

# Anti-Money Laundering Policy & Guidance

## **1. Introduction**

- 1.1. Money laundering involves the “cleaning” of illegal proceeds in order to disguise their criminal origin. The proceeds of criminal activity, usually cash, but also other illegally gained assets, are introduced into the organisation’s systems where they are processed, enabling them to leave the systems appearing to come from a legitimate source.
- 1.2. Historically, legislation seeking to prevent the laundering of the proceeds of criminal activity was aimed at professionals in the financial and investment sector. However, it was subsequently recognised that those involved in criminal conduct were able to “clean” the proceeds of crime through a wider range of business and professional activities.
- 1.3. New obligations in respect of money laundering were therefore imposed by the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2017 which broaden the definition of money laundering and increase the range of activities within the statutory control framework. In particular, the duty to report suspicions of money laundering is strengthened and criminal sanctions imposed for failure to do so. There are also obligations under the Terrorism Act 2000.
- 1.4. The Council has therefore adopted a Money Laundering Policy, to comply with its requirements under the The Money Laundering, Terrorist Financing and Transfer of Funds 2017, the Proceeds of Crime Act 2002 and the Terrorism Act 2000.
- 1.5. The Council’s policy is to do all it can to prevent, wherever possible, the organisation and its staff being exposed to money laundering, to identify the potential areas where it may occur, and to comply with all legal and regulatory requirements, especially with regard to the reporting of actual or suspected cases.
- 1.6. It is important that all staff who are involved in processing financial transactions are aware of the issues surrounding money laundering, and to whom they should go to for further advice and guidance.

## **2. Roles and Responsibilities**

- 2.1. This policy applies to all employees, members and contractors of the Council, and aims to maintain the high standards of conduct, which currently exist by preventing criminal activity through money laundering.
- 2.2. The officer to receive disclosures about money laundering activity is the Money Laundering Reporting Officer (MLRO). The Council has nominated Mark Green, Director of Finance and Business Improvement (S151) to undertake this role. The roles and responsibilities of the MLRO are as follows:

- To thoroughly understand the requirements of the Anti-Money Laundering legislation
- To understand the internal organisation and the degree/varieties of risk, including general risk assessment on the organisation
- To determine what constitutes a suspicious transaction
- To determine what is required in making a report
- To identify when a greater due diligence is required from particular customer, based on a risk-based approach;
- To be aware of who to report to
- To be aware of the "consent" provisions
- To conduct investigations
- To be aware of the criminal offences under the Act including "tipping off" and interfering with an investigation

2.3. Any disclosures will be notified to Internal Audit who will liaise with the identified above.

### **3. Local Authority Anti-Money Laundering Regulations**

3.1. The 2007 regulations require that 'relevant businesses' adopt a number of key measures to counter money laundering. Whilst local authorities are not separately identified in the list of 'relevant businesses' there are some local authority activities that could come within the scope of the regulations. It is mainly accountancy and audit services, and the financial, company and property transactions undertaken by Legal Services. However, the safest way to ensure compliance with the law is to apply them to all areas of work undertaken by the Council.

3.2. The following are examples of key factors could indicate that money laundering activity is taking place:

- Large volume/value cash transactions (e.g. sale of land/buildings) – sale proceeds could be received in cash. Identification procedures should apply when a client seeks to make a payment of £10,000 (€15,000) or greater, and/or where two or more transactions appear to be linked and involve a total payment of £10,000 (€15,000) or greater.
- Fraudulent Claims – if an accident has not actually taken place but a claim is made then monies received would be proceeds of crime.
- Payments are received from unexpected sources.
- The cancellation or reversal is made of a previous transaction.
- A substantial payment in cash is received from a new customer.

3.3. It is anticipated that there will only be a small number of occasions when relevant events are identified. If in doubt consult the nominated reporting officer (**see Appendix A**) and he will help you decide.

