

POLICY STATEMENT & GUIDANCE NOTES – MONEY LAUNDERING

Introduction

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.

New obligations in respect of money laundering were therefore imposed by the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2007 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.

The Council has therefore adopted a Money Laundering Policy, to comply with its requirements under the Money Laundering Regulations 2007, the Proceeds of Crime Act 2002 and the Terrorism Act 2000.

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.

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.

Roles and Responsibilities

All Members and Council Officers have a duty to ensure prevention of money laundering, naivety is not considered to be a valid defence for allowing laundering to take place. **Appendix A** sets out the responsibilities for the Council and individuals, and procedures have been put in place to assist in preventing and detecting possible instances of money laundering.

There is a specific duty to appoint a Money Laundering Reporting Officer (MLRO), who should be:

- A member of senior management
- Independent and autonomous
- Possess the confidence and trust of management and staff
- Have sufficient knowledge of the organisation, its services and systems
- Have access to all relevant information throughout the organisation and knowledge as to the existence of such information

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
- To determine what constitutes a suspicious transaction
- To determine what is required in making a report
- 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

Local Authority Anti-Money Laundering Regulations

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.

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.

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.

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. CIPFA (the leading accountancy body for the public sector) 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. This approach is consistent with advice given by HM Treasury to government departments, and with practices being promoted by the National Audit Office and the Audit Commission.

Suggested Methods of Prevention

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.

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.

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.

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).

Reporting Suspicions of Money Laundering

The Council has appointed the Head of Finance & Resources, as it's Money Laundering Reporting Officer (MLRO). He has a statutory duty to report any suspicions to the National Crime Agency (NCA). Not all suspicions have to be reported, it is up to the MLRO to decide whether there are sufficient grounds to make a report.

However it is important that **all** suspicions are referred to the MRLO. This can be in writing, or by means of a verbal discussion.

Appendix B details the full disclosure procedure, along with the relevant form that may need to be completed.

Further Guidance and Advice

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

APPENDIX A

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 England and Wales, or from Scotland, or from Northern Ireland;
- Entering into or becoming concerned in an arrangement in which someone knowingly or suspects facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person;
- Acquiring, using or possessing criminal property.

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.

The organisation has nominated the Head of Finance & Resources to be responsible for the coordination of anti-money laundering measures within the organisation.

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 329 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.

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 National Criminal Intelligence Service (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 Chief Finance Officer either using a form he will give to you or, if you prefer, in a discussion. He will decide whether the transaction is suspicious and whether to make a report to the NCA (National Criminal Intelligence Service). 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. The full disclosure procedure is explained at *Appendix B*.

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.

LEGISLATION AND REGULATIONS RELATING TO MONEY LAUNDERING

- 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 Laundering Regulations 2007
<http://www.legislation.gov.uk/uksi/2007/2157/made>

OTHER USEFUL LINKS

- 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/>
- Serious Organised Crime Agency <http://www.nationalcrimeagency.gov.uk/>

APPENDIX B - DISCLOSURE PROCEDURE

Reporting to the Money Laundering Reporting Officer (MLRO)

Where you know or suspect that money laundering activity is taking/has taken place, or become concerned that your involvement in a matter may amount to a prohibited act under sections 327 – 329 of the Act, you must disclose this as soon as practicable to the MLRO. The disclosure should be within “hours” of the information coming to your attention, not weeks or months later. SHOULD YOU NOT DO SO, THEN YOU MAY BE LIABLE TO PROSECUTION.

Your disclosure should be made to the MLRO using the proforma report below. The report must include as much detail as possible, for example:

- Full details of the people involved (including yourself, if relevant), e.g. name, date of birth, address, company names, directorships, phone numbers, etc;
- Full details of the nature of their/your involvement;
- If you are concerned that your involvement in the transaction would amount to a prohibited act under sections 327 – 329 of the Act, then your report must include all relevant details, as you will need consent from the National Criminal Intelligence Service (“NCA”), via the MLRO, to take any further part in the transaction - this is the case even if the client gives instructions for the matter to proceed before such consent is given.

- You should therefore make it clear in the report if such consent is required and clarify whether there are any deadlines for giving such consent e.g. a completion date or court deadline;
- The types of money laundering activity involved:
 - if possible, cite the section number(s) under which the report is being made e.g. a principal money laundering offence under section 327 – 329 of the Act, or general reporting requirement under section 330 of the Act, or both;
- The dates of such activities, including:
 - whether the transactions have happened, are ongoing or are imminent;
- Where they took place;
- How they were undertaken;
- The (likely) amount of money/assets involved;
- Why, exactly, you are suspicious – the NCA will require full reasons; along with any other available information to enable the MLRO to make a sound judgment as to whether there are reasonable grounds for knowledge or suspicion of money laundering and to enable him to prepare his report to the NCA, where appropriate. You should also enclose copies of any relevant supporting documentation.

Once you have reported the matter to the MLRO you must follow any directions he may give you. You must NOT make any further enquiries into the matter yourself: any necessary investigation will be undertaken by the NCA. Simply report your suspicions to the MLRO who will refer the matter on to the NCA if appropriate. All employees will be required to co-operate with the MLRO and the authorities during any subsequent money laundering investigation.

