

# Art Market Participants: navigating

While HMRC's initial enforcement of anti-money laundering rules was relatively benign, the art trade can now expect a much tougher approach and significantly higher fines. Here experts *Rakhi Talwar* and *Nikesh Pandit* outline for ATG readers three key considerations for mounting an appropriate defence when the regulator comes knocking.



**Above:** Rakhi Talwar is the Founder of RTalwar Compliance ([www.rtalwar.com](http://www.rtalwar.com)), an independent consultancy that specialises in advising art dealers, auction houses and other businesses within the art and luxury sectors on regulatory compliance. Rakhi advised the British Art Market Federation on the development of the AML Guidance for the UK art market and is a longstanding member of the Responsible Art Market's Advisory Board.

Art market participants ('AMPs') have been subject to regulatory oversight by HMRC for anti-money laundering and countering the finance of terrorism ('AML/CFT') compliance since 2020.

HMRC's initial enforcement output was relatively benign. The focus was on warnings and relatively low-level fines on AMPs for failing to register with HMRC for AML purposes.

This approach has now fundamentally changed.

HMRC is now bringing far more sophisticated actions covering a range of regulatory requirements and attracting significantly higher fines. In the current challenging economic climate for AMPs, HMRC's more robust approach can pose an existential threat to businesses.

As we continue into 2026, a year in which we expect HMRC to maintain its bolder approach, this article discusses three key considerations for mounting an appropriate defence when the regulator comes knocking.

## 1. A Risk-based Approach

AMPs regulated by HMRC for AML/CFT purposes include any firm or individual who trades in or acts as an intermediary in the sale or purchase of works of art over €10,000 or is involved in the storage of art worth over €10,000 in a freepoint.

This broad definition means regulated AMPs include a diverse range of entities, including galleries, auction houses, online sales companies, private dealers, art advisers and even interior designers when buying or selling art as set out above.

While AMP businesses include large international names, such as global auction houses, many of these entities are small businesses. For

instance, seaside galleries that sell only one or two paintings over the €10,000 threshold, come within the scope of HMRC's regulation.

The money laundering and terrorist financing risk faced by different AMPs can therefore be fundamentally different. The regulatory regime recognises this and provides that "The policies, controls and procedures adopted by a relevant person...must be... proportionate with regard to the size and nature of the relevant person's business".

However, all too often there is an initial risk of a 'one size fits all' approach being applied. Moreover, this one size is seemingly that of a global AMP conducting many qualifying transactions. This approach should be questioned and appropriately challenged.

By way of example, proliferation financing risk assessments should be relatively simple where the size and nature of the AMP's business mean it does not in any way deal with customers or countries identified as presenting a high proliferation risk, such as Iran or North Korea (including through the geographic areas within which it operates or its delivery channels).

In these circumstances, it may be that demands for a detailed standalone risk assessment can

be resisted and the proliferation financing and AML risk assessments can be recorded together.

The important point should be that the documentation establishes an up-to-date record of all of the appropriate steps taken to identify and assess the risks of proliferation financing to which the AMP is subject considering the size and nature of its business and, within this context, appropriately takes into account the mandatory information and risk factors in relation to proliferation financing noted in the 2017 Money Laundering Regulations.

Additionally, in certain cases where it appears that an AMP has not entirely followed policies and procedures, it might be possible that other business processes can demonstrate de facto compliance and low risk. For example, business records and communications (including over social media or WhatsApp) setting out introductions and negotiations may de facto evidence key elements of KYC (Know Your Customer), including source of wealth where needed, and mitigate matters.

In considering the risk of any past customers and transactions asserted by HMRC, AMPs should also resist any inappropriate application of hindsight. For example, it would be inappropriate for HMRC to assert that a customer should have presented a red flag based on information that is known now (eg press reports of links to money laundering) that was not available prior to completion of the transaction.

## 2. Law vs Guidelines

AMPs facing allegations of breaches from HMRC should also carefully assess whether the alleged breach actually amounts to a breach of legal



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# HMRC's bolder approach



**Above:** Nimesh Pandit is a barrister specialising in financial regulation and professional discipline, including anti-money laundering. Nimesh has been involved in some of the most significant regulatory investigations and proceedings brought by HMRC, the FCA, the Bank of England and leading offshore authorities in recent years. His experience combines acting for major private institutions and regulators, including secondments at Goldman Sachs and the FCA.

the guidelines. The term 'should' is used in the BAMF Guidelines to indicate ways in which the statutory and regulatory requirements may be satisfied, but allowing for alternative means of meeting requirements.

As part of their obligations under the 2017 Money Laundering Regulations, an AMP must take HMRC's external risk narrative into account when carrying out their own risk assessment. This narrative is available on a gov.uk website ('Understanding risks and taking action for art market participants').

