



Jersey Financial
Services Commission

Jersey Estate Agents Association Breakfast Briefing

Caroline Morgan
Sam Davison

International Standard

Under FATF Estate Agents are caught as DNFBPs:

- › Recommendation 28 – Regulation and Supervision of DNFBPs - Countries should ensure that the other categories of DNFBPs are subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements.



To cover...

- › Overview of sector and money laundering vulnerabilities, including mitigating factors
- › Recent JFSC work
- › Handbooks
and the future



Overview: Immovable Property Sector



47 estate agents registered with the JFSC



Small size of sector and domestic nature (very small number of off island property transactions)



Around 200 employees – 13,000 in financial services sector



Not all property activities are regulated for AML/CFT purposes – property developers, some letting agents and property managers



Overview: immovable property sector

Statistics (2018)



- › Property and land transactions value around £ 1.18 billion
- › Commercial share transfer value estimated to be around £ 200-300 million
- › 88% clients Jersey resident individuals

Overview: immovable property sector

- › 8% Jersey companies
- › 4% non Jersey resident individuals or non-Jersey companies or other vehicles
- › No clients with connections to enhanced risk states
- › No foreign PEPs



Money laundering vulnerabilities

- › Use of “informal reliance” – always need to know who is the ultimate buyer/seller (look through company vehicles)
 - › Knowing that the lawyer knows is not good enough
- › Commercial property share transfer transactions – no data to support size of sector, element of opaqueness regarding ownership
- › Commission based pay, may introduce pressures to close a sale



Money laundering vulnerabilities

- › Across the sector understanding of AML/CFT risk awareness is variable
 - › MER 2016 real estate agents and auditors
 - › Awareness was generally low
 - › Increase awareness raising and/or guidance



Mitigating factors

- › Almost all clients are met face to face
- › Almost all transactions involve at least one other supervised person (lawyer, lender)
- › No cash transactions
- › Population Office Regulation (CHWL)
- › Low level of international transactions



Thematic examinations

Recent work – risk-based supervision



- › The role of the money laundering reporting officer (MLRO) – evaluating the effectiveness of the MLRO



- › Property managers and letting agents – a discovery thematic



Money Laundering Reporting Officer

The role of the MLRO

- › Sample of 37 entities
- › Objective was to review and assess, where relevant, the following:
 - › Whether the MLRO had appropriate independence, sufficient seniority and authority in the business
 - › MLRO's assessment of internal SARs



The Role of the MLRO

- › The decision of whether or not to externalise a SAR was always documented properly
- › Relevant Person's governance, oversight and support of the MLRO
- › The effectiveness of the Relevant Person's internal control systems in respect of all the above



