

Darlington Borough Council

Proceeds of Crime Act (Anti-Money Laundering) Policy

1 Introduction

1.1 The Proceeds Of Crime Act 2002, Money Laundering Regulations 2003 and other recent legislation impose significant new burdens on Local Authorities to recognise and report "money laundering" by those they deal with.

1.2 The Acts have broadened the definition of money laundering and increased the range of activities caught by 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.

2 What is Money Laundering?

2.1 Money laundering is an act falling within section 340(11) of the Proceeds of Crime Act 2002 (POCA). **Money laundering is now interpreted very widely and includes possessing, or in any way dealing with, or concealing, the proceeds of any crime.**

Organised Money Laundering.

2.2 This is what is typically thought of as money laundering and involves organised crime and providing a legitimate cover for criminal funds. The aim is for the money to get into the financial mainstream, and therefore 'dirty' funds appear to come 'clean'. There are many different methods, from the purchase of property and luxury goods to the creation of 'shell' companies.

Smaller Scale Money Laundering.

2.3 This occurs whenever money generated by crime is placed in the economic system, i.e. any type of property crime is likely to involve money laundering.

To most people who are likely to come across it or be affected by it, money laundering involves a suspicion that someone they know, or know of, is benefiting financially from dishonest activities.

3 What duty does the Council have?

3.1 The Council must reflect the principles of this legislation by the establishment of internal procedures to prevent the use of their services for money laundering and by the appointment of a Money Laundering Reporting Officer (MLRO).

Money Laundering Reporting Officer.

3.2 The officer nominated to receive disclosures about money laundering activity within the Council is the Head of Corporate Assurance. Contact details are as follows:

Head of Corporate Assurance
Audit Services
Darlington Borough Council
Corporate Services Department
Town Hall
Darlington
DL1 5QT

Email: internalaudit@darlington.gov.uk

In the absence of the MLRO, the Audit Managers are authorised to deputise..

Client Identification for Relevant Business.

3.3 In addition to appointing a MLRO, the legislation mainly concerns the Council's 'relevant business' of accountancy and audit services, and the financial, company and property transactions undertaken by Legal Services that are provided 'by way of business' to third parties.

3.4 Legal, Finance, Accounting and Audit staff must follow the procedures set out in Appendix 1 in order to ascertain the true identity of clients and ensure record keeping procedures (e.g. for evidence of identity obtained, details of transactions undertaken, for at least 5 years afterwards).

3.5 Legal Services are subject to particular provisions applying to the legal profession and these are set out separately in Legal Services procedure notes.

4 Duties upon all members of staff.

Criminal Offences

Potentially any employee could commit a criminal offence if they suspect money laundering and either become involved with it in some way and/or do nothing about it.

4.1 The principle offences of money laundering under the legislation are

- Concealing, disguising, converting, transferring or removing criminal property (Section 327)
- Being 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 (Section 328)
- Acquiring, using or possessing criminal property (Section 329)

4.2 However there are also two further ‘third party’ offences that relate to the suspicion or knowledge that money laundering is taking place, and these are the ones that members of staff are more likely to commit

- Failure to disclose one of the principle offences
- Tipping Off – where someone informs a person who is, or suspected of being involved in money laundering, in such a way as to reduce the likelihood of their being investigated, or prejudicing an investigation.

To comply with the legislation all staff are required to follow the reporting procedure set out in this policy if they have knowledge of or suspicion of money laundering taking place.

4.3 Recognising Money Laundering.

At all times staff should:

- be wary of unusually large cash transactions;
- be wary of the absence of an obvious legitimate source of funds
- be alert to the possibility of money laundering by a client or a prospective client;

4.4 Possible signs of money laundering are set out in Appendix 2.

5. Reporting Procedure

5.1 Where you know or suspect that money laundering activity is taking place (or has happened) you must immediately notify the MLRO on the form set out in Appendix 3. If you do not immediately notify the MLRO then you may be liable to prosecution.

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

5.3 After reporting:

- you must not make any further enquiries into the matter yourself and you must assist the MLRO as requested;
- at no time and under no circumstances should you voice any suspicions to the person(s) whom you suspect of money laundering, otherwise you may commit a criminal offence of “tipping off”. Be very careful what you say; preliminary enquiries of a client to obtain more information (e.g. confirm their identity, clarify the source of funds) will not amount to tipping off unless you know or suspect that a report has been made;
- You should not record on a client file that the MLRO has been notified – 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 secure manner. Such disclosures to the MLRO will be protected in that they will not be taken to breach any restriction on the disclosure of information.

5.4 You should be aware that:

- If you deliberately shut your mind to the obvious, you will still be responsible under the legislation.
- Although you do not need actual evidence money laundering is happening, mere speculation or gossip is unlikely to be sufficient to show 'knowledge or suspicion'.
- The legislation covers the proceeds of any crime, no matter how minor and irrespective of the size of the benefit gained.

6 Action by Money Laundering Reporting Officer

6.1 The MLRO will:

- Advise you of the timescale within which he expects to respond to you;
- will consider the form and any other available internal information he thinks relevant;
- undertake such other reasonable inquiries he thinks appropriate;
- seek specialist legal and financial advice (if appropriate);
- once the MLRO has evaluated the disclosure report and any other relevant information, he must make a timely determination about money laundering, 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 (SOCA) for a particular transaction to proceed.

6.2 If so then the MLRO must disclose this as soon as practicable to the SOCA (the Serious Organised Crime Agency) on their standard report form and in the prescribed manner, unless there is a reasonable excuse for non-disclosure to the SOCA (for example, if you are a lawyer and you wish to claim legal professional privilege for not disclosing the information).

6.3 All disclosure reports referred to the MLRO and reports made by the MLRO to SOCA must be retained by the MLRO in a confidential file kept for that purpose, for a minimum of five years.

6.4 The MLRO commits a criminal offence if he or she knows or suspects, or has reasonable grounds to do so, through a disclosure being made to him or her, that another person is engaged in money laundering and he or she does not disclose this as soon as practicable to the SOCA.

6.5 The MLRO should always consult the Borough Solicitor in complex or difficult cases.

Please take prompt and proper action in accordance with this Policy if you have any suspicions and if you have any concerns whatsoever regarding any transactions then you should contact the MLRO as you can be held criminally liable for a number of offences.

7 Review of this Policy

7.1 This Policy will be reviewed and updated annually, as necessary, by the Head of Corporate Assurance

APPENDIX 1

IDENTIFICATION PROCEDURE AND RECORD KEEPING PROCEDURES FOR FINANCIAL SERVICES, AUDIT AND LEGAL STAFF

A. General

The procedures set out in this Appendix apply to Council Employees conducting 'relevant business' (set out below) and these are mainly accountancy and audit services carried out by Financial Services and certain financial, company and property transactions undertaken by Legal Services.

"Relevant" for the purposes of the legislation is the provision **by way of business** of:

- advice about the tax affairs of another person by a body corporate;
- accountancy services by a body corporate;
- audit services;
- legal services by a body corporate which involves participation in a financial or real property transaction (whether by assisting in the planning or execution of any such transaction or otherwise by acting for, or on behalf of, a client in any such transaction);
- services in relation to the formation, operation or management of a company or a trust.

B. Identification Procedure

Where the Council is carrying out relevant business (the provision of accountancy, audit and certain legal services 'by way of business' to third parties) 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 15,000 Euro (approximately £10,000) or more; or
- c) undertakes a series of linked one-off transactions involving total payment by or to the client(s) of 15,000 Euro (approximately £10,000) or more; or
- d) it is known or suspected that a one-off transaction (or a series of them) involves money laundering;

then this Identification Procedure must be followed before any business is undertaken with that organisation or person. For the procedure, you must obtain satisfactory evidence of identity, as soon as practicable after instructions are received (unless evidence has already been obtained). This applies to existing and new persons or organisations, but

identification evidence is not required for matters entered into prior to 1 March 2004.

Satisfactory evidence is evidence which:

- is capable of establishing, to the satisfaction of the person receiving it, that the client is who they claim to be; and
- does in fact do so.

Evidence of identity should be obtained as follows:

1. Signed, written instructions on official letterhead at the outset of a particular matter. Such correspondence should then be placed on the Council's file along with a prominent note explaining which correspondence constitutes the evidence and where it is located.

