be verified prior to an occasional transaction being carried out or before the establishment of a business relationship. However, CDD can be carried out during the establishment of a business relationship if this is necessary in order to not interrupt normal course of business and there is little risk of money laundering/terrorist financing.

The level of CDD to be carried out should be determined by each business, using a risk based approach.

## 1.3 What is a beneficial owner?

Regulation 6, MLR defines a beneficial owner as:

- in the case of a body corporate/partnership – any individual who owns/controls more than 25% of the shares or voting rights/capital or profits, and/or any individual who exercises control over management;
- in the case of a trust – any individual who is entitled to a specified interest in at least 25% of the capital, the persons whose main interest the trust is set up and any individual who has control over the trust;
- in the case of an estate of a deceased person – the executor or administrator; and
- in any other case, the individual who ultimately owns or controls the customer or on whose behalf a transaction is being conducted.

## 1.4 What are Senior Managers' responsibilities?

Senior management is responsible for ensuring that their firm has appropriate processes and procedures in place to reduce the risk of being used for the purpose of money laundering and for ensuring that the requirements of the MLR are complied with.

Senior managers include the following roles:

- director;
  - senior manager;
  - company secretary;
  - chief executive;
  - member of the management committee or someone who carries out those functions; and
  - any partner in a partnership or a sole proprietor.
- Policies and procedures should address the level of risk a business may encounter in different circumstances and, when high risks are identified, senior managers must take extra measures and consider whether to report suspicious activity.

## 1.5 What are the consequences of not carrying out CDD?

Breaching various requirements of the MLR is a criminal offence which can result in unlimited fines for companies and fines and/or a term of imprisonment of up to two years.

Companies subject to the MLR can also be imposed with civil financial penalties for breaches of the MLR.

## 1.6 What is a risk based approach?

A risk based approach assesses the risks that a business may be used for money laundering or terrorist financing, and puts in place appropriate measures to reduce and manage those risks. Such measures should take the form of policies and procedures which are communicated to all staff.

The approach taken by businesses to the risk of money laundering will vary across each firm, as the risks faced by each firm are likely to vary depending on the customers they have, the location they operate in and the value of transactions they are undertaking.

## 1.7 What are some warning signs of suspicious activity?

### New customers

- checking the customer's identity is difficult;
- the customer is reluctant to provide details of their identity or provides fake documents;
- no apparent reason for using a business's services - for example, another business is better placed to handle the size of the transaction or the location of the property;
- part or full settlement in cash or foreign currency, with an inadequate reason for this provided; and
- the property value does not fit the customer's profile.

### Regular and existing customers

- the transaction is different from the normal business of the customer;
- the size and frequency of the transaction is different from the customer's normal pattern;
- the pattern has changed since the business relationship was established;
- there has been a significant or unexpected improvement in the customer's financial position; and
- the customer cannot give a proper explanation of from the source of their funds.

### Transactions

- a property has multiple owners or is owned by nominee companies;
- the sale price is significantly above or below market value;
- unusual requests to expedite transactions unnecessarily;
- a sudden or unexplained change in ownership;
- a third party, apparently unconnected with the customer, bears the costs, settles invoices or otherwise pays the transaction costs;
- unusual involvement of third parties, cash gifts, or large payments from private funds, particularly where the buyer appears to have a low income;
- being asked to hold a big sum in a client account, then refund it to the same or a different account;
- proceeds of a sale or rental sent to a high risk jurisdiction or unknown third party;
- unusual source of funds, for example complex loans or unexplained charges; and
- the owner, landlord or builder is not complying fully with their legal obligations, perhaps to save money.



## 2. ESTATE AGENTS

### 2.1 Why are estate agents required to comply with the Money Laundering Regulations 2007?

Estate agents are defined as “relevant persons” under the MLR and therefore must comply.

For the purposes of the MLR, HMRC is the supervisory body for estate agents. All estate agents should, therefore, be registered with HMRC.

Estate agents can register by completing an MLR100 form which can be found on HMRC’s website.

### 2.2 Who should an estate agent (principal and sub-agents) carry out CDD on?

All estate agents must carry out CDD on their customers and the beneficial owners of their customers.