In line with the approach set out in HMRC's internal manual titled 'Economic Crime Supervision Handbook', of which there is a publicly available online version, HMRC compliance visits include establishing to what extent an AMP has taken into account HMRC's Risk Narrative and any other guidance referred to within it.

HMRC's Risk Narrative and the documents referred to therein are often updated. This can result in an AMP failing to have taken into account updates that have emerged between the AMP's own risk assessments. Notably, smaller

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AMPs can lack the resources to continuously monitor for updates to HMRC's Risk Narrative as well as any other guidance referred to therein. Where a breach is asserted in such circumstances, depending on the specific circumstances, it may be possible for the AMP to argue that any associated enforcement action would be disproportionate and unfair.

### 3. Co-operation, Financial Strength & Personal Circumstances

Undergoing an HMRC compliance assessment or facing enforcement action is often a challenging and expensive process. This is particularly the case for smaller AMPs whose staff undertake multiple roles. In these high-pressured circumstances it is vitally important to remain professional and constructive, while also appropriately setting out one's position, as this may impact the outcome.

Notably, under the regulatory regime for determining the type of sanction and level of penalty, HMRC will have regard to the level of cooperation it is afforded. Cooperation can be demonstrated through timely and relevant responses to information requests, as well as rapidly remediating any preliminary breaches that are merited. Moreover, if done properly, this need not evidence acceptance of the alleged breach; there is generally room to learn and improve systems and controls that satisfy the base-line legal requirements.

However, cooperation should not mean shying away from raising legitimate concerns about HMRC's approach, particularly where this appears to stray beyond legal requirements, seems unreasonable or lacks procedural fairness. This includes concerns about delay on HMRC's part; deficient case officer conduct and continuity, including any failures to properly safeguard or relay information; and failures to properly consider representations in line with statutory, regulatory or common law obligations.

It is also important to note that the high cost of compliance visits and proposed fines can pose an existential challenge to many AMPs. This is perhaps unsurprising given that the art sector has faced significant financial headwinds in

recent years including depressed sales and increased overheads due to inflation, tax increases and mounting costs of meeting regulatory obligations.

Where this is the case, an AMP should not suffer in silence. Under the penalty regime, HMRC must take into account all relevant circumstances, including where appropriate the financial strength of the AMP.

In setting out the financial strength of the AMP to inform the type of sanction and level of any fine, it is vital to provide evidence. Independent evidence is particularly persuasive. Accordingly, finalised accounts and financial statements and letters from accountants can provide invaluable evidence of financial strength.

Personal circumstances can also be relevant to determining and mitigating the penalty. Accordingly, if the alleged breach was caused or exacerbated by medical conditions or extenuating circumstances such as bereavement, appropriate representations should be made. In making such representations, it is vital that personal privacy and consent to share information are properly considered and obtained where required.

### Conclusion

HMRC's bolder approach towards AMPs is likely to continue over the course of 2026. In many respects this is quite right: money laundering and terrorist financing are serious crimes with widespread and real social and economic consequences.

However, it is also important that regulatory actions are appropriate and fair, and any sanctions are proportionate. Failure in this regard can lead to devastating consequences for AMPs and the wider economy, as well as individuals and their communities.

It is hoped that through a genuine risk-based approach; clear application of legal requirements; and by recognising the industry's efforts against the backdrop of real-life financial and personal circumstances, this can be achieved.

*This article is not intended to be a substitute for legal advice and nothing in this article should be construed as such. Anyone requiring clarification on the legal issues contained in this article should seek their own independent legal advice.*



**Above:** auctioneer Richard Madley on the rostrum at The Hundred. (Image: ECB.)

## Madley back at the crease (or rostrum in this case)

Auctioneer Richard Madley has returned to the cricketing rostrum.

He recently hosted the auction for both the men's and women's teams in The Hundred, the only cricket league in the world that uses the 100-ball cricket format. Organised by the England and Wales Cricket Board (ECB), it is played during July and August each year with eight teams in both the women and men's sections.

This year the auction took place on March 11-12.

Madley, previously at Phillips, Christie's in New York and Dreweatts, said: "This was a live auction in its truest sense with all bidders participating in the room having flown in from America, India, Australia and South Africa. Record prices were set for women and men's cricketers."

The event, held in Piccadilly in London, was streamed on both YouTube and Sky Sports.

Madley is no stranger to cricket auctions. He was previously the auctioneer for the Indian Premier League (IPL) until 2018.

He had conducted the annual televised auction of cricketers for 11 years and was nicknamed 'The Hammerman' in India.

Laura Chesters