

<b>NAME OF COMMITTEE</b>	<b>Audit Committee</b>
<b>DATE</b>	<b>14 June 2012 (South Hams)</b>
<b>REPORT TITLE</b>	<b>Joint Anti Money Laundering Policy</b>
<b>Report of</b>	<b>Head of Finance and Audit/S.151 Officer Monitoring Officer Chief Internal Auditor</b>
<b>WARDS AFFECTED</b>	<b>All</b>

---

### Summary of report:

West Devon and South Hams Councils will do all that they can do to practically 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 Councils have followed previous CIPFA advice and approved Anti Money Laundering Policies on several occasions in the past, the most recent being approved for West Devon in February 2010 and for South Hams in December 2008.

However, the requirements of the individual policies differ with different officers responsible, limits and processes in place. This report is asking members of the Committee to recommend approval of an aligned policy (Appendix A) that has been written having regard to the legislation and any local circumstances.

### Financial implications:

There are no direct financial implications arising from the report, although effective anti money laundering policies may help protect the Councils and their officers from future legal action.

### RECOMMENDATIONS:

That South Hams District Council Audit Committee recommends to Council formal adoption of the revised Anti Money Laundering Policy;

### Officer contact:

For further information concerning this report, please contact:

Allan Goodman, Chief Internal Auditor [allan.goodman@southhams.gov.uk](mailto:allan.goodman@southhams.gov.uk)

---

## 1. BACKGROUND

- 1.1 The Proceeds of Crime Act 2002 (POCA) consolidated, updated and reformed criminal law with regard to money laundering.

- 1.2 In 2005, Chartered Institute of Public Finance and Accountancy (CIPFA) published Proceeds of Crime (Anti-money Laundering) – Practical Guidance for Public Service Organisations (CIPFA guidance 2005), upon which the Councils' original policy and guidance was based.
- 1.3 The stated purpose of that publication was to help to clarify the position of local authorities and other public service organisations within the framework created by the following legislation and regulations, and to give practical advice on their application:
- The Proceeds of Crime Act 2002 (POCA)
  - The Money Laundering Regulations 2003
  - The Terrorism Act 2000.
- 1.4 The impact on the public services of the provisions of the Proceeds of Crime Act 2002 (the POCA) (as amended by the Serious Organised Crime and Police Act 2005), and the Terrorism Act 2000 (the TA) (as amended by the Anti Terrorism and Security Act 2001 and the Terrorism Act 2006) remains largely unchanged since publication of the CIPFA guidance 2005.
- 1.5 However, in December 2007, in order to implement the requirements of the European Union 3rd Money Laundering Directive (the 3rd Directive):
- The UK Government published the Money Laundering Regulations 2007 (the 2007 Regulations), which became effective from 15 December 2007, and
  - Replaced the Money Laundering Regulations 2003 (the 2003 Regulations).

## **2. LEGAL PROVISIONS APPLYING TO THE COUNCILS**

- 1.1 The following provisions apply to all public authorities and their staff, as they did before the 2007 Regulations;
- The full provisions of the TA;
  - The following offences under the provisions of the POCA:
    - concealing, disguising, converting, transferring or removing criminal property from England and Wales, from Scotland or from Northern Ireland (section 327);
    - being concerned in an arrangement which a person knows or suspects facilitates the acquisition, retention, use or control of criminal property (section 328);
    - acquiring, using or possessing criminal property (section 329)
    - doing something that might prejudice an investigation – for example, falsifying a document (section 342).
- 1.2 So long as a public authority does not undertake activities which might be interpreted, under POCA, as falling within the regulated sector, the following provisions do not apply to it:
- The offences of failure to disclose (under sections 330 and 331);
  - The offence of tipping off (under new section 333A).

1.3 CIPFA’s conclusion was based on the essentially service-orientated characteristics of treasury management in the public services, and the widespread absence of evidence of such activities being pursued “by way of business”, a prime test employed under the POCA. Nothing has happened in the intervening period to cause CIPFA to conclude otherwise.

### **3. THE COUNCILS’ ANTI MONEY LAUNDERING POLICIES**

3.1 Both Councils’ have followed previous CIPFA advice and approved Anti Money Laundering Policies, the most recent being approved for West Devon in February 2010 and for South Hams in December 2008.

3.2 However, the requirements of the individual policies differ with different officers responsible, limits and processes in place. This report is asking members of the Committee to recommend approval of an aligned policy that has regard to the legislation and any local circumstances.

3.3 The draft Joint Anti Money Laundering Policy is attached at Appendix A. The key changes when compared with the previous version are:

- Appointing the S.151 Officer (the Head of Finance and Audit) as the Money Laundering Reporting Officer (MLRO) at both Councils;
- Appointing the Councils’ Chief Accountants as Deputy MLRO for their respective Council;
- Non acceptance of cash above £10,000 in a single transaction; and
- Introducing procedures for Client identification in certain circumstances.