Where an estate agent is acting as a principal agent the seller/purchaser is the customer and should be subject to CDD (identification and verification). If the customer is a corporate entity/partnership/trust then it will also be necessary to identify the customer’s beneficial owners.

Where an estate agent is acting as a sub-agent, the “customer” is the principal estate agent and, therefore, all sub-agents should carry out CDD on the principal agents that they work with. This will include verifying the identity of the company and identifying its beneficial owners, which will include shareholders who own 25% or more of the shareholding in the company.

In the case of a sub-agent, the seller (who is the customer of the principal agent) is also deemed to be a beneficial owner of the principal agent. This is because the seller is the individual who ultimately controls the customer and/or on whose behalf a transaction is being conducted. As such, all sub-agents should take steps to identify the underlying seller/purchaser. Please see question 2.4 below.

If a sub-agent has contact with the principal agent’s customer, the sub-agent may need to treat the seller or purchaser as a customer, rather than a beneficial owner. This is important to keep in mind because the MLR requires verification of all customers’ identities, whilst verification of the identity of beneficial owners is dependent on an assessment of the level of risk.

### 2.3 What information and documentation should an estate agent obtain?

The level of CDD which needs to be carried out will depend upon the risks involved in any given transaction, Estate agents should, however, identify customers and verify their identities using independent, reliable sources.

#### Identifying private individuals as a customer or beneficial owner

Where the customer of an estate agent is a private individual, the estate agent must obtain the individual’s full name, residential addresses and date of birth.

If the customer’s identity is to be verified by documents, original documents should be seen and photocopies should not be accepted, unless validated as described below.

Documents which should be accepted to verify an individual's identity should be a government issued document such as:

- a valid passport;
- a valid photo card driving licence;
- a national identity card;
- a firearms certificate; or
- an identity card issued by the Electoral Office for Northern Ireland.

Where the customer does not have photo ID a second document should be obtained which details the customer's name and either their address or date of birth.

Alternatively, if the risk of a particular business permitted it, electronic checks could be carried out in order to verify a customer's identity. There are a number of suppliers who can provide electronic verification. Where a customer is not a resident of the UK and there are concerns in relation to the authenticity of the identity document, the relevant embassy or consulate should be contacted.

If documents are in a foreign language, the estate agent must be satisfied that they do in fact provide evidence of the customer's identity.

### **Identifying organisations as customers or as beneficial owners**

For corporate customers, partnerships, trusts, charities and sole traders, identity information that is relevant to that entity must be obtained. The nature of the CDD carried out will depend upon the type of customer.

Estate agents should obtain the full name of the company, company registration number, registered address and country of incorporation.

For private or unlisted companies the names of all directors (or equivalent) should also be obtained.

Estate agents must verify the identity of the organisation through reliable, independent sources that are relevant to that type of entity. For example:

- searching a relevant company registry;
- confirming a company's listing on a regulated market; or
- obtaining a copy of the company's certificate of incorporation.
- It will also be necessary to establish the beneficial owners of customers who are organisations. As such, the names of individuals who own or control 25% or more of its shares or voting rights must be obtained. In the case of a sub-agent it is also necessary to identify the identity of the underlying seller/purchaser.

## **2.4 When should an estate agent (principal and sub-agents) carry out CDD?**

Estate agents are required to carry out CDD when they establish a business relationship, carry out occasional transactions (worth €15,000 or more), suspect money laundering and when there are doubts about previously obtained customer identification information.

Where an estate agent acts as a principal agent, they must carry out CDD on their customers at the point which they are instructed.

In the case of sub agents, the position is less clear. All sub-agents are required to carry out CDD (identify and verify the identity) on principal agents which they work with and this should be done prior to entering into an agency agreement and before the first instruction is received.



As detailed above, sub-agents are also required to carry out CDD in respect of beneficial owners of the principal agent. They must take steps to identify beneficial owners, which includes the underlying seller. Whether or not the identity of the beneficial owners needs to be verified is a matter for each firm, taking into account the risk associated with any given transaction.

