

TONBRIDGE & MALLING BOROUGH COUNCIL

GUIDANCE NOTE - Anti-Money Laundering

1. INTRODUCTION

Tonbridge and Malling Borough Council has a zero tolerance policy concerning money laundering and is committed to the highest standards of conduct.

The Proceeds of Crime Act (POCA) 2002, the Terrorism Act 2000 and the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 place obligations on Tonbridge and Malling Borough Council and its employees to ensure that procedures are in place to prevent the Council's services being used for money laundering.

This note seeks to provide guidance on the Council's anti-money laundering procedures in order to minimise any risk. Adhering to the policy and guidance will protect employees from the risk of prosecution if an employee becomes aware of money laundering activity while employed by the Council.

The approved policy is not intended to prevent customers and service users from making payments for Council services, but to minimise the risk of money laundering in high value cash transactions.

2. GENERAL

Whilst the Council has no obligation under statute to provide what is defined as a 'Relevant Person(s)' for the purposes of money laundering there is substantial reputational risk for the authority if it does not have an adequate policy or procedure in place to prevent money laundering.

To that end the Council has adopted certain of the procedures required of the regulations

These are;

- 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.

Certain areas of the Council's business will be more likely to attract potential money laundering activity – property/legal transactions and financial arrangements. All Councillors, employees (permanent or temporary) and contractors of the Council are required to comply with the Council's Anti-Money Laundering Policy in terms of reporting concerns regarding money laundering. This will ensure consistency throughout the organisation and avoid 'offences' being committed inadvertently.

3. THE OFFENCES

Under the legislation there are two main types of offences which may be committed:

- Money laundering offences
- Failure to report money laundering offences.

Details of what falls under each of these headings are shown below:

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:

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

“Criminal property” is widely defined - it is 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 obtained through a person’s benefit from criminal conduct where you know or suspect that that is the case.

“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.

The law assumes a reasonable and honest person to draw a judgement on the circumstances and information available to you, ignoring this information and guidance will not absolve you of your responsibilities under the legislation.

The Council has appointed the Financial Services Manager, Paul Worden, as its Money Laundering Reporting Officer to receive reports from employees of suspected money laundering activity. He can be contacted on 01732 876175 and at paul.worden@tmbc.gov.uk.

In his absence the Senior Exchequer Assistant, Dominic Reynolds, is authorised to deputise for him and can be contacted on 01732 876110 and at dominic.reynolds@tmbc.gov.uk.

Examples of money laundering activity

By way of an example, consider the following hypothetical scenario:

A council officer is assessing a customer's finances to calculate how much they should pay towards a service, in the course of which they become aware of, or suspects the existence of, criminal property.

In this scenario the officer may commit an offence under section 328 by "being concerned in an arrangement" which they knows/suspects "facilitates the acquisition, retention, use or control of criminal property" if they do not report their 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.

Possible signs of money laundering

It is impossible to provide 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:

Legal and financial

- A new client;
- Concerns about the honesty, integrity, identity or location of a client;
- Illogical or unreasonable transactions: unnecessary routing or receipt of funds via third parties, or is out of line with normal expectations;
- Payment of a substantial sum in cash (over £13,000);
- Absence of an obvious legitimate source or purpose of funds;
- Movement of funds overseas, particularly to a higher risk country or tax haven;
- An overpayment, cancellation or reversal of an earlier transaction which would require a refund;
- 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

- 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);

- 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 then you must discuss it with the MLRO and not take any further action until you have received further instructions from the MLRO.

The failure to report money laundering obligations, referred to below, relate also to your knowledge or suspicions of others, through your work.

Failure to report money laundering offences.

Under the Terrorism Act 2000 all individuals and businesses in the UK have an obligation to report knowledge, reasonable grounds for belief or suspicion about the proceeds from, or finance likely to be used for, terrorism or its laundering, where it relates to information that comes to them in the course of their business or employment.

The Council's Anti-Money Laundering Policy makes it clear that Members and staff must report any concerns they may have of money laundering activity, irrespective of their area of work and whether it is relevant business for purposes of the legislation. 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 possible that the client is also engaged in money laundering and a report to the MLRO will be required, irrespective of the value of the transaction.

Such disclosures to the MLRO are confidential and will be protected in that they will not be taken to breach any restriction on the disclosure of information. You should report any matter you consider as an illegal act to the MLRO, failure to report may render you liable to prosecution.

Where you suspect money laundering and report it to the MLRO, information should not be disclosed to a third party without the permission of the MLRO, as it could result in prejudicing any further investigation, subsequent charge or prosecution. Both of these actions could give rise to a criminal offence and result in your own prosecution.

4. 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 they must make a report as soon as practicable to the NCA 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 the NCA for any acts/transactions, which would otherwise amount to prohibited acts, to proceed.

The MLRO may receive appropriate consent from the NCA 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).

5. 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 Conduct Authority, members of the Consultative Committee of Accountancy Bodies (CCAB) and other such bodies. Such guidance is available for lawyers and accountants by their respective professional bodies.

6. INTERNAL PROCEDURES

As mentioned earlier, the various acts impose specific obligations on individuals and businesses in the UK, requiring them to:

- obtain sufficient knowledge to ascertain the true identity of clients in certain circumstances, by maintaining client identification procedures;
- ensure record keeping procedures (e.g. for evidence of identity obtained, details of transactions undertaken, for at least 5 years afterwards).

These procedures are contained in the Anti-Money Laundering Policy and further explanation of them is given below.

7. CLIENT IDENTIFICATION PROCEDURE

Where the Council -

- forms an ongoing business relationship with a client; or
- undertakes a one-off or series of transactions involving payment by the client of £13,000 or more; or
- it is known or suspected that a one-off transaction (or a series of them) involves money laundering

The Client Identification Procedure must be followed before any business is undertaken for that client. Where the client is acting or appears to be acting for someone else, reasonable steps must also be taken to establish the identity of that other person (although this is unlikely to be relevant to the Council).

The law states that particular care must be taken when the client is not physically present when being identified. There are a limited number of exceptions where identification evidence does not need to be obtained, however these are unlikely to ever be relevant to the Council.

8. SATISFACTORY EVIDENCE OF IDENTITY

Satisfactory evidence is that 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.

General guidance on the money laundering legislation suggests that fairly rigorous identification checks should be made. However, due to the considered low risk of the Council being open to money laundering the authority provides for only the most basic of identity checks:

- for internal clients, signed, written instructions on Council headed notepaper or an email on the internal email system at the outset of a particular matter; and
- for external clients, signed, written instructions on the organisation in question's headed paper at the outset of a particular matter.

The following factors suggest a minimum level client identification procedure for the Council is appropriate:

- For internal clients: we all work for the same organisation and therefore have detailed awareness of individuals and their location through previous dealings.
- For external clients: generally local authorities can only provide services to local authorities and designated public bodies; they are therefore heavily regulated by their very nature; most are repeat clients, well known to us in terms of people and the business address.

The Client Identification Procedure should enable us to have confidence in accepting instructions from a known client. For a new client, then you may also wish to seek additional evidence, for example:

- checking the organisation's website to confirm the identity of personnel, its business address and any other details;
- attending the client at their business address;
- a search of the internet;
- asking the key contact officer to provide evidence of their personal identity and position within the organisation, for example: passport or driving licence; signed, written confirmation from their Head of Service or Chair of the relevant organisation that such person works for the organisation.

9. TRAINING

Because of the perceived low risk of the Council of becoming involved in money laundering activity, this Guidance Note will provide sufficient awareness/ training for most members of staff. However, further guidance may be issued from time to time and targeted training provided to those staff more directly affected by the legislation.

10. 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 individuals liable to prosecution.

Please take prompt and proper action if you have any suspicions and feel free to consult the MLRO on 01732 876175 or at paul.worden@tmbc.gov.uk at any time should you be concerned regarding any related matter.