Working together

South Hams District Council

West Devon Borough Council

South Hams District Council
And
West Devon Borough Council

Anti-money Laundering Policy
Procedures and Guidance for Staff

July 2016

SOUTH HAMS DISTRICT COUNCIL and WEST DEVON BOROUGH COUNCIL

ANTI-MONEY LAUNDERING POLICY – GUIDANCE AND PROCEDURE

1. Introduction and the Councils' Policy

West Devon and South Hams Councils will do all that they can to practically do to prevent the Councils and their staff being exposed to money laundering, to identify the potential area where exposure may occur and to comply with all legal requirements especially with regard to the reporting of actual, alleged or suspected cases.

The Anti Money Laundering Policy has been approved by the Councils and is available on the Councils' Intranet or from the Community of Practice Lead Finance or Internal Audit.

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

These notes are important. They are designed to help you familiarise yourself with the legal and regulatory requirements relating to money laundering, as they affect both the Councils and you personally.

We cannot stress too strongly, however, that it is every member of staff's responsibility to be vigilant.

Requirements in the Policy include:

- Officers being precluded from accepting cash for individual transactions above £10,000 and completing a report to the Money Laundering Reporting Officer (MLRO) if tendered (section 5 of the Policy and section 5 of these notes); and
- Client identification procedures for those involved in *'Relevant Business'* (section 6 of the Policy and section 9 of these notes).

2. What is money laundering?

Money laundering is the term used for removing from criminal property (including funds) any indication or trace of its being the proceeds of crime or terrorist funds, most often by passing it through various transactions (which may be bona fide) in order to disguise its ill-gotten origin.

The following acts constitute money laundering:

- Concealing, disguising, converting, transferring or removing criminal property from England and Wales, or from Scotland, or from Northern Ireland;
- Becoming concerned in an arrangement in which someone knowingly or suspects facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person; and
- Acquiring, using or possessing criminal property.

Although the term 'money laundering' is generally used when describing the activities of organised crime – for which the legislation and regulations were first and foremost introduced – to most people who are likely to come across it or be affected by it, it involves a suspicion that someone they know, or know of, is benefiting financially from dishonest activities.

'Criminal property' is defined very widely in the law relating to money laundering. It includes not only the proceeds of crime committed by somebody else, but also possession of the proceeds of an individual's own crime – for example, the retention of monies from non-payment of income tax. It does not matter how small the amount of money involved is. It also includes the proceeds of crimes that take place abroad.

3. What laws exist to control money laundering?

In recent years, new laws have been passed which shift the burden for identifying acts of money laundering away from government agencies and more towards organisations and their employees.

The main obligations are contained in the **Proceeds of Crime Act 2002 (POCA) and the Money Laundering Regulations 2007,** which broaden the definition of money laundering and increases 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 can be imposed for failure to do so.

4. What are the main money laundering offences?

There are three PRINCIPAL offences – **concealing, arranging and acquisition.**

Concealing is where someone knows or suspects a case of money laundering, but conceals or disguises its existence.

Arranging is where someone involves himself or herself in an arrangement to assist in money laundering.

Acquisition is where someone seeks to benefit from money laundering by acquiring, using or possessing the property concerned.

There are also two THIRD PARTY offences – **failure to disclose** and **tipping off:**

Failure to disclose one of the three principal offences above or,

Tipping off is where someone informs a person or people who are, or are suspected of being, involved in money laundering, in such a way as to reduce the likelihood of them being investigated, or prejudicing an investigation.

All the money laundering offences may be committed by the Councils or by the individuals working for them.

5. What are the implications for the Councils and their staff?

The Councils have accepted the responsibility to ensure that those of its staff who are most likely to be exposed to money laundering can make themselves fully aware of the law and, where necessary, are suitably trained.

The Councils have also implemented procedures for reporting suspicious transactions and, if necessary, making an appropriate report to the National Crime Agency (NCA).

These procedures include **officers being precluded from accepting cash for individual; transactions above £10,000, and should complete a report to the MLRO in the circumstances where such amounts are tendered**. For the purposes of this requirement cash is defined as including notes, coins or travellers cheques in any currency.

Whilst it is considered most unlikely that a member of staff would commit one of the three principal offences, **the failure to disclose a suspicion is a serious offence in itself**, and there are only very limited grounds in law for not reporting a suspicion.

Whilst stressing the importance in reporting your suspicions, you should understand that failure to do so is only an offence if your suspicion relates, in the event, to an actual crime.

6. What are the penalties?

Money laundering offences may be tried at a magistrate's court or in the Crown Court, depending on the severity of the suspected offence. Trials at the former can attract fines of up to £5,000, up to six months in prison or both. In a Crown Court, fines are unlimited, and sentences from two to fourteen years may be handed out.

7. What should you do if you suspect a case of money laundering?

There is no clear definition of what constitutes suspicion – common sense will be needed. If you are considered likely to be exposed to suspicious situations, you will be made aware of these by your middle manager and, where appropriate, training will be provided.

If you suspect a case of money laundering, you should report the case immediately to the MLRO, or the Deputy MLRO in his/her absence either using a form that he/she will give to you (and is also available on the Intranet) or, if you prefer, in a discussion. He/she will decide whether the transaction is suspicious and whether to make a report to the National Crime Agency (NCA).