2. If you are undertaking work for a new persons or organisations or further instructions from a person or an organisation not well known to you, then you may also wish to seek additional evidence of the identity of key individuals in the organisation and of the organisation itself, for example:

- checking the organisation's website to confirm the business address;
- attending them at their business address;
- asking the key contact Employee to provide evidence of their personal identity and position within the organisation; for example signed, written confirmation from their Head of Service or Chair of the relevant organisation.

If satisfactory evidence of identity is not obtained at the outset of the matter then the business relationship or one off transaction(s) cannot proceed any further until this becomes available.

The law states that particular care must be taken when the person or organisation that is paying you to do work or who the council is an agent for, is not physically present when being identified: this is always likely to be the case for the Council, given that its relevant business can only be undertaken for other local authorities and designated public bodies (not individuals) and therefore instructions will usually be given in writing.

There are a limited number of exceptions where identification evidence does not need to be obtained, for example evidence is not required when a purchaser of property is represented by a legal professional (eg solicitor, legal executive, licensed conveyancer etc): this is because we are entitled to presume that the professional has complied with the legislation and checked the purchaser's identity (as their own client).

General guidance on money laundering legislation suggests that fairly rigorous identification checks should be made: for example, in relation to an organisation, evidence should be obtained as to the identity of key individuals within the organisation along with evidence of identity of the business entity and its activity.

You will see, however, that the Council's Client Identification Procedure provides for only the most basic of identity checks – signed, written instructions on the organisation in question's headed paper at the outset of a particular matter. This is not because client identification is not important, but because of the need to introduce a procedure that is workable, appropriate to the nature of the Council as an organisation and proportionate to the risk to the Council of money laundering,

which has been assessed as low.

C. Recording Keeping Procedures

Each unit of the Council conducting relevant business must maintain records for at least five years from the end of the business relationship or one-off transaction(s) of:

- identification evidence obtained; and
- details of all relevant business transactions carried out for those persons or organisations for whom we have obtained evidence

This is so they may be used as evidence in any subsequent investigation by the authorities into money laundering.

The precise nature of the records is not prescribed by law however they must be capable of providing an audit trail during any investigation, for example distinguishing the person or organisation and the relevant transaction and recording in what form any funds were received or paid.

In practice, Council business units will be routinely making records of work carried out for persons or organisations in the course of normal business and these should be sufficient for this requirement.

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 that may, either alone or cumulatively with other factors, suggest the possibility of money laundering activity:

General

- 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;
- Significant overpayments by a client and the subsequent requests for refunds;
- Absence of an obvious legitimate source of the funds;
- 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;
- Refunds following the cancellation or reversal of an earlier transaction;
- Requests for release of client account details other than in the normal course of business;
- Poor business records or internal accounting controls;
- A previous transaction for the same client that has been, or should have been, reported to the MLRO.

Property

- Unusual property investment transactions if there is no apparent investment purpose or rationale;
- 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.

Reporting Forms

CONFIDENTIAL

Report to Money Laundering Reporting Officer re money laundering activity

To: [] Money Laundering Reporting Officer

From:
[insert name of employee]

Directorate: Ext/Tel
No:..... *[insert post title and Business Unit]*

DETAILS OF SUSPECTED OFFENCE:

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

<p>Nature, value and timing of activity involved: [Please include full details e.g. what, when, where, how. Continue on a separate sheet if necessary]</p>

<p>Nature of suspicions regarding such activity: <i>[Please continue on a separate sheet if necessary]</i></p>

Has any investigation been undertaken (as far as you are aware)?
Yes/No

If yes, please include details below:

Have you discussed your suspicions with anyone else?
Yes/No

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)

Yes/No

If yes, please specify below:

Do you feel you have a reasonable excuse for not disclosing the matter to the SOCA? (e.g. are you a lawyer and wish to claim legal professional privilege?)

Yes/No

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 the SOCA?

Yes/No

If yes, please give details 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 5years' 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?

[Please tick the relevant box]

If there are reasonable grounds for suspicion, will a report be made to the SOCA?

Yes/No

If yes, please confirm date of report to SOCA:

.....

and complete the box below:

Details of liaison with the SOCA regarding the report: Notice Period: to Moratorium Period: to

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

Yes/ No

If yes, please confirm full details below:

Date consent received from SOCA:

.....

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 the SOCA, 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