Sub-agents, when carrying out CDD on the principal agent, should also identify all shareholders/partners who own or control 25% or more of the shareholding/voting rights in the business.

The underlying seller (i.e. the customer of the principal agent) is a beneficial owner of the principal agent and as such, sub-agents will have to take steps to identify the seller. However, in our opinion, there is an argument that CDD on the principal agent's customer need not be carried out until there is an offer made and accepted in respect of a property.

In our opinion, it is not until an offer is made and accepted on a property that the sub-agent enters into an occasional transaction which involves the underlying seller acting as a beneficial owner of the principal agent. At this point the requirement to carry out CDD on the seller would arise. Assuming that there is no contractual relationship or direct communication between the sub-agent and the underlying seller, merely arranging viewings of a property is not enough, in our opinion, to constitute an occasional transaction or an on-going business relationship. We note that HMRC may take a different view to us in respect of interpreting the legislation. Should any agent have any specific concerns raised by HMRC they should seek legal advice.

We also note that regulation 7(3) MLR states that a person subject to the MLR must:

*“determine the extent of CDD measures on a risk-sensitive basis depending on the type of customer, business relationship, product or transaction and be able to demonstrate to [HMRC] that the extent of the measures is appropriate in view of the risk of money laundering and terrorist financing.”*

It is important to note that the MLR were implemented in order to prevent money laundering and terrorist financing. In our opinion there is, generally speaking, no potential risk of money laundering or terrorist financing until there is a transaction taking place which involves the passing of money between individuals/entities. Again, arranging a viewing of a property as a sub-agent does not generally involve a risk of money laundering. However, should a sub-agent have any suspicion regarding a property then we would recommend that CDD on the underlying seller is undertaken at a much earlier stage.

Once an offer is made and accepted on a property, the sub-agent must conduct CDD on the seller as a beneficial owner of the principal agent by identifying the underlying seller. This means that they should at least obtain their name, date of birth and address and we understand that such information would typically be provided within a memorandum of sale which the principal and sub-agent exchanges. Whether the identity of the underlying seller needs to be verified, using documents or electronic means, will depend on the risk associated with the transaction.

Notwithstanding our comments above, the requirement to carry out CDD is very much based on the level of risk associated with any business relationship and transaction. All estate agents should consider their customer and transaction profiles in order to determine the appropriate level of CDD which should be carried out. There is no one single approach which can be uniformly applied by all estate agents as the measures taken by each firm must be dependent on the risks identified. As such, sub-agents may wish to consider whether it is possible for them to obtain the information in respect of the underlying seller at an earlier stage, if it is warranted.

Ongoing CDD should be carried out on existing customers depending on the risks assessed. Therefore, sub-agents should ensure that the CDD carried out on principal agents is regularly reviewed and updated.

## 2.5 Is a principal agent permitted to provide the seller's name, address and date of birth to a sub-agent or are there data protection considerations?

The principal estate agent is only permitted under the Data Protection Act 1998 ("DPA") to provide this personal information to a sub-agent where fair notice (to the affected individuals) is satisfied and where there is a lawful reason for that provision of personal data to a sub-agent. Absent this there is risk to the principal agent under that legislation.

Estate agents will be considered to be 'data controllers' in respect of personal information they hold relating to the seller for MLR CDD purposes (e.g. names, addresses, dates of birth etc.) because estate agents process this information for their own purposes (i.e. to comply with their legal obligations).

As data controllers, estate agents must provide fair notice to the affected individuals (e.g. the homeowner(s) / seller(s) of the property) before providing their personal data (as above) to a sub-agent. Typically, this would be addressed in data privacy notices on websites and/or in hard copy and supplied to those individuals when they first submit their personal data to the estate agent. The same point applies to any personal data about officers and shareholders of the estate agent whose personal data may be shared with the sub-agent

As data controllers, estate agents must ensure that any disclosures of personal information are made 'lawfully' in compliance with the first principle of the DPA. The most relevant legal justifications that estate agents may seek to rely on to demonstrate compliance with this requirement are:

