

Wolverhampton City Council

OPEN DECISION ITEM

Audit Committee

Date **29 September 2011**

Originating Service Group(s) **DELIVERY / OCE**

Contact Officer(s)/ **B BURGESS** **R MORGAN**
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Title/Subject Matter **ANTI-MONEY LAUNDERING POLICY**

RECOMMENDATION

That Members of the Audit Committee endorse the Audit Services' management review of the Council's Anti-Money Laundering Policy.

1. PURPOSE AND BACKGROUND

- 1.1 The City Council's existing Anti-Money Laundering Policy was approved by Members of the Audit Committee on 4 September 2006 in response to the Proceeds of Crime Act 2002 (POCA) and the Money Laundering Regulations 2003. This legislation broadened the definