

# **WEST LANCASHIRE BOROUGH COUNCIL**

## **GUIDANCE NOTE & PROCEDURES**

### **RE THE ANTI-MONEY LAUNDERING POLICY**

#### **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 businesses and professional activities.

New obligations in respect of money laundering were therefore imposed by the Proceeds of Crime 2002 Act, the Terrorist Act 2000 and the Money Laundering Regulations 2003, which were replaced by the Money Laundering Regulations 2007. These broadly define money laundering and the range of activities covered by the statutory control framework, in particular the duty to report suspicions of money laundering.

As a result, certain areas of the Council’s business are subject to the legislative controls and the Council is required to establish guidance and procedures designed to prevent the use of its services for money laundering. All staff should be aware of the content.

The Policy and this Guidance Note and Procedures document will be sufficient for most staff in providing detail on the legal requirements and practical help, however, for staff in areas which have a higher risk of being exposed to money laundering activities, additional training will be provided.

**All** members of staff are required to comply with the Council’s Anti-Money Laundering Policy in terms of reporting concerns re money laundering; this will ensure consistency throughout the Council and avoid inadvertent offences being committed.

#### **THE OFFENCES**

Under the legislation there are two main types of offences which may be committed: money laundering offences and failure to report money laundering offences.

Money laundering now goes beyond the transformation of the proceeds of crime into apparently legitimate money/assets: it now covers a range of activities (which do not necessarily need to involve money or laundering) regarding the proceeds of crime. It is technically defined as any act constituting:

- an offence under the 2002 Act i.e.:
  - concealing, disguising, converting, transferring criminal property (i) or removing it from the UK; or
  - entering into or becoming concerned in an arrangement which a person knows or suspects facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person; or

- acquiring, using or possessing criminal property (unless there was adequate consideration);
  - an attempt, conspiracy or incitement to commit such an offence; or
  - aiding, abetting, counselling or procuring such an offence; and
- an offence under the Terrorist Act 2000, namely becoming concerned in an arrangement facilitating concealment, removal from the jurisdiction, transfer to nominees or any other retention or control of terrorist property (ii).

Note also that any attempt, conspiracy or incitement to commit any of the offences noted above; or aiding, abetting, counselling or procuring such offences will also be the subject of a criminal sanction.

It is likely that the law will treat you as knowing that which you do know or which is obvious, or which an honest and reasonable person would have known given the circumstances and the information you have. Consequently if you deliberately shut your mind to the obvious, this will not absolve you of your responsibilities under the legislation.

Although you do not need to have actual evidence that money laundering is taking place, mere speculation or gossip is unlikely to be sufficient to give rise to knowledge or suspicion that it is.

The legislation goes beyond major drug money laundering operations, terrorism and serious crime to cover the proceeds of potentially any crime, no matter how minor and irrespective of the size of the benefit gained.

The broad definition of money laundering means that potentially anybody (and therefore any Council employee, irrespective of what sort of Council business they are undertaking) could contravene the money laundering offences if they become aware of, or suspect the existence of criminal or terrorist property, and continue to be involved in the matter without reporting their concerns.

The money laundering regime is far reaching and does not just relate to the activities of organised crime, offences under POCA could also apply to being complicit in crimes relating to falsification of benefit claims, benefiting from non-compliance of conditions attached to a grant and facilitating employment upon which tax is not paid.

The Council has appointed the Audit Manager, Mike Coysh, as its Money Laundering Reporting Officer (MLRO) to receive reports from employees of suspected money laundering activity (iii).

(i) "criminal property" is widely defined: it is property representing a person's benefit from criminal conduct where you know or suspect that that is the case. It includes all property (situated in the UK or abroad) real or personal, including money, and also includes an interest in land or a right in relation to property other than land.

(ii) "terrorist property" means money or other property which is likely to be used for the purposes of terrorism, proceeds of the commission of acts of terrorism, and acts carried out for the purposes of terrorism.

(iii) Note, this is not a formal appointment under section 337 or 338 of the 2002 Act

#### Examples of money laundering activity:

By way of example, consider the following hypothetical scenario:

*A Housing Officer is assessing a service user's finances to calculate how much they should pay towards the cost of electrical goods, and then goes on to arrange for goods to be provided and charged for, in the course of which s/he becomes aware of, or suspects the existence of, criminal property.*

In this scenario the Housing Officer may commit an offence under section 328 by "being concerned in an arrangement" which s/he knows/suspects "facilitates the acquisition, retention, use or control of criminal property" if s/he does not report his/her concerns. Any lawyer involved could also be guilty of an offence if s/he assists in the transaction.