You should also enclose copies of any relevant supporting documentation. Once you have reported the matter to the MLRO you must follow any directions given to you. You must not make any further enquiries into the matter yourself. All members of staff will be required to co-operate with the MLRO and other authorities during any subsequent investigation.

You must 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. Remember, failure to report may render you liable to prosecution (for which the maximum penalty is an unlimited fine, five year's imprisonment, or both). The MLRO will not refer the matter to NCA if there is no need.

Tipping Off Offences

Where you suspect money laundering and report it to the MLRO, be very careful what you say to others afterwards: you may commit a further offence of "tipping off" if, knowing a disclosure has been made, you say or do anything which is likely to prejudice any investigation that might be conducted.

Even if you have not reported the matter to the MLRO, if you know or suspect that such a disclosure has been made and you mention it to someone else, this could amount to a tipping off offence.

You must not, therefore, make any reference on a file to a report having been made to the MLRO because, should the client exercise the right to see the file under Data Protection or Freedom of Information Acts, such a note will obviously "tip them off" and may render you liable to prosecution. The MLRO will keep the appropriate records in a confidential manner.

8. What will the MLRO do?

When the MLRO receives a disclosure from a member of staff and concludes that there is actual money laundering taking place or there are reasonable grounds to suspect so, then a report must be made as soon as practicable to NCA on their standard report form and in the prescribed manner, unless there are reasonable grounds for non-disclosure.

The MLRO commits a criminal offence under the legislation if she/he knows or has reasonable grounds to suspect, through a disclosure having been made, that another person is engaged in money laundering and this is not disclosed as soon as practicable to the NCA.

The MLRO will undertake such other reasonable enquiries deemed appropriate in order to ensure that all available information is taken into account in deciding whether a report to the NCA is required. Such enquiries should be 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.

Where the MLRO concludes that there are no grounds to suspect money laundering, or suspects money laundering but has a good reason for non-disclosure, then this must be noted in the report accordingly and consent given in writing for any ongoing

or imminent transactions to proceed. The MLRO should consult with the relevant Councils' Monitoring Officer before reaching a non-disclosure decision.
Where relevant, the MLRO will also need to request appropriate consent to proceed with the transaction from NCA for any acts/transactions which would amount to prohibited acts under section 327 to 329 of the 2002 Act.

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

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

9. Client Identification Procedure (Policy Section 6)

Where the Councils are carrying out 'relevant business' and as part of this:

- Forms an ongoing business relationship with a client;
- Undertakes a one-off transaction involving payment by or to the client of £10,000 or more;
- Undertakes a series of linked one-off transactions involving total payment by or to the client(s) of £10,000 or more; or
- It is known or suspected that a one-off transaction (or series of them) involves money laundering;

then the **Client Identification Procedure** (as set out below) must be followed before any business is undertaken for that client.

'Relevant Business' is defined as the:

- Provision, by way of business, of advice about the tax affairs of another person by a body corporate;
- Provision, by way of business, of **accountancy services** by a body corporate;
- Provision, by way of business, of **audit services**;
- Provision, by way of business, of **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);
- Provision, by way of business, of services in relation to the **formation, operation or management of a company or a trust**;
- **Activity of dealing in goods of any description, by way of business, whenever a transaction involves accepting a total cash payment of 15,000 euros (approximately £12,000 April 2016) or more**; or
- **Activity of dealing in and managing investments 'by way of business'**.

Unlike the reporting procedure above, the Client Identification Procedure is restricted to those operating relevant business i.e. Financial Services and

Legal Services. This requirement does not apply if a business relationship with the client existed before 1st March 2004.
Where the 'relevant business' is being provided to another public sector body then officers responsible must ensure that you have signed, written instructions on the body's headed paper before any business is undertaken.

Where the 'relevant business' is not a public sector body, then the officer responsible should seek:

- Additional evidence of identity, for example:
    - Checking with the organisation's website to confirm their business address;
    - Conducting an on-line search via Companies House; or
    - Seeking evidence from the key contact of their personal identity and position within the organisation.

With instructions from new clients or further instructions from a client not well known to the Councils, the officer responsible may seek additional evidence of the identity of key individuals in the organisation and of the organisation itself.

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

Record Keeping

Where the Councils are carrying out 'relevant business' and as part of this the 'relevant business' is carried out then the client identification evidence and details of the relevant transaction(s) for that client must be retained for at least five years.

10. Possible Indications of Money Laundering:

It is impossible to give a definitive list of ways through which to identify 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:

- A new client;
- A secretive client: e.g. refuses to provide requested information without a reasonable explanation;
- Concerns over the honesty, integrity, identity or location of a client;
- Illogical third party transactions: unnecessary routing or receipts 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) – see Section 5 above;
- 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, type of a client) is inconsistent 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; and
- 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 or pay out money where there is no linked substantive property transaction involved (surrogate banking); and
- Funds received for property 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 that 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 the matter may amount to money laundering under the 2002 Act then you must discuss it or report it to the MLRO and not take any further action until you have received, through the MLRO, the consent of the NCA.

For example, if you receive cash that you suspect is from the proceeds of crime, you must not bank it but set it aside securely until you receive an instruction from the MLRO on how to proceed.

Conclusion

Robust money-laundering procedures are essential if the Councils and their staff are to comply with our responsibilities and legal obligations. It falls to you as a member of the Councils' staff, as well as to the Councils themselves, to follow these procedures rigorously.

Further information can be obtained from the MLRO or his/her Deputies, or Internal Audit.