Key findings and conclusions - MLRO



Of 37 Relevant Persons involved in the examination, 96% resulted in findings

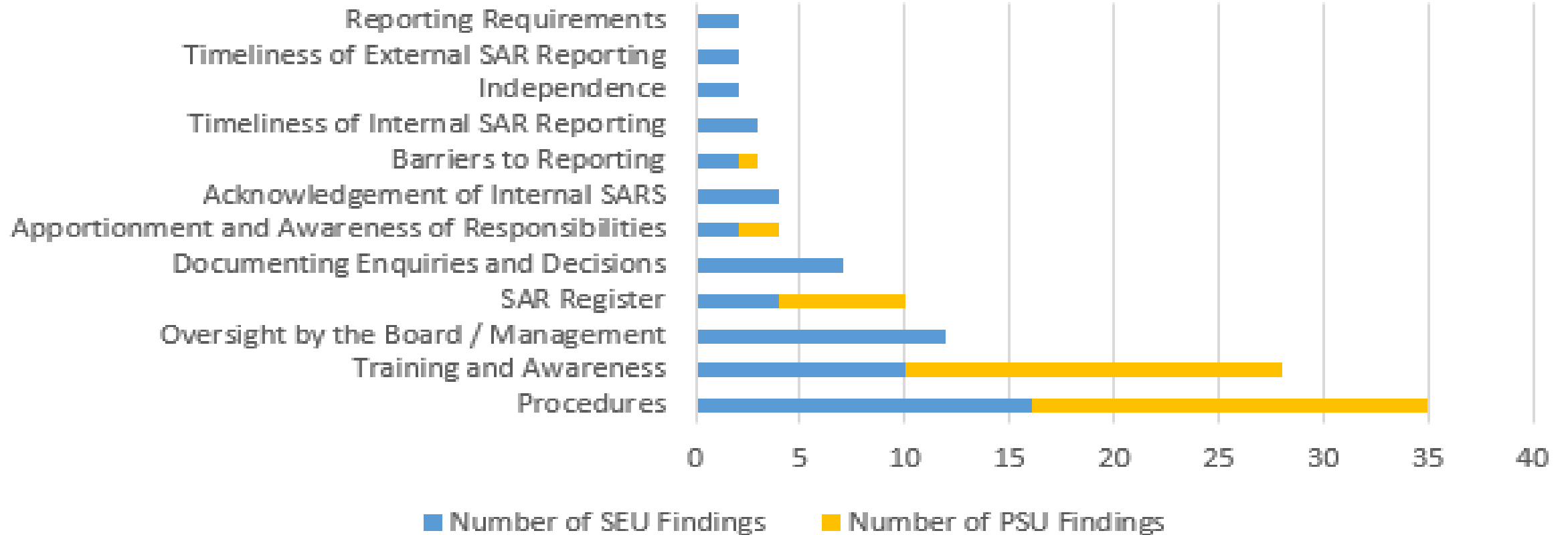


Of the sample of 20 Relevant Persons examined by the PSU, there were 46 findings



These findings were in respect of the Order and the relevant Handbook

Findings



Important reminder - MLRO

- › A person registered under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008
- › In accordance with Articles 7(6) and 8(4) of the Money Laundering (Jersey) Order 2008 notification must be provided to the JFSC within one month after the date:
 - › Appointment of a new MLCO or MLRO takes effect
 - › The individual ceases to act



Property managers and letting agents thematic

- › Historic confusion regarding registration requirements
- › JFSC to clarify its understanding of the services and activities provided
- › Consideration of the use of exemptions
- › Move forward with documented understanding



Key findings – administering money

- › 22 firms identified
 - › The JFSC identified that 17 of 22 firms were *administering or managing funds or money on behalf of third parties* by the:
 - › Collection of both rent and deposits - 12
 - › Collection of rent only - 2
 - › Collection of deposits only (including depositing to the MyDeposit scheme) - 2
 - › Third party payments (non-incidentals) - 1



Guidance – administering money

- › Collecting rent directly into a firm's own bank account, and not into the landlord's account
- › Collecting rent from tenants and paying expenses from the rent before passing the balance of money to the landlord
- › We consider these activities to be:
otherwise investing, administering or managing funds or money on behalf of third parties

These activities requires registration



Key findings – Trust Company Business (TCB)

- › The JFSC identified that 5 of the 22 firms appeared to be carrying on, and/or holding out to provide, TCB services in or from within Jersey, by way of the provision of:
 - › Company secretarial services – 5
 - › Registered office and correspondence address services to their customers – 4



Key findings – Trust Company Business (TCB)

- › Firms were either
 - › not aware of the potential requirement to register, or
 - › were misguidedly utilising an exemption which sets out the TCB services that can be provided to third parties without the need for registration
- › **The JFSC strongly recommended that, where TCB services are being provided, firms carefully consider whether the requirements of the exemption are met**



Exemptions – administering money

- › Paragraph 7(1)(n) of Part B of Schedule 2 to the Proceeds of Crime (Jersey) Law 1999

Otherwise investing, administering or managing funds or money on behalf of third parties

- › Limited exemption exists from the requirement to register (paragraph 7(2) of Part B), in respect of:

The provision of the services of collecting, administering and disbursing service or maintenance charges (however described) in connection with immovable property situated in Jersey.



Exemptions – administering money

- › This applies **solely** to the handling of maintenance and service charges, such as cleaning services, upkeep of the grounds, lift maintenance, utilities, and emergency repairs

Exemptions - TCB

- › Trust Company Business – defined at Article 2(3) and (4) of the Financial Services (Jersey) Law 1998
- › Incidental providers of TCB services exemption
 - › Article 7 of the Financial Services (Trust Company Business (Exemptions)) (Jersey) Order 2000)

may be relied upon in the case of:



Exemptions - TCB

A Person who is carrying on a business or profession the sole or main purpose of which is not trust company business, when carrying out a service specified in Article 2(4) of the FS(J)L for which the person is not separately remunerated, which the person does not separately hold himself or herself out as providing and which is carried out as an incident of the Person's business or profession.



Exemptions - TCB

- › TCB is not your main business
- › Not separately remunerated for the TCB service
- › Don't hold yourself out as providing a TCB service
- › The TCB services you provide are incidental to your main business



Property managers and letting agents

- › Objective – awareness, communication, knowledge & feedback
 - › No matters identified, the services provided all sit outside the regulatory framework
 - › A firm is correctly relying on an exemption, or
 - › The services offered by a firm fall within the regulatory framework and registration is required but they are unaware
- › Registration under:
 - › Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008; and/or
 - › Financial Services (Jersey) Law 1998 (FS(J)L).



To close

- › Handbook
 - › Recent updates
 - › Future
- › 2020 – 2023 Business Plan





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Caroline Morgan
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