

UPDATE

# A cautionary tale - Employment Tribunal judgment highlights need to tackle employee non-compliance with AML/CFT obligations.

Update prepared by Mathew Cook and Carla Benest (Jersey)

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The Importance of regulated businesses monitoring compliance with regulatory obligations by their staff, and taking action if employees fail to meet those obligations, is highlighted by the recent judgment of the Jersey Employment and Discrimination Tribunal in the case of Dowling –v- Concentric Analytics Limited.

Mourant acted for Concentric in successfully defending an unfair dismissal claim brought by an employee who was summarily dismissed for failing to raise an internal suspicious activity report.

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## Background

Concentric is part of a regulated investment business and accordingly has AML/CFT policies and procedures, provides training to its staff and has measures in place to monitor compliance. The obligation on staff to report any potentially suspicious activity to the money laundering reporting officer is a key aspect and is addressed extensively.

In this case, as part of a routine compliance monitoring process, an email was flagged between a senior investment employee and a potential new client. The email contained content that gave rise to concern, including reference to disclosure to authorities potentially resulting in 'heavy penalties and punishment'. Concentric conducted an investigation that revealed many more email exchanges, the content of which gave rise to greater concern. A key feature of the correspondence between the employee and the potential client was unease on the part of the potential client over disclosure to tax authorities. In describing this unease, the potential client referenced facing potential jail time, confiscation of assets, being paraded through the streets as a 'big catch' and asked questions as to whether Concentric could help him find an explanation for the sudden appearance of the investment, as well as whether Concentric's duty of confidentiality was overridden in cases considered 'suspicious'.

The correspondence revealed that the employee had engaged in this correspondence and had sought to encourage the potential client to make relevant tax disclosures, whilst at the same time progressing the onboarding process. However, the employee failed to file an internal suspicious activity report, or even raise the matter with compliance. Concentric conducted a disciplinary process that ultimately led to the employee's summary dismissal for gross misconduct. The employee challenged that decision in the Tribunal.

## Decision of the Employment Tribunal

Notwithstanding that the employee had accepted that he should have reported the exchanges with the potential client during the disciplinary proceedings, in the Tribunal the employee asserted that he had not in fact been suspicious and, accordingly, had not breached the applicable internal procedures.

The Tribunal soundly rejected this assertion. In its ruling, the Tribunal stated that it was unable to accept the assertion, or associated explanations, that the employee was not suspicious based on the email exchanges. Further, the Tribunal considered that the emails clearly gave reasonable grounds for such suspicion (therefore triggering the reporting obligation). The Tribunal further found that a failure even to forward the emails to the MLRO (i.e. stopping short of filing an internal suspicious activity report and something the

employee accepted he should have done) would have also amounted to gross misconduct. The Tribunal noted the serious implications for the employee and for the business and its principal persons arising from this failure.

The Tribunal also addressed the employee's allegations of procedural flaws in the disciplinary process adopted by Concentric. However, in the circumstances, the Tribunal rejected those and found the process to have been fair.

### Comment

The Tribunal's judgment is vindication of Concentric's strong stance on enforcing its AML/CFT framework, and demonstrates that all regulated businesses should adopt a robust stance to instances of non-compliance with these obligations. The monitoring of staff compliance with those obligations is also clearly key, this matter ultimately coming to light due to routine compliance monitoring.

Concentric was represented by Mourant (Carla Benest and Mathew Cook) in successfully defending the claim.

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