

Proceeds of Crime and Anti-Money Laundering Policy

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1. INTRODUCTION

- 1.1 The legislation in respect of Money Laundering is set out in the following:
- Proceeds of Crime Act 2002 as amended by the Crime and Courts Act 2013 and the Serious Crime Act 2015;
 - The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and The Money Laundering and Terrorist Financing (Amendment) Regulations 2019;
 - The Terrorism Act 2000 as amended by the Anti-Terrorism, Crime and Security Act 2001, the Terrorism Act 2006 and the Terrorism Act 2000 and Proceeds of Crime Act 2002 (Amendment) Regulations 2007.
- 1.2 The combined legislation is referred to in this Policy as 'the money laundering legislation'.
- 1.3 There have been significant changes to the money laundering legislation which have broadened the definition of money laundering and increased the range of activities caught by the statutory framework. As a result, the obligations now impact on certain areas of Council business and require Councils to establish internal procedures to prevent the use of their services for money laundering.
- 1.4 Money laundering may be defined as the process whereby the origin of dishonest and or illegally obtained money is concealed so that it appears to come from a legitimate source.

2. POLICY STATEMENT

- 2.1 The Council will do all it can to:
- Prevent, wherever possible, the organisation, its employees and Members being exposed to money laundering;
 - Identify the potential areas where money laundering may occur and take appropriate action to minimise the risk; and
 - Comply with all legal and regulatory requirements, especially with regard to the reporting of actual or suspected cases.
- 2.2 Every employee (see 3.1 and 3.2 below) and elected Member has a personal responsibility to be vigilant.

3. SCOPE OF THE POLICY

- 3.1 This Policy applies to all officers (including external appointments, contractors and seconded staff) and elected Members of the Council. The Policy sets out the procedures which must be followed to enable the Council to comply with its legal obligations.
- 3.2 The Policy specifically covers employees of contractors and other public authorities delivering a service on behalf of the Council, for example Ubico or Publica. The term "officer" or "staff" includes employees of the contractor / other authority.

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- 3.3 Failure to comply with the procedures set out in this Policy may lead to disciplinary action being taken in accordance with existing Council policies in addition to any criminal prosecution which may ensue.
- 3.4 This policy should be read in conjunction with the Whistle-Blowing Policy and the Counter Fraud and Anti-Corruption Policy.

4. PURPOSE

- 4.1 The Council has a duty to ensure it complies with its obligations under the legislation but it is acknowledged that it is a low risk area. Criminal sanctions may be imposed for breaches of the legislation.
- 4.2 The purpose of this Policy is to make officers and members aware of the money laundering legislation; their responsibilities regarding the legislation; and the consequences of non-compliance with this Policy.
- 4.3 Any officer or Member of the Council could be subject to the provisions of the money laundering legislation if they suspect money laundering and either fail to report their concerns or become involved in any actions to process the suspicious transaction. This Policy sets out how any concerns should be raised.

5. WHAT IS MONEY LAUNDERING?

- 5.1 Under the Proceeds of Crime Act 2002 (POCA), money laundering means:
- Concealing, disguising, converting, transferring criminal property or removing it from the UK (section 327 of Proceeds of Crime Act [POCA]). This covers hiding an item or its source, removing serial numbers, or changing an item for something else (e.g. unexplained large cash payment claimed to be from death of relative or lottery win, a person using illegally earned money to buy a house or piece of land); or
 - Entering into or becoming concerned in an arrangement which you know or suspect facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person (section 328 of POCA). This is actual involvement in helping to cover up an act (e.g. a housing officer becoming suspicious that a tenant on benefits is buying valuable items when they are on limited income and failing to report this); or
 - Acquiring, using or possessing criminal property (section 329 of POCA). Accepting stolen items knowingly or knowingly taking advantage of them or accepting items paid for by the proceeds of crime. This might involve paying significantly less than the value of an item with the suspicion or knowledge that it may be stolen; or
 - Becoming concerned in an arrangement facilitating concealment, removal from the jurisdiction, transfer to nominees or any other retention or control of terrorism property (section 18 of the Terrorism Act 2000). This is about hiding income or other items which are being used to fund or carry out terrorist activities.

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- 5.2 Criminal property is defined in Section 340 (3) of POCA as “property”¹ that is or represents the person’s benefit from illegal actions in whole or part and the person knows or suspects that it is the proceeds of a criminal act.

6. THE COUNCIL’S OBLIGATIONS

- 6.1 Organisations conducting “relevant business” under the legislation must:

- Appoint a Money Laundering Reporting Officer (MLRO) to receive disclosures from employees of money laundering activity (their own or anyone else’s);
- Implement a procedure to enable the reporting of suspicions of money laundering;
- Maintain client identification procedures in certain circumstances; and
- Maintain records.

- 6.2 Some of the Council’s business is “relevant” for the purposes of the legislation, including the accountancy and audit services carried out by Financial Services and the financial, company and property transactions undertaken by Legal Services.

7. THE MONEY LAUNDERING REPORTING OFFICER (MLRO)

- 7.1 The officer nominated to receive disclosures about money laundering activity is the Officer appointed under section 151 of the Local Government Act 1972.

8. DISCLOSURE PROCEDURE

- 8.1 Where it becomes known or is suspected, that money laundering is taking/has taken place or there is concern by an officer that involvement in a matter may amount to a prohibited act under the legislation (see definition in 5 above), it must be disclosed immediately. Disclosure must be within hours of the information becoming known. Failure to disclose may lead to prosecution.

- 8.2 The disclosure should be made to the MLRO initially verbally (in person or by telephone). The report must include as much detail as possible, for example:

- Full details of the people involved (including the officer making the report) e.g. full name, date of birth, address, company names, directorships, phone numbers etc.
- Full details of the nature of their involvement.
- The types of money laundering activity involved. The MLRO can help identify this.