- 3.4. The size and scope of the activities of local authorities are such that few, if any, are likely to be immune from the risks surrounding money laundering. Chartered Institute of Public Finance and Accountancy (CIPFA) believes all public service organisations should embrace the underlying principles behind the money laundering legislation and regulations and put in place anti-money laundering policies, procedures and reporting arrangements, appropriate and proportionate to their activities.

#### **4. Suggested Methods of Prevention**

- 4.1. Cash payments of £10,000 (€15,000) or greater should not be accepted, and this should be made clear by way of notice in the reception area.
- 4.2. Identification procedures should apply in situations where payments are received from an unexpected source, where a new customer makes a substantial payment in cash, or where a new business relationship is established with a company or individual with whom the Council has not dealt before.
- 4.3. There are a number of methods of checking identification:
- Seeking references (trade, personal or bank) from reputable organisations or individuals with whom the subject of the enquiry has had dealings in the past.
  - In the case of a company, asking to see audited accounts or checking their details with the Register of Companies (Companies House).
  - In the case of individuals asking to see some independent evidence of their identity and address, for example a passport or a driving licence.
  - Seeking independent verification of the source of funds being paid to the Council.
  - Some companies may require further checks due to the level of risk for each one. Please see your Senior Officer or the MRLO for further assistance.
- 4.4. Once identification has been verified it is important that the evidence is retained for at least five years from the end of the business relationship or the one-off transaction(s).

#### **5. Reporting Suspicions of Money Laundering**

- 5.1. Where you know or suspect that money laundering activity is taking/has taken place, or you are concerned that your involvement in the matter may amount to a prohibited act under the legislation, you must disclose to the MLRO this suspicion or concern as soon as practicable. Your disclosure should be made to the MLRO on the pro-forma attached at **Appendix B**.
- 5.2. Once you have reported the matter to the MLRO you must follow any directions they may give you. You must not make any further enquiries into the matter

yourself and you must not proceed with the transaction until given the all clear. Any necessary investigation will be undertaken by the (NCA). All employees will be required to cooperate with the MLRO and the authorities during any subsequent money laundering investigation.

- 5.3. If an employee suspects money laundering and does nothing about it, they can be in breach of the provisions of the legislation, and related Council procedures. Whilst the risk to the Council is low, it is important that all employees are aware of their responsibilities. The key responsibility of all employees is to promptly report any suspicion of money laundering to the MLRO.

## **6. Consideration of a disclosure by the Money Laundering Reporting Officer**

- 6.1. Upon receipt of a disclosure report, the MLRO must note the date of receipt on his section of the report and acknowledge receipt of it. He should also advise you of the timescale within which he expects to respond to you.
- 6.2. The MLRO will consider the report and any other available internal information he thinks relevant e.g.:
- reviewing other transaction patterns and volumes;
  - the length of any business relationship involved;
  - the number of any one-off transactions and linked one-off transactions;
  - any identification evidence held;
- 6.3. and undertake such other reasonable inquiries he thinks appropriate in order to ensure that all available information is taken into account in deciding whether a report to NCA is required (such enquiries being made in such a way as to avoid any appearance of tipping off those involved). The MLRO may also need to discuss the report with you.
- 6.4. Once the MLRO has evaluated the disclosure report and any other relevant information, he must make a timely determination as to whether:
- there is actual or suspected money laundering taking place; or
  - there are reasonable grounds to know or suspect that is the case; and
  - whether he needs to seek consent from the NCA for a particular transaction to proceed.
- 6.5. Where the MLRO does so conclude, then he must disclose the matter as soon as practicable to NCA on their standard report form and in the prescribed manner, unless he has a reasonable excuse for non-disclosure to the NCA (for example, if you are a lawyer and you wish to claim legal professional privilege for not disclosing the information).

