

Anti-Money Laundering Policy and Guidance 2019



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If you require clarification on any aspect of the Anti-Money Laundering Policy or require this document in a different format, please contact the Internal Audit function of the Council.

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The Council's Corporate Audit Committee has recorded in its Terms of Reference that it will review periodically the Council's key financial governance procedures, i.e. Financial Regulations, Contract Standing Orders, Anti-Fraud & Corruption Strategy and recommend any necessary amendments

Introduction

The Proceeds of Crime Act 2002 (The POCA Act) amended by the Criminal Finance Act 2017 ([2017](#)). The Terrorism Act [2000](#) & [2006](#), and the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ([MLR 2017](#)) place obligations on the Council and its employees with respect to suspected money laundering.

MLR 2017 commenced on 26 June 2017 and impacts on certain areas of local authority business. As under the previous regulations of 2007, it requires local authorities to maintain internal procedures to prevent the use of their services for money laundering. A key difference of the 2017 Regulations is that it requires relevant persons to adopt a more risk-based approach towards anti-money laundering, particularly in the conduct of due diligence. Determining the appropriate level of due diligence requires analysis of risk factors based on the EU Directive and which are set out in MLR 2017.

Scope of Policy

This Policy applies to all employees of the Council and aims to maintain the high standards of probity which currently exist within the Council by preventing criminal activity through money laundering.

- All employees whether full or part time, permanent or temporary
- Elected Members
- All staff working in maintained schools (Local Education Authority)
- All contractors, agencies and partners working within the Council

This Policy is closely aligned to the Council's Anti-Fraud & Corruption Strategy 2019 and the Whistle Blowing Policy 2019.

Failure by a member of staff to comply with the procedures set out in this Policy may lead to disciplinary action under the Council's Disciplinary Procedure and/or prosecution.

What is Money Laundering?

Money laundering is the disguising of the source of money, either in cash, paper or electronic form including Bitcoins. This may be in order to conceal that the money has originated from crime, or it may be to conceal the source of money that is to be used in the pursuit of future crime.

Money laundering is highly sophisticated. The conversion of cash in to a non-cash form of money is only the first step. In itself it is not sufficient disguise for the launderer. There will follow a complex series of transactions intended to hide the trail from any

investigator. Consequently those on the lookout for money laundering should not restrict themselves to looking for cash transactions.

The following acts constitute money laundering:

- Concealing, disguising, converting, transferring criminal property or removing it from the UK ([Section 327 of the Proceeds of Crime Act 2002](#));
- 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](#));
- Acquiring, using or possessing criminal property ([Section 329](#)).

What are the obligations on the Council?

Organisations conducting “relevant business” must:

- Appoint Money Laundering Reporting Officers (MLROs) to receive disclosures from employees, of money laundering activity (their own or anyone else’s);
- Implement risk sensitive policies and procedures relating to customer due diligence, reporting, record keeping, internal control, risk assessment and management, the monitoring and management of compliance and the internal communication of such policies and procedures.

Not all of the Council’s business is “relevant” for the purposes of the legislation: it is mainly the accountancy and audit services carried out by the Corporate Services Directorate and the financial, company and property transactions undertaken by Legal Services. It should also be a consideration for any large cash payments received in connection with Council Tax, Business Rates, rents etc.

While the risk to the Council of contravening the legislation is low, it is important that all employees are familiar with their responsibilities: serious criminal sanctions may be imposed for breaches of the legislation. The key requirement on employees is to promptly report any suspected money laundering activity to the Money Laundering Reporting Officers.

Personal Liability

It is an offence under the Proceeds of Crime Act 2002 if an employee enters into or becomes 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.

These offences are punishable by a maximum term of imprisonment for 14 years at the Crown Court and an unlimited fine. At the Magistrates Court it is a 6 months maximum term of imprisonment and £5,000 fine.

A new criminal offence was created in 2017; any individual who recklessly makes a statement in the context of money laundering which is false or misleading commits an offence punishable by a fine and/or up to 2 years imprisonment.

The Money Laundering Reporting Officers (MLROs)

All employees and members are obliged to report any suspicion of money laundering or terrorist financing to the Council's nominated officer. The officer nominated to receive disclosures about money laundering activity within the Council is:

Andy Cox - Head of Audit and Assurance (Andy_Cox@bathnes.gov.uk)

Reporting to the Money Laundering Reporting Officers

Where you know or suspect that money laundering activity, as described in "What is Money Laundering?" above, is taking/has taken place, or become concerned that your involvement in a matter may amount to a prohibited act under sections 327-329 of the Act, you must disclose this as soon as practicable to the MLROs. The disclosure should be within "hours" of the information coming to your attention, not weeks or months later.

SHOULD YOU NOT DO SO, THEN YOU MAY BE LIABLE TO PROSECUTION

Offence of Tipping Off

If an employee has a concern they should ask questions or seek information/documentation, which would allay any suspicions they may have and negate the need to make a report.

Once a report has been made to the nominated officer or the person the Council is dealing with suspects that a report has been made the potential criminal offence of "tipping off" arises.