- that the relevant data subject(s) has consented to the disclosure of their personal data for the purposes of assisting sub-agents to comply with their MLR CDD obligations. Such consent must be freely given and be specific and informed. A general consent statement in terms and conditions is unlikely to be considered valid; and/or
- that the disclosure is necessary for the legitimate interests of the estate agent and the relevant sub-agent, except where the disclosure is unwarranted because it is prejudicial to the individual. Adequate safeguards should be put in place to limit disproportionate processing (e.g. to limit the volume of data shared to that which is strictly necessary, and to ensure the data is secure) and to minimise any undue impact on the data subject(s)

## 2.6 Who should estate agents not accept as customers?

Estate agents should not deal with, or accept as customers, persons or entities it cannot carry out CDD on, or if the results of CDD are unsatisfactory.

Furthermore, if an estate agent cannot comply with ongoing CDD, it must terminate any existing business relationship with the customer and consider whether to make a suspicious activity report ("SAR").

Estate agents must not deal with persons or entities which are subject to financial sanctions imposed by either the United Nations, European union or the UK. As such, all agents should have in place, procedures to ensure that funds are not received from, or made available to, any individual or entity which has been designated pursuant to financial sanctions.



## 3. THE EU FOURTH MONEY LAUNDERING DIRECTIVE

### 3.1 What is the EU Fourth Money Laundering Directive (“4th MLD”) and how will it change the current position?

The 4th MLD implements a number of key changes, including bringing letting agents within scope of anti-money laundering legislation.

Chapter 2 of the 4th MLD deals with CDD and reiterates the importance of identification, the ongoing scrutiny of transactions and the risk sensitive nature of the CDD exercise.

Article 25 of the 4th MLD states that member states may permit “obliged entities”, which include estate agents, to rely on third parties (including other estate agents) to carry out CDD. This will permit sub-agents to rely on principal agents to carry out CDD, where the principal agent gives consent to being relied upon.

Principal agents will, once the changes come into effect in the UK, be able to certify to sub-agents that they have conducted CDD on the underlying seller/purchaser. However, the sub-agent will remain ultimately liable for CDD compliance. It will be a matter for sub-agents to determine whether, given the CDD they have carried out on the principal agent and their knowledge of the transaction in question, whether it is comfortable and confident in relying on the CDD carried out by the principal agent on the seller/purchaser.

### 3.2 When will the Fourth Money Laundering Directive come into effect in the UK?

All EU Member States are required to bring into effect domestic legislation to comply with the 4th MLD by 26 June 2017. The amendments detailed at 3.1 above will not come into effect until the UK government legislates accordingly.



## 4. PROCEEDS OF CRIME ACT 2002 (“POCA”)

### 4.1 What are the principal money laundering offences?

The principal money laundering offences include:

- concealing, converting and transferring criminal property ;
- entering into, or becoming concerned in, an arrangement which a person knows or suspects facilitates the acquisition, retention, use or control of criminal property ;
- acquiring, using and having possession of criminal property ;
- failing to disclose (in the regulated sector) where a person knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering ; and
- tipping off ..

### 4.2 What reporting obligations do estate agents have under POCA?

If any employee knows, suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering they must report this knowledge or suspicion to the nominated officer within the estate agent. Failure to make such a disclosure is a criminal offence. Estate agents should, therefore, have procedures in place for such reporting to take place.

Where a report is made to a nominated officer, it is an offence for that person to fail to make an external SAR to the National Crime Agency (“NCA”) where they know or suspect (or have reasonable grounds for knowing or suspecting) that another person is engaging in money laundering.

These obligations only arise where information comes to a person in the course of business.

### 4.3 How should a SAR be made?

SAR's should be submitted online at [www.nationalcrimeagency.gov.uk](http://www.nationalcrimeagency.gov.uk)

#### **4.4 What is “tipping off” and why do estate agents have to be concerned about it?**

Tipping off (s. 333A POCA) is where a person (including any employee) discloses to another that either an internal or external SAR has been made or that an investigation in respect of money laundering is taking place and that disclosure is likely to prejudice an investigation that may take place.

Tipping off is a criminal offence with a maximum penalty of 2 years imprisonment and/or a fine.

#### **4.5 A customer or principal agent may become concerned if a sub-agent starts to ask too many questions regarding the identity of a seller and the source of funds. Would refusing to proceed with the transaction until this information has been obtained constitute a “tipping off” offence?**

A sub-agent must be satisfied that it has conducted adequate CDD. In addition, the offence of tipping off is only committed in the circumstances detailed at 4.4. These criteria are unlikely to be met in these circumstances as a SAR is unlikely to have been submitted at this point. However, if a sub-agent is unable to satisfactorily complete CDD on a customer or beneficial owner, it should consider whether a SAR should be submitted to the NCA.

Where an agent has any specific concerns regarding tipping off, legal advice should be sought.

#### **4.6 What steps can estate agents take to avoid “tipping off”?**

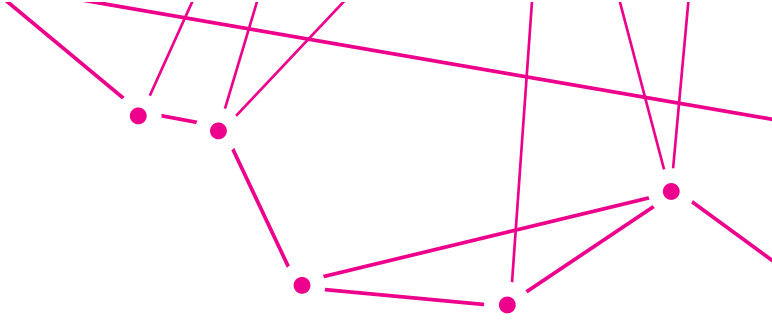
Estate agents should never disclose the existence of a SAR to a third person if they know or suspect that this disclosure is likely to prejudice the investigation.

Best practice would be to avoid contact with the subject of the SAR until consent is received from either the internal nominated officer or the NCA (if an external SAR has been submitted). If this is not possible, estate agents should act normally whilst not acting on the customer’s behalf until the SAR

Nothing in POCA prevents an estate agent from making normal enquiries about their customers in order to decide whether to act for this customer. These enquiries would only constitute tipping off if agent discloses that a SAR has been made.

#### **4.7 Can an estate agent be held liable if they submit a SAR and a potential customer loses a sale or opportunity to purchase a property?**

Section 338(4A) of POCA explains that “where an authorised disclosure is made in good faith, no civil liability arises in respect of the disclosure on the part of the person by or on whose behalf is made”. Provided that the SAR is submitted in good faith, the estate agent would not be held liable for any losses incurred by a customer resulting from the SAR.



## 5. MISCELLANEOUS

### 5.1 What are the tax implications if an agent is shown a copy of trust deeds in the UK of the owner of an offshore trust?

It is unlikely that tax issues would arise by merely showing documents to an agent provided that the tax planning did not require the documents to stay outside of the UK (e.g. for stamp duty purposes) and provided further that the agent has no further duty to report any offshore trusts to HMRC.

If an individual has any concerns about bringing the documents into the UK and/or showing them to agent, they should seek advice from whoever put the tax planning in place.

### 5.2 Is the offering of commission by a principal agent to a sub-agent a breach of the MLR?

The MLR does not prohibit commission arrangements.



# LINKS

## HM Revenue & Customs

Money Laundering Regulations: Estate Agency Business registration  
[www.gov.uk/guidance/registration-guide-for-estate-agency-businesses](http://www.gov.uk/guidance/registration-guide-for-estate-agency-businesses)

Money Laundering Regulations 2007: Supervision of Estate Agency Businesses  
[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/321830/MLR2007.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/321830/MLR2007.pdf)

Money Laundering Regulations: Application for registration (MLR100)  
[public-online.hmrc.gov.uk/lc/content/xfaforms/profiles/forms.html?contentRoot=repository:///Applications/BusinessTax\\_iForms/1.0/MLR100&template=MLR100v5.xdp](http://public-online.hmrc.gov.uk/lc/content/xfaforms/profiles/forms.html?contentRoot=repository:///Applications/BusinessTax_iForms/1.0/MLR100&template=MLR100v5.xdp)

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