- 6.6. Where the MLRO suspects money laundering but has a reasonable excuse for nondisclosure, then he must note the report accordingly; he can then immediately give his consent for any ongoing or imminent transactions to proceed.
- 6.7. In cases where legal professional privilege may apply, the MLRO must liaise with the legal adviser to decide whether there is a reasonable excuse for not reporting the matter to NCA.
- 6.8. Where consent is required from NCA for a transaction to proceed, then the transaction(s) in question must not be undertaken or completed until NCA has specifically given consent, or there is deemed consent through the expiration of the relevant time limits without objection from NCA.
- 6.9. Where the MLRO concludes that there are no reasonable grounds to suspect money laundering then he shall mark the report accordingly and give his consent for any ongoing or imminent transaction(s) to proceed.
- 6.10. All disclosure reports referred to the MLRO and reports made by him to NCA must be retained by the MLRO in a confidential file kept for that purpose, for a minimum of five years.
- 6.11. The MLRO commits a criminal offence if he knows or suspects, or has reasonable grounds to do so, through a disclosure being made to him, that another person is engaged in money laundering and he does not disclose this as soon as practicable to NCA.

## **7. Further Guidance and Advice**

- 7.1. If you have any queries or require clarification on any of the issues in the policy please contact the MLRO in the first instance.

## **8. Useful Links**

- The Proceeds of Crime Act 2002  
<http://www.legislation.gov.uk/all?title=Proceeds%20of%20crime>
- The Terrorism Act 2000  
<http://www.legislation.gov.uk/all?title=terrorism%20act>
- The Money Regulation 2017  
<http://www.legislation.gov.uk/uksi/2017/692/made>
- HM Treasury <https://www.gov.uk/government/publications/anti-money-laundering-legislation-guidance-notes>
- Law Society <http://www.lawsociety.org.uk/advice/anti-money-laundering/>
- National Crime Agency <http://www.nationalcrimeagency.gov.uk/>

## **PROCEEDS OF CRIME (ANTI-MONEY LAUNDERING) – MAIDSTONE BOROUGH COUNCIL'S AND YOUR OWN PERSONAL RESPONSIBILITIES**

### **PURPOSE**

These notes are important. They are designed to help you familiarise yourself with the legal and regulatory requirements relating to money laundering, as they affect both the organisation and you personally.

### **WHAT IS MONEY LAUNDERING?**

Money laundering is the term used for a number of offences involving the proceeds of crime or terrorist funds. The following acts constitute the act of money laundering:

- concealing, disguising, converting, transferring or removing criminal property from the UK (Section 327 POCA);
- entering into or becoming concerned in an arrangement which a person knows or suspects facilitates the acquisition, retention, use or control of criminal property (Section 328 POCA);
- acquiring criminal property, using criminal property; or possession of criminal property (Section 329 POCA).
- failure to report a suspicion of money laundering during the course of business he develops knowledge or suspicion (or has reasonable grounds for doing so) that another person is engaged in money laundering, and he does not make the required disclosure as soon as is practicable (Section 330 POCA)

Although the term 'money laundering' is generally used when describing the activities of organised crime – for which the legislation and regulations were first and foremost introduced – to most people who are likely to come across it or be affected by it, it involves a suspicion that someone they know, or know of, is benefiting financially from dishonest activities.

'Criminal property' is defined very widely in the law relating to money laundering. It includes not only the proceeds of crime committed by somebody else, but also possession of the proceeds of an individual's own crime – for example, the retention of monies from non-payment of income tax. It does not matter how small the amount of money involved is. It also includes the proceeds of crimes that take place abroad.

### **WHAT LAWS EXIST TO CONTROL MONEY LAUNDERING?**

In recent years, new laws have been passed which shift significantly the burden for identifying acts of money laundering away from government agencies and more towards organisations and their employees. They prescribe potentially very heavy penalties, including imprisonment, for those who are convicted of breaking the law. These laws are

important and a list of them appears at the end of these notes, together with a list of useful websites.

### **WHAT IS THIS ORGANISATION'S POLICY ON MONEY LAUNDERING?**

Our policy is to do all we can to prevent, wherever possible, the organisation and its staff being exposed to money laundering, to identify the potential areas where it may occur, and to comply with all legal and regulatory requirements, especially with regard to the reporting of actual or suspected cases. We cannot stress too strongly, however, that it is every member of staff's responsibility to be vigilant.