"Tipping off" is where someone informs the person who has approached the financial institution, such as the Council, that they are suspected of being involved in money laundering, in such a way as to prejudice any investigation.

Any person found guilty of tipping off or prejudicing an investigation offence is liable to imprisonment (maximum 5 years), a fine or both.

How You Might Recognise Money Laundering

The key slogan is “Know Your Customer” or “K.Y.C”.

For any transaction, cash or otherwise you should ask yourself: -

“Given my knowledge of this person, is it plausible that they can pay this amount for this service by this means?”

If they are paying more than would be reasonable or more than they could afford or by a means that would not normally be used the answer would be No. Then action will be required.

More specific possible indicators of Money Laundering are:

- If the Source or Destination of funds differ from the original details given by the client;
- If the client cancels a transaction without good reason and requests a cheque refund for previously deposited funds;
- Any large cash deposits;
- Large overpayments of fees or money on account;
- If information about the client reveals criminality or association with criminality;
- If there is more than one Solicitor/Conveyancer used in the sale or purchase of a property or land or if there is an unexplained and unusual geographic use of a Solicitor in relation to a property's location;
- If the buyer or seller's financial profile does not fit, particularly in relation to property transactions;
- If there are over complicated financial systems;
- If the client enters into transactions which make little or no financial sense or which go against normal practice;
- If the client is happy to enter into an apparent bad deal for them;
- If the client enters into arrangements beyond their apparent financial means;
- Any odd behaviour by any of the parties involved.

Further information can be obtained from the MLRO and the following sources:

- <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/nationaleconomic-crime-centre> – website of the National Crime Agency
- Anti Money Laundering Guidance for the accountancy sector , published by CCAB www.ccab.org.uk
- Anti Money Laundering Guidance for the legal sector at www.lawsociety.org.uk
- The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 at: <https://www.legislation.gov.uk>

Procedures – Appendix 1

Cash Payments

The Council will risk assess all cash payments in line with the regulatory guidance.

Reporting

Any employee who suspects money laundering activity must report their suspicion promptly to the MLROs, using the attached **Disclosure Report** form (Appendix A). If you would prefer, you can discuss your suspicions with the MLROs first.

The employee must follow any subsequent directions of the MLROs, and must not themselves make any further enquiries into the matter. They must not take any further steps in any related transaction without authorisation from the MLROs.

The employee must not disclose or otherwise indicate their suspicions to the person suspected of the money laundering. They must not discuss the matter with others or note on the file that a report has been made to the MLROs in case this results in the suspect becoming aware of the situation.

The MLROs must promptly evaluate any Disclosure Report, to determine whether it should be reported to the National Crime Agency (NCA).

The MLROs must, if they so determine, promptly report the matter to NCA in the prescribed manner by submitting a Suspicious Activity Report (SAR) via the [SAR online system](#).

You will be informed if the MLROs make a SAR report to NCA. Officers should not complete any transactions **until clearance has been given by NCA, or seven days have elapsed since the disclosure was made to NCA.**

The MLROs will commit a criminal offence under POCA if they know or suspect, or have reasonable grounds to do so, through a disclosure being made to them, that another person is engaged in money laundering and they do not disclose this as soon as practicable to NCA.

Customer Due Diligence

Where the Council is carrying out certain 'regulated activities' then extra care needs to be taken to check the identity of the customer or client; this is known as carrying out Customer Due Diligence.

Regulated activity is defined as the provision 'by way of business' of: advice about tax affairs; accounting services; treasury management, investment or other financial services; audit services; legal services; estate agency; services involving the formation, operation or arrangement of a company or trust or; dealing in goods wherever a

transaction involves a cash payment of €10,000 or more (approximately £8,750). The limit is specified by the MLR 2017.

The Regulations regarding customer due diligence are detailed and complex, but there are some simple questions that will help you decide if it is necessary:

- Is the service a regulated activity?
- Is the Council charging for the service i.e. is it 'by way of business'?
- Is the service being provided to a customer other than a UK public authority?

If the answer to any of these questions is **NO** then you do not need to carry out customer due diligence.

If the answer to all these questions is **YES** then you must carry out customer due diligence **BEFORE** any business is undertaken for that client. If you are unsure whether you need to carry out customer due diligence then you should contact the MLROs.

Where you need to carry out customer due diligence then you must seek evidence of identity, for example:

- Checking with the customer's website to confirm their business address;
- Conducting an on-line search via Companies House to confirm the nature and business of the customer and confirm the identities of any Directors / beneficial owners;
- Seeking evidence from the key contacts of their personal identity, for example their passport and position within the organisation.

The requirement for customer due diligence applies immediately for new customers and should be applied on a risk sensitive basis for existing customers. Ongoing customer due diligence must also be carried out during the life of a business relationship but should be proportionate to the risk of money laundering and terrorist funding, based on the officer's knowledge of the customer and a regular scrutiny of the transactions involved.

If, at any time, you suspect that a client or customer for whom you are currently, or are planning to carry out a regulated activity is carrying out money laundering or terrorist financing, or has lied about their identity then you must report this to the MLROs.