Any person found guilty of a money laundering offence is liable to imprisonment (maximum of 14 years), a fine or both; however an offence is not committed if the suspected money laundering activity is reported to the MLRO and, where necessary, official permission obtained to continue in the transaction.

Defences are available if, for example, the person:

- makes an 'authorised disclosure' under the 2002 Act to the Serious Organised Crime Agency (SOCA) or the MLRO and SOCA gives consent to continue with the transaction; such a disclosure will not be taken to breach any rule which would otherwise restrict that disclosure;
- intended to make such a disclosure but had a reasonable excuse for not doing so;
- acquired, used or possessed the property for adequate consideration.
- did not know and had no reasonable cause to suspect the arrangement related to terrorist property or criminal property as the case may be.

#### **POSSIBLE SIGNS OF MONEY LAUNDERING**

It is impossible to give a definitive list of ways in which to spot money laundering or how to decide whether to make a report to the MLRO. The following are types of risk factors which may, either alone or cumulatively with other factors, suggest the possibility of money laundering activity:

##### **GENERAL**

- A new client;
- A secretive client: e.g., refuses to provide requested information without a reasonable explanation;
- Concerns about the honesty, integrity, identity or location of a client;
- Illogical third party transactions: unnecessary routing or receipt of funds from third parties or through third party accounts;
- Involvement of an unconnected third party without logical reason or explanation;
- Payment of a substantial sum in cash (over £10,000);

- Overpayments by a client;
- Absence of an obvious legitimate source of the funds;
- Movement of funds overseas, particularly to a higher risk country or tax haven;
- Where, without reasonable explanation, the size, nature and frequency of transactions or instructions (or the size, location or type of a client) is out of line with normal expectations;
- A transaction without obvious legitimate purpose or which appears uneconomic, inefficient or irrational;
- The cancellation or reversal of an earlier transaction;
- Requests for release of client account details other than in the normal course of business;
- Companies and trusts: extensive use of corporate structures and trusts in circumstances where the client's needs are inconsistent with the use of such structures;
- Poor business records or internal accounting controls;
- A previous transaction for the same client which has been, or should have been, reported to the MLRO;

#### **PROPERTY MATTERS**

- Unusual property investment transactions if there is no apparent investment purpose or rationale;
- Instructions to receive and pay out money where there is no linked substantive property transaction involved (surrogate banking);
- Re property transactions, funds received for deposits or prior to completion from an unexpected source or where instructions are given for settlement funds to be paid to an unexpected destination;

Facts which tend to suggest that something odd is happening may be sufficient for a reasonable suspicion of money laundering to arise.

In short, the money laundering offences apply to your own actions and to matters in which you become involved. If you become aware that your involvement in a matter may amount to money laundering under the 2002 Act then you must discuss it with the MLRO and not take any further action until you have received, through the MLRO, the consent of SOCA. The failure to report money laundering obligations relate also to your knowledge or suspicions of others, through your work.

#### **WHAT ARE MY RESPONSIBILITIES?**

The Council's Anti-Money Laundering Policy makes it clear that all members of staff should report any concerns they may have of money laundering activity, irrespective of their area of work.

In relation to money laundering offences themselves, potentially any member of staff could breach the legislation if they knew or suspected money laundering and became involved with it in some way without reporting their concerns.

If you know or suspect, through the course of your work, that anyone is involved in any sort of criminal conduct then it is highly likely, given the wide definition of money laundering, that the client is also engaged in money laundering and a report to the

MLRO will be required. The value involved in the offence is irrelevant. If, for example, you reasonably suspect that someone has falsified their expenses claim, even if just by £1, then you would need to report that to the MLRO.

Do not voice any suspicions to the person(s) whom you suspect of money laundering or involve other officers/individuals. 'Tipping off' is no longer an offence under the 2007 regulations for public authorities, however to do so may jeopardise the investigation.

If you suspect a case of money laundering you should report the details immediately to the Council's Money Laundering Reporting Officer (MLRO) Mike Coysh (ext 2603) or in his absence the Deputy MLRO ~~Ferry Broderick~~Michael Hynes (ext 50045522). Such disclosures to the MLRO will be protected in that they will not be taken to breach any restriction on the disclosure of information.

