ANNEX 1

TONBRIDGE & MALLING BOROUGH COUNCIL
ANTI-MONEY LAUNDERING POLICY

1. INTRODUCTION

1.1 The relevant Regulations and Acts pertinent to this policy document are

Proceeds of Crime Act 2002 (POCA 2002)
Terrorism Act 2000 (TA 2000)
Money Laundering Regulations 2007 (MLR 2007)

1.2 Public authorities and their staff are subject to the full provision of the Terrorism Act 2000 and may be exposed to most of the offences listed under the Proceeds of Crime Act 2002.

1.3 As Public authorities are neither 'Relevant Persons' (as defined in the MLR 2007) nor part of the 'Regulated Sector' (as defined in POCA 2002) they are not obliged to apply the provisions of the Money Laundering Act 2007.

1.4 However, as responsible public bodies, public authorities should employ policies and procedures which reflect the essence of the UK's anti-terrorist financing and anti-money laundering regimes.

2. SCOPE OF THE POLICY

2.1 This Policy, which applies to Members and all employees of the Council, aims to maintain the high standards of conduct which currently exist within the Council by preventing criminal activity through money laundering. The Policy sets out the procedures which must be followed (for example the reporting of suspicions of money laundering activity) to enable the Council to comply with its legal obligations.

2.2 Further information is set out in the accompanying Guidance Note. Both the Policy and the Guidance Note sit alongside the Council's Confidential Reporting Code and Anti-Fraud and Corruption Strategy.

2.3 Failure by a person to comply with the procedures set out in this Policy may lead to disciplinary action being taken against them. Any disciplinary action will be dealt with in accordance with the Council's Disciplinary Policy and Procedure.

3. WHAT IS MONEY LAUNDERING?

3.1 Money laundering is defined as meaning:

- concealing, disguising, converting, transferring criminal property or removing it from the UK (section 327 of the 2002 Act); 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); or

- acquiring, using or possessing criminal property (section 329); or

- becoming concerned in an arrangement facilitating concealment, removal from the jurisdiction, transfer to nominees or any other retention or control of terrorist property (section 18 of the Terrorist Act 2000).

These are the primary money laundering offences and thus prohibited acts under the legislation.

3.2 Potentially any Member or member of staff could contravene the POCA 2002 provisions if they suspect money laundering and either become involved with it in some way and/or do nothing about it. The Guidance Note gives practical examples. This Policy sets out how any concerns should be raised.

3.3 Whilst the risk to the Council of contravening legislation is low, it is extremely important that all Members and employees are familiar with their legal responsibilities as serious criminal sanctions may be imposed for breaches.

4. WHAT ARE THE OBLIGATIONS ON THE COUNCIL?

4.1 As previously mentioned public authorities are not obliged to apply the provisions of the MLR 2007. However, there is substantial reputational risk for an authority that does not have adequate policies and procedures in place. To that end the Council has adopted certain of the procedures required of 'relevant persons' as defined in the MLR 2007 Regulations -

- 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 record keeping procedures.

4.2 For the purposes of this Policy the main areas of concern are financial and property transactions undertaken by the Council's Finance, Legal and Estates sections. However, the safest way to ensure compliance with the law is to apply them to all areas of work undertaken by the Council; therefore, all Members and staff are required to comply with the reporting procedure set out in section 6 below.

4.3 The following sections of this Policy provide further detail about the requirements listed in paragraph 4.1.

5. THE MONEY LAUNDERING REPORTING OFFICER

5.1 The officer nominated to receive disclosures about money laundering activity within the Council is the Insurance & Risk Manager, Brian Courtney. He can be contacted as follows:

Brian Courtney
Insurance & Risk Manager
Financial Services
Gibson Building
Gibson Drive
Kings Hill
West Malling
ME19 4LZ

Telephone: 01732 876108 Direct Line or at brian.courtney@tmbc.gov.uk

5.2 In the absence of the MLRO, the Exchequer Services Manager, John Pickup, is authorised to deputise for him. John can be contacted at the above address or on telephone number 01732 876112 Direct Line or at john.pickup@tmbc.gov.uk.

6. DISCLOSURE PROCEDURE

Reporting to the Money Laundering Reporting Officer

6.1 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 the legislation, 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.