In certain circumstances enhanced customer due diligence must be carried out for example where:

- The customer has not been physically present for identification;
- The customer is a politically exposed person. A politically exposed person is an individual who at any time in the preceding year has held a prominent public function

- outside of the UK, and EU or international institution/body, their immediate family members or close associates;
- There is a beneficial owner who is not the customer. A beneficial owner is any individual who holds more than 25% of the shares, voting rights or interest in a company, partnership or trust.

Enhanced customer due diligence could include any additional documentation, data or information that will confirm the customer's identity and/or the source of the funds to be used in the business relationship/transaction. If you believe that enhanced customer due diligence is required then you must consult the MLROs prior to carrying it out.

Record Keeping

Where 'relevant business' is carried out then the customer due diligence records and details of the relevant transaction(s) for that client **must be retained for at least five years after the end** of the business relationship.

An electronic copy of every customer due diligence record must be sent to the MLROs to meet the requirements of the Regulations and in case of inspection by the relevant supervising body.

Internal Clients: Appropriate evidence of identity for Council employees will be signed, written instructions on Council headed notepaper or e-mail from an internal email address at the outset of a particular matter. Such correspondence should then be placed in the Council's client file along with a prominent note explaining which correspondence constitutes the evidence and where it is located.

External Clients: For external clients of the Council, appropriate 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 in the Council's client file along with a prominent note explaining which constitutes the evidence and where it is located.

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.

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

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.

You need to be satisfied as to the identity of the client before any business is undertaken for that client. The client's identity can be verified on the basis of documents, data or information obtained from a reliable and independent source.

The following checklist should be used for the **identification** of a private individual:

- Name;
- Address;
- Date of Birth;
- National Insurance Number;
- Telephone number;
- E-mail address.

The following checklist should be used for the **verification** of a private individual:

- Passport;
- Driving Licence;
- Birth Certificate;
- Current Council Tax and/or Utility Bill;
- Marriage Certificate.

In the case of a representative of an organisation, this can include measures such as:

- Checking the organisation's website to confirm the business address;
- Attending the client at their business address;
- Asking the key contact officer to provide evidence of their personal identity and position within the organisation.

Where the client is acting on behalf of a third party, reasonable steps should be taken to establish the identity of that other person.

If satisfactory evidence of identity is not obtained at the outset of the matter then the business relationship or one off transactions cannot proceed any further.

Methods to Safeguard Yourself

Customer due diligence measures is a key part of the Anti-Money Laundering requirements and to adequate measures should be in place. Therefore to safeguard staff in their normal business administration the following are key points to remember when engaging in business transactions.

- Obtain sufficient evidence/knowledge to ascertain the true identity of the person(s) you are dealing with.
 - Who is the ultimate owner of the business
 - Has their Identity been verified
 - Who do they report to e.g. company director, chair of a board or head of department

- Does the company exist? Can you locate them through a normal internet search
- Where the business is located and the ability to visit and verify them.
- Retain evidence for a period of 5 years

Further information can be obtained from the MLRO and the following sources:

- National Crime Agency (NCA) – <http://www.nationalcrimeagency.gov.uk>
- CCAB - Anti-Money Laundering (Proceeds of Crime and Terrorism) – Guidance for Accountants – www.ccab.org.uk
- The Law Society - Anti-Money Laundering Guidance and Advice - <http://www.lawsociety.org.uk/advice/anti-money-laundering>

CONFIDENTIAL

REPORT TO MONEY LAUNDERING REPORTING OFFICERS

To: Andy Cox Head of Audit & Assurance

From:

Contact details:

Department:

DETAILS OF SUSPECTED OFFENCE:

Name(s) and address(es) of person(s) involved:
(If a company/public body please include details of nature of business)

Nature, value and timing of activity involved and cause of suspicion:
(Please include full details e.g. what, when, where, how.)

Has any investigation been carried out (as far as you are aware)?

(Please circle appropriate answer) **Yes/No**

If yes, please include details below:

Have you discussed your suspicions with anyone else?

(Please circle appropriate answer) **Yes/No**

If yes, please specify below whom the discussion took place with, when and why such discussion was necessary:

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 5 years' imprisonment.

When completed, please print off the form and put it in a sealed envelope, marked "**Strictly Private and Confidential**" and **hand deliver to Andy Cox.**

Your report will be treated in the strictest confidence.

THE FOLLOWING PART OF THIS FORM IS FOR COMPLETION BY THE MLROs

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?

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

(Please circle appropriate answer) **Yes/No**

If yes, please confirm date of SARS report to the NCA: _____ and complete the details below:

Details of liaison with the NCA regarding the report:

Notice Period: _____ to _____

Moratorium Period: _____ to _____

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

(Please circle appropriate answer) **Yes/No**

If yes, please confirm full details below:

Date consent received from the NCA: _____

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 NCA, please set out below the reason(s) for non-disclosure:

Date consent given by you to employee for any prohibited act transactions to proceed:

_____/_____/_____

Other relevant information:

Signed: _____ Date: _____

THIS REPORT TO BE RETAINED FOR AT LEAST FIVE YEARS

The logo for Audit West, featuring the words "Audit West" in a stylized orange font, with horizontal lines above and below the text.