### **4. LEGAL IMPLICATIONS**

4.1 The Legal implications are discussed in detail at sections 1 and 2 above.

### **5. FINANCIAL IMPLICATIONS**

5.1 There are no direct financial implications arising from the report, although effective anti money laundering policies may help protect the Councils and their officers from future legal action.

### **6. RISK MANAGEMENT**

6.1 The risks are discussed in the table following section 7 Other Considerations.

### **7. OTHER CONSIDERATIONS**

<b>Corporate priorities engaged:</b>	All
<b>Statutory powers:</b>	See sections 1 and 2 above.
<b>Considerations of equality and human rights:</b>	No specific equality and human rights issues arising from this report.
<b>Biodiversity considerations:</b>	No specific biodiversity issues arising from this report.
<b>Sustainability considerations:</b>	No specific sustainability issues arising from this report.
<b>Crime and disorder implications:</b>	See sections 1 and 2 above.

<b>Background papers:</b>	CIPFA Proceeds of Crime (Anti-Money Laundering) Practical Guidance for Public Service Organisations 2005: The Consultative Committee of Accountancy Bodies CCAB ( <a href="http://www.ccab.org.uk">www.ccab.org.uk</a> ) Anti-Money Laundering (Proceeds of Crime and Terrorism) – Guidance for Accountants; CIPFA: Combating Financial Crime 2009
<b>Appendices attached:</b>	Appendix A - Draft Joint Anti Money Laundering Policy

### STRATEGIC RISKS TEMPLATE

No	Risk Title	Risk/Opportunity Description	Inherent risk status				Mitigating & Management actions	Ownership
			Impact of negative outcome	Chance of negative outcome	Risk score and direction of travel			
1	Opportunity	To comply with the legislation and latest guidance covering prevention and reporting of money laundering.	-	-	-	↔	Approval of a revised Policy for identifying and reporting suspicions of money laundering activity in line with the related legislation and professional guidance.	S.151 Officer
2	Committing an offence under money laundering legislation.	The key risk for the Council and its employees results from non compliance with the legislation. There are criminal offences that in some circumstances may attract prison sentences and unlimited fines.	3	1	3	↔	The risk is mitigated by the various defences under the legislation, which include a report internally to the MLRO, externally to SOCA, and consent from the SOCA or MLRO; and Adoption of a Policy for identifying and reporting suspicions of money laundering activity. The Council provides appropriate guidance, and reminders to all employees, with targeted training to employees dealing with the receipt of funds or having contact with the public.	S.151 Officer

Direction of travel symbols ↓ ↑ ↔



**DRAFT JOINT ANTI MONEY LAUNDERING POLICY  
JUNE 2012**

## **1. Introduction**

- 1.1 The Councils will do all that they are practically able to do to prevent the Councils and their staff being exposed to money laundering, identify the potential areas where it may occur and to comply with all legal and regulatory requirements, especially with regard to the reporting of actual or suspected cases.
- 1.2 This policy has therefore been adopted in order to introduce safeguards to help identify and report on instances where money laundering is suspected.
- 1.3 In summary:
- The Councils are committed to the prevention, detection and reporting of actual, alleged or suspected money laundering;
  - All employees must be vigilant for the signs of money laundering;
  - Any employee who suspects money laundering activity must report this promptly to the Money Laundering Reporting Officer (MLRO) – Section 151 Officer (the Head of Finance and Audit) or in his/her absence the relevant Deputy Section 151 Officer (Chief Accountant); and
  - Where the Councils are carrying out relevant business then the Client Identification Procedure must be followed.
- 1.3 This policy applies to all employees of both Councils and aims to maintain high standards of conduct, by preventing criminal activity through money laundering. The policy sets out the procedures which must be followed to enable the Councils to comply with its legal obligations.

## **2 What is Money Laundering?**

- 2.1 Money laundering can be defined as the process of moving illegally acquired cash through financial systems so that it appears to be from a legitimate source.
- 2.2 Money laundering offences include:
- Concealing, disguising, converting, transferring or removing criminal property from England and Wales, from Scotland or from Northern Ireland (section 327);
  - Being concerned in an arrangement which a person knows or suspects facilitates the acquisition, retention, use or control of criminal property (section 328);
  - Acquiring, using or possessing criminal property (section 329).
- 2.3 Other offences:
- Failure to disclose money laundering offences (sections 330-332);
  - Tipping off a suspect either directly or indirectly (section 333); and;

- Doing something that might prejudice an investigation – for example, falsifying a document (section 342).

### **3 To Whom Does it Apply and How Will they be Made Aware?**

- 3.1 Any member of staff could potentially be caught by the money laundering provisions, if they suspect money laundering and either become involved with it in some way and/or do nothing about it. This policy sets out how any concerns should be raised.
- 3.2 Whilst the risk to the Councils 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 Officer.
- 3.3 The guidance, general and targeted training that will be provided is set out at section 6 of this policy.