The report should be made either by completing the proforma at Appendix 1 of the Anti-money Laundering Policy, or if you prefer, in a discussion.

You should still report your concerns, even if you believe someone else has already reported their suspicions of the same money laundering activity.

If you are in any doubt as to whether or not to file a report with the MLRO then you should err on the side of caution and do so. The MLRO will not refer the matter on to SOCA if there is no need.

### **CONSIDERATION OF DISCLOSURE REPORT BY MLRO**

Where the MLRO receives a disclosure from a member of staff and concludes that there is actual/suspected money laundering taking place, or there are reasonable grounds to suspect so, then he must make a report as soon as practicable to SOCA on their standard report form and in the prescribed manner, unless he has a reasonable excuse for non-disclosure. Where relevant, the MLRO will also need to request appropriate consent from SOCA for any acts/transactions, which may otherwise amount to prohibited acts under the 2002 Act, to proceed.

The MLRO may receive appropriate consent from SOCA in the following ways:

- specific consent;
- no refusal of consent during the notice period (seven working days starting with the first working day after the MLRO makes the disclosure); or
- refusal of consent during the notice period but the moratorium period has expired (31 days starting with the day on which the MLRO receives notice of refusal of consent).

### **RELEVANT GUIDANCE**

When considering any offence under the legislation, the Court will consider whether you followed any relevant guidance approved by the Treasury, a supervisory authority, or any other appropriate body which includes, for example, the Law Society, the Financial Services Authority, the Institute of Chartered Accountants in England and Wales and other such bodies. Such guidance is available for lawyers and accountants by their respective professional bodies.

### **CLIENT IDENTIFICATION PROCEDURE**

The client identification procedure – putting in place formal procedures for evidencing the identity of those they do business with under the 2007 regulations - is only required,

under the regulations, by those engaging in specific areas of Council activity. It is essential, however, for all staff to ensure they are constantly alert to potentially suspicious circumstances, for example, situations where funds flow through the Council from a source with which it is unfamiliar.

In particular, if the Council is forming a new business relationship, and/or is considering undertaking a significant one-off transaction, officers must ensure that their own divisional service procedures satisfy the requirements of the Client Identification Procedure before any business is undertaken for that client. This will be especially true if the parties concerned are not physically present for identification purposes and to situations where they may be acting for absent third parties. Satisfactory evidence of the identity of the prospective client should be obtained beforehand. Further guidance can be obtained from the MLRO.

If you are undertaking work for a new client, then you may also wish to corroborate the details they provide/identity using any other sources available e.g.:

- check the organisation's website to confirm the identity of personnel, its business address and any other details;
- attend the client at their business address;
- search the telephone directory;
- ask the key contact officer to provide evidence of their personal identity and position within the organisation

## **CONCLUSION**

Given the nature of what the Council does and who it can provide services for, instances of suspected money laundering are unlikely to arise very often, if at all; however we must be mindful of the legislative requirements, as failure to comply with them may render the Council and/or individuals liable to prosecution and will also severely affect the reputation of the Council if it were to be implicated in such activity.

Please take prompt and proper action if you have any suspicions and feel free to consult the MLRO at any time should you be concerned regarding a matter.

### ***Resources used in connection with the preparation of the Anti-Money Laundering Policy and Guidance Note (and helpful reference points):***

[www.moneylaunderingreporting.co.uk](http://www.moneylaunderingreporting.co.uk)

<http://www.soca.gov.uk/>

[www.anti-moneylaundering.org](http://www.anti-moneylaundering.org)

[www.theclc.gov.uk](http://www.theclc.gov.uk)

[www.fowles.co.uk/MoneyLaundering.htm](http://www.fowles.co.uk/MoneyLaundering.htm)

[www.hardwickecrime.co.uk/access/resources/articles/03031201](http://www.hardwickecrime.co.uk/access/resources/articles/03031201)

*The Financial Services' Authority Handbook*

*The Law Society "Money Laundering: Guidance for Solicitors (Pilot – January 2004)"*

*"The Money Laundering Regulations" by Charles Ward (The Legal Executive Journal)*

*"I Spy" by Jon Robins (The Lawyer magazine)*

*"Secret Disservice" by Peter Caldwell (The Lawyer magazine 8.3.04)*

*"Property lawyers – are you ready?" by Vanessa France & Jonathan Mills (The Young Solicitors Group Mar/Apr 04)*

*CIPFA's Combating financial crime. Further guidance on Anti-money laundering for Public Services Organisations 2009*