¹ Defined by Section 340 (9) of POCA – “Property is all property wherever situated and includes:

(a) Money;
(b) All forms of property, real or personal, heritable or moveable;
(c) Things in action and other intangible or incorporeal property.”

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- The dates of such activities, including whether the transactions have happened, are ongoing or are imminent.
 - Where the transactions took place.
 - How they were undertaken.
 - The (likely) amount of money/ assets.
- 8.3 If there is concern that involvement in the transaction would amount to a prohibited act under sections 327-329 of POCA (see section 5 above for details), then consent will be needed from the National Crime Agency (NCA), via the MLRO, to take any further part in the transaction. It must therefore be made clear in the report whether there are any deadlines for giving such consent e.g. a completion date or court deadline.
- 8.4 The MLRO must be given all available information to help them decide whether there are reasonable grounds for knowledge or suspicion of money laundering, and to enable them to prepare a report to the NCA, if required.
- 8.5 Following the initial contact, the officer reporting the money laundering activity should then promptly complete the "Report to Money Laundering Reporting Officer" (See Guidance Notes) and attach copies of any supporting documentation.
- 8.6 Once reported to the MLRO the officer that made the report must follow any directions given and must not make any enquiries into the reported event. The MLRO will, if appropriate, refer the matter to the NCA who will undertake any necessary investigations. Officers will be required to co-operate fully with those investigating the matter.
- 8.7 It is imperative that nothing is said to the person suspected of money laundering; this would constitute "tipping off" which carries a maximum penalty of 5 years imprisonment and an unlimited fine.
- 8.8 All disclosure reports including those made to the NCA must be kept securely for a minimum of five years.

9. CONSIDERATION OF THE DISCLOSURE BY THE MLRO

- 9.1 On receiving a disclosure report, the MLRO must note the date of receipt on his/her section of the report and acknowledge receipt of it. He/she should also advise the officer, who made the report, of the timescale within which he/she expects to respond.
- 9.2 The MLRO will consider the report and any other available internal information he/she thinks relevant, such as:
- 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.
- 9.3 The MLRO will undertake such other enquiries as they think appropriate to ensure they take all available information into account in deciding whether to report the incident to the NCA. The MLRO may also need to discuss the report with the officer that submitted it.

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- 9.4 Once the MLRO has evaluated the disclosure report and any other relevant information, they must make a timely decision whether:
- There is actual or suspected money laundering taking place; or
 - There are reasonable grounds to know or suspect this; and
 - Whether they need consent from the NCA for a particular transaction to proceed.
- 9.5 Where the MLRO decides to refer a case to the NCA, they should do this promptly and on their standard report form (see Guidance Notes).
- 9.6 Where consent is required from the NCA for a transaction to proceed, then the transaction(s) in question must not proceed until the NCA has specifically given consent, or there is deemed consent because the relevant time limit has expired without objection from the NCA.
- 9.7 Where the MLRO suspects money laundering but has a reasonable excuse for nondisclosure, then the MLRO must note the report accordingly; consent can then be granted immediately for any ongoing or imminent transactions to proceed.
- 9.8 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 the NCA.
- 9.9 Where the MLRO concludes that there are no reasonable grounds to suspect money laundering they must mark this on the report accordingly and authorise the transaction to go ahead.
- 9.10 The MLRO is criminally liable if they know or suspect, or have reasonable grounds to do so on the basis of a disclosure made to them, that money laundering is happening and they do not disclose this promptly to the NCA.
- 9.11 All disclosure reports referred to the MLRO and reports made by the MLRO to the NCA must be retained by the MLRO in a confidential file kept for that purpose, for a minimum of five years.

10. CLIENT IDENTIFICATION PROCEDURE

- 10.1 Where the Council is carrying out relevant business (examples of relevant business may be defined for this Council as, legal services, investments, cash handling and accountancy services) and:
- a) Forms an ongoing business relationship with a client; or
 - b) Undertakes a one-off transaction involving payment by or to the client of €10,000 (or equivalent) or more; or
 - c) Undertakes a series of linked one-off transactions involving a total payment by or to the client(s) of €10,000 (or equivalent) or more; or
 - d) It is known or suspected that a one-off transaction or a number of them involves money laundering; then this Client Identification Procedure must be followed before any business is undertaken.

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- 10.2 In the above circumstances staff in the applicable department must obtain satisfactory evidence of the identity of the prospective client as soon as practicable after instructions are received. This applies to existing clients, where such information has not been obtained, as well as new clients (see Customer Due Diligence process outlined in Guidance Notes).
- 10.3 The evidence should be retained for at least five years from the end of the business relationship or one-off transaction.
- 10.4 If satisfactory evidence is not obtained at the outset then the business relationship or one-off transaction cannot proceed. If there is an unjustifiable delay in obtaining evidence of identity or the where the client is deliberately not providing evidence a disclosure will have to be made.

11. RECORD KEEPING

- 11.1 Staff within the areas of the Council conducting relevant business must maintain records of:
- Client identification evidence obtained and;
 - Details of all relevant business transactions carried out for clients.
- 11.2 As a minimum the records must provide an audit trail to aid any subsequent investigation, for example, distinguishing the client and the relevant transaction and recording in what form any funds were received or paid.
- 11.3 In all cases evidence should be retained for at least five years from the end of the business relationship or transaction(s). This is so that they may be used as evidence in any subsequent investigation.

12. GUIDANCE & TRAINING

- 12.1 In support of this policy the Council will make staff aware of the requirements and obligations placed on the Council and on themselves as individuals by the legislation and give training to those most likely to encounter money laundering.
- 12.2 As a minimum they should be made aware of the relevant legislation and their responsibilities.