### **WHAT ARE THE MAIN MONEY LAUNDERING OFFENCES?**

There are three principal offences – concealing, arranging, and acquisition/use/possession. These are dealt with under sections 327 to 330 of the Proceeds of Crime Act 2002.

Concealing (s.327) is where someone knows or suspects a case of money laundering, but conceals or disguises its existence. Arranging (s.328) is where someone involves himself or herself in an arrangement to assist in money laundering. Acquisition (etc) (s.329) is where someone seeks to benefit from money laundering by acquiring, using or possessing the property concerned. Failure to report (s.330)

There are also two 'third party' offences – failure to disclose one of the three principal offences, and 'tipping-off'. Tipping off is where someone informs a person or people who are, or are suspected of being, involved in money laundering, in such a way as to reduce the likelihood of their being investigated, or prejudicing an investigation.

All the money laundering offences may be committed by an organisation or by the individuals working for it.

### **WHAT ARE THE IMPLICATIONS FOR THE COUNCIL AND ITS STAFF?**

The Council has accepted the responsibility to ensure that those of its staff who are most likely to be exposed to money laundering can make themselves fully aware of the law and, where necessary, are suitably trained. The Council has also implemented procedures for reporting suspicious transactions and, if necessary, making an appropriate report to the NCA.

The consequences for staff or committing an offence are potentially very serious. Whilst it is considered most unlikely that a member of staff would commit one of the three principal offences, the failure to disclose a suspicion of a case of money laundering is a serious offence in itself, and there are only very limited grounds in law for not reporting a suspicion.

Whilst stressing the importance of reporting your suspicions, however, you should understand that failure to do so is only an offence if your suspicion relates, in the event, to an actual crime.

### **WHAT ARE THE PENALTIES?**

Money laundering offences may be tried at a magistrate's court or in the Crown Court, depending on the severity of the suspected offence. Trials at the former can attract fines of up to £5,000, up to six months in prison, or both. In a Crown Court, fines are unlimited, and sentences from two to 14 years may be handed out.

### **WHAT SHOULD I DO IF I SUSPECT A CASE OF MONEY LAUNDERING?**

You should report the case immediately to the MLRO using the form in Appendix B. He will decide whether the transaction is suspicious and whether to make a report to the NCA. There is no clear definition of what constitutes suspicion – common sense will be needed. If you are considered likely to be exposed to suspicious situations, you will be made aware of these by your senior officer and, where appropriate, training will be provided.

### **SUMMARY**

Robust money laundering procedures are essential if the Council and its staff are to comply with our responsibilities and legal obligations. It falls to you as a Councillor or a member of the Council's staff, as well as to the Council itself, to follow these procedures rigorously.

**Confidential**  
**Report to the Money Laundering Reporting Officer**  
**Report of Money Laundering Activity**

To: **Money Laundering Reporting Officer**

<b>Report from</b>	
Staff member's name	
Directorate / Department	
Details of suspected offence	
Names and address of the persons involved (If a company/public body please include details of the nature of their business)	
Nature, value, timing of activity involved (Please include full details e.g. what, when, where, how)	
Nature of suspicions regarding such activity	
Has any investigation been undertaken?	
Have you discussed your suspicion with anyone else?	

Signed and dated	
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<b>For completion by MLRO</b>	
Date received	
Date acknowledged	
Unique case reference no.	
Are there reasonable grounds for suspecting money laundering activity?	
If yes, confirm date of report to NCA	
Is consent required from the NCA to any on-going or imminent transactions which would otherwise be prohibited act? If yes please confirm full details in the box.	
Date consent received from NCA	
Date consent given to employee for transaction to proceed	
If there are reasonable grounds to suspect money laundering, but you do not intend to report the matter to the NCA, please set out the reason(s) for non-disclosure	
Date consent given by you to the employee for transaction to proceed.	
Signed and dated	
<b>THIS REPORT TO BE RETAINED FOR AT LEAST FIVE YEARS</b>	