6.2 Your disclosure should be made to the MLRO using the proforma report attached at Appendix 1. The report must include as much detail as possible, for example:

a) Full details of the people involved (including yourself, if relevant), e.g. name, date of birth, address, company names, directorships, phone numbers, etc;

b) 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 (sections 327 – 329 of the 2002 Act), then your report must include all relevant details, as you will need consent from the National Criminal Intelligence Service ("NCIS"), 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;

c) 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 the POCA 2002 Act (or 2000 Act), or
general reporting requirement under section 330 of the 2002 Act (or section 21A of the 2000 Act), or both;

d) 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 NCIS 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 NCIS, where appropriate. You should also enclose copies of any relevant supporting documentation

6.3 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 NCIS. Simply report your suspicions to the MLRO who will refer the matter on to the NCIS if appropriate. All members of staff will be required to co-operate with the MLRO and the authorities during any subsequent money laundering investigation.

6.4 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 NCIS has given consent to a particular transaction proceeding, without the specific consent of the MLRO.

6.5 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. The MLRO will keep the appropriate records in a confidential manner.

Consideration of the disclosure by the Money Laundering Reporting Officer

6.6 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.

6.7 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 the NCIS 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.

6.8 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 NCIS for a particular transaction to proceed.

6.9 Where the MLRO does so conclude, then he must disclose the matter as soon as practicable to the NCIS on their standard report form and in the prescribed manner, unless he has a reasonable excuse for non-disclosure to the NCIS (for example, if you are a lawyer and you wish to claim legal professional privilege for not disclosing the information).

6.10 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.

6.11 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 NCIS.

6.12 Where consent is required from the NCIS for a transaction to proceed, then the transaction(s) in question must not be undertaken or completed until the NCIS has specifically given consent, or there is deemed consent through the expiration of the relevant time limits without objection from the NCIS.

6.13 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.

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

6.5 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 the NCIS.

7. CLIENT IDENTIFICATION PROCEDURE

7.1 Although, as a result of the MLR Regulations 2007, it is no longer a legal requirement for public authorities to have in place formal procedures for evidencing the identity of those they do business with, it is good practice to do so. In particular if the authority is forming a new business relationship or is considering undertaking a significant one-off transaction, it would be prudent to set up and maintain identification procedures with the parties involved.

7.2 This will be especially true if the parties concerned are not physically present for identification purposes – to which the MLR 2007 Regulations (Regulation 14(2)) draw specific attention - and to situations where they may be acting for absent third parties.

7.3 Staff in the relevant section of the Council must obtain satisfactory evidence of the identity of the prospective client, as soon as practicable after instructions are received (unless evidence of the client has already been obained).

7.4 Once instructions to provide relevant business have been received, and it has been established that any of the scenarios in paragraphs 7.1 and 7.2 apply, evidence of identity should be obtained as follows:

Internal clients:

7.4.1 Appropriate evidence of identity for Council departments will be signed, written instructions on Council headed notepaper or an email on the internal

Groupwise email system at the outset of a particular matter. Such correspondence should then be placed on the Council's client file along with a prominent note explaining which correspondence constitutes the evidence and where it is located.

External Clients:

7.4.2 The MLRO will maintain a central file of general client identification evidence regarding the external organisations to whom Financial Services and Legal Services provide professional services (e.g. Kent Police, District, other Councils). You should check with the MLRO that the organisation in respect of which you require identification is included in the MLRO's central file and check the precise details contained in relation to that organisation. If the organisation is not included in the central file, you should discuss with the MLRO. You should also then obtain the following additional evidence:

7.4.2.1 For external clients, appropriate additional evidence of identity will be written instructions on the organisation's official letterhead at the outset of the matter or an email from the organisation's e-communication system. Such correspondence should then be placed on the Council's client file along with a prominent note explaining which correspondence constitutes the evidence and where it is located (and including a reference to a search of the MLRO's central file, if undertaken).

7.4.3 With instructions from new clients, or further instructions from a client not well known to you, you may wish to seek additional evidence of the identity of key individuals in the organisation and of the organisation itself: please see the Guidance Note for more information.

7.5 In all cases, the evidence should be retained for at least five years from the end of the business relationship or transaction(s).

7.6 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.

8.RECORD KEEPING PROCEDURES

8.1 Each section of the Council must maintain records of:

- client identification evidence obtained; and
- details of all relevant business transactions carried out for clients

for at least five years. This is so that they may be used as evidence in any subsequent investigation by the authorities into money laundering.

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

business units of the Council will be routinely making records of work carried out for clients in the course of normal business and these should suffice in this regard.

9. CONCLUSION

9.1 The legislative requirements concerning anti-money laundering procedures are lengthy and complex. This Policy has been written so as to enable the Council to meet the legal requirements in a way which is proportionate to the very low risk to the Council of contravening the legislation.

9.2 Should you have any concerns whatsoever regarding any transactions then you should contact the MLRO.

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