Similarly, at no time and under no circumstances should you voice any suspicions to the person(s) whom you suspect of money laundering, even if the NCA has given consent to a particular transaction proceeding, without the specific consent of the MLRO; otherwise you may commit a criminal offence of “tipping off” (see Appendix A for further details).

Do not, therefore, make any reference on a client file to a report having been made to the MLRO – should the client exercise their right to see the file, then such a note will obviously tip them off to the report having been made and may render you liable to prosecution. The MLRO will keep the appropriate records in a confidential manner.

Consideration of a disclosure by the Money Laundering Reporting Officer

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 time-scale within which he expects to respond to you.

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;

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.

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 Serious Organised Crime Agency (NCA) for a particular transaction to proceed.

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).

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.

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.

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.

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.

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.

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.

PRIVATE AND CONFIDENTIAL
Report to Money Laundering Reporting Officer

Re money laundering activity

To: Head of Finance & Resources – Maidstone Borough Council -Money Laundering Reporting Officer

From:
[insert name of employee]

Section: Ext/Tel No:.....
[insert post title and section]

DETAILS OF SUSPECTED OFFENCE:

Name(s) and address(es) of person(s) involved:
[if a company/public body please include details of nature of business]

Nature, value and timing of activity involved:
[Please include full details eg what, when, where, how. Continue on a separate sheet if necessary]

Nature of suspicions regarding such activity:

[Please continue on a separate sheet if necessary]

Has any investigation been undertaken (as far as you are aware)?

[Please tick the relevant box]

| | | | |
|-----|--------------------------|----|--------------------------|
| YES | <input type="checkbox"/> | NO | <input type="checkbox"/> |
|-----|--------------------------|----|--------------------------|

If yes, please include details below:

Have you discussed your suspicions with anyone else?

[Please tick the relevant box]

| | | | |
|-----|--------------------------|----|--------------------------|
| YES | <input type="checkbox"/> | NO | <input type="checkbox"/> |
|-----|--------------------------|----|--------------------------|

If yes, please specify below, explaining why such discussion was necessary:

Have you consulted any supervisory body guidance re money laundering? (e.g. the Law Society) [Please tick the relevant box]

| | | | |
|-----|--------------------------|----|--------------------------|
| YES | <input type="checkbox"/> | NO | <input type="checkbox"/> |
|-----|--------------------------|----|--------------------------|

If yes, please specify below:

Do you feel you have a reasonable excuse for not disclosing the matter to NCA? (e.g. are you a lawyer and wish to Yes No claim legal professional privilege?) [Please tick the relevant box]

| | | | |
|-----|--------------------------|----|--------------------------|
| YES | <input type="checkbox"/> | NO | <input type="checkbox"/> |
|-----|--------------------------|----|--------------------------|

If yes, please set out full details below:

Are you involved in a transaction which might be a prohibited act under sections 327- 329 of the Act and which requires appropriate consent from NCA? [Please tick the relevant box]

| | | | |
|-----|--------------------------|----|--------------------------|
| YES | <input type="checkbox"/> | NO | <input type="checkbox"/> |
|-----|--------------------------|----|--------------------------|

If yes, please enclose details in the box below:

Please set out below any other information you feel is relevant:

Signed:..... Dated:.....

Please do not discuss the content of this report with anyone you believe to be involved in the suspected money laundering activity described. To do so may constitute a tipping off offence, which carries a maximum penalty of 5 years' imprisonment.

THE FOLLOWING PART OF THIS FORM IS FOR COMPLETION BY THE MLRO

Date report received:

Date receipt of report acknowledged:

CONSIDERATION OF DISCLOSURE:

Action plan:

OUTCOME OF CONSIDERATION OF DISCLOSURE:

Are there reasonable grounds for suspecting money laundering activity?

If there are reasonable grounds for suspicion, will a report be made to NCA? [Please tick the relevant box]

| | | | |
|-----|--------------------------|----|--------------------------|
| YES | <input type="checkbox"/> | NO | <input type="checkbox"/> |
|-----|--------------------------|----|--------------------------|

If yes, please confirm date of report to NCA:

..... and complete the box below:

| |
|---|
| <p>Details of liaison with the NCA regarding the report: Notice Period: to Moratorium Period: to</p> |
|---|

Is consent required from NCA to any ongoing or imminent transactions which would otherwise be prohibited acts?

| | | | |
|-----|--------------------------|----|--------------------------|
| YES | <input type="checkbox"/> | NO | <input type="checkbox"/> |
|-----|--------------------------|----|--------------------------|

If yes, please confirm full details in the box below:

Date consent received from NCA:

.....

Date consent given by you to employee:

.....

If there are reasonable grounds to suspect money laundering, but you do not intend to report the matter to NCA, please set out below the reason(s) for non-disclosure: [Please set out any reasonable excuse for non-disclosure]

Date consent given by you to employee for any prohibited act transactions to proceed:

.....

Other relevant information:

Signed:..... Dated:.....

THIS REPORT TO BE RETAINED FOR AT LEAST FIVE YEARS