### **4 Staff Concerns and Reporting?**

#### Money Laundering Reporting Officer (MLRO)

- 4.1 The officer nominated to receive disclosures about money laundering activity within the Councils is the Section 151 Officer (the Head of Finance and Audit). In his/her absence such disclosures should be made to the relevant Deputy Section 151 Officer (Chief Accountant).

#### Reporting Procedures

- 4.2 Any employee who suspects money laundering activity must report their suspicion promptly to the MLRO, either by discussing the suspicion or using the appropriate money laundering form. A copy of the form is attached at Annex A and included with the guidance notes made available to employees.
- 4.3 The employee must follow any subsequent directions of the MLRO, 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 MLRO.
- 4.4 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 MLRO in case this results in the suspect becoming aware of the situation.



- 4.5 The MLRO must promptly evaluate any disclosure report, to determine whether it should be reported to the Serious Organised Crime Agency (SOCA).
- 4.6 The MLRO must, if they determine it necessary, promptly report the matter to SOCA on their standard form and in the prescribed manner.
- 4.7 The MLRO will commit a criminal offence if they know or suspect, or have reasonable grounds to do so, through a disclosure being made, that another person is engaged in money laundering and they do not disclose this as soon as practicable to the SOCA.

## **5 Acceptance of Cash**

- 5.1 Officers are 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;
- 5.2 For the purposes of this requirement cash is defined as including notes, coins or travellers cheques in any currency.

## **6 Client Identification Procedures**

- 6.1 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.

- 6.2 '*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 £11,900 May 2012) or more; or
- Activity of dealing in and managing investments 'by way of business'.

6.3 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.

6.4 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.

6.5 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.

6.6 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.

6.7 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

6.8 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.

## **7 Guidance and Training**

7.1 In support of this policy, the Councils will:

- Draft and publicise, on the Intranet and other relevant places, detailed guidance to officers to support this policy;

- Make all staff aware of the requirements and obligations placed on the Councils and on themselves as individuals by the Anti Money Laundering legislation; and
- Provide targeted training to those most likely to encounter money laundering e.g. cashiers or other officers accepting cash on behalf of the Councils.

As a minimum staff will be made aware of the:

- Money Laundering Regulations 2007
- Proceeds of Crime Act 2002, part 7
- Anti-Terrorism, Crime and Security Act 2001, section 117
- Terrorism Act 2000, sections 18 & 21a

## **8 Further Information**

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

- [www.soca.gov.uk](http://www.soca.gov.uk) – website of the Serious Organised Crime Agency (SOCA)
- Proceeds of Crime (Anti-Money Laundering) Practical Guidance for Public Service Organisations – CIPFA: available for the Chief Internal Auditor;
- The Consultative Committee of Accountancy Bodies CCAB ([www.ccab.org.uk](http://www.ccab.org.uk)) Anti-Money Laundering (Proceeds of Crime and Terrorism) – Guidance for Accountants
- [www.lawsociety.org.uk](http://www.lawsociety.org.uk) – Money Laundering Guidance from the Law Society

<b>REPORT TO THE MONEY LAUNDERING REPORTING OFFICER</b>
---

**Confidential Report of Suspected Money Laundering Activity**

To: **Money Laundering Reporting Officer (MLRO)**  
**Deputy Money Laundering Reporting Officer**

From: \_\_\_\_\_  
[Name of employee]

Service: \_\_\_\_\_  
[Post Title and Service]

Ext/Tel No: \_\_\_\_\_

**URGENT: YES / NO**

**CONSENT - Required and By When: YES / NO      Date:**

**Details of suspected offence:**

<b>Name(s) And Address(Es) Of Person(s) Involved:</b>
---

*[if a company/public body please include details of nature of business]*

<b>Nature, Value And Timing Of Activity Involved:</b>
---

*[Please include full details e.g. what, when, where, how. Continue on a separate sheet if necessary]*

**Nature Of Suspicions Regarding Such Activity:**

*[Please continue on a separate sheet if necessary]*

**Has any investigation been undertaken (as far as you are aware)?** *[Delete as appropriate]*

**Yes / No**

**If yes, please include details below:**

--

**Have you discussed your suspicions with anyone?**

**Yes / No**

**If yes, please specify below, explaining 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 and an unlimited fine.***

**THE FOLLOWING PART OF THIS FORM TO BE COMPLETED BY THE MLRO**

Date report received: \_\_\_\_\_

Date receipt of form 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 SOCA? *[Delete as appropriate]***

**Yes / No**

**If yes, please confirm date and type of report to SOCA:  
 And complete the box below:**

**Details of liaison with the SOCA regarding the report:**

**Notice Period: from:**

**to:**

**Moratorium Period: from:**

**to:**

**Is consent required from the SOCA to any ongoing or imminent transactions which would otherwise be prohibited acts? *[Delete as appropriate]***

**Yes / No**

**If consent is required, please confirm full details in the box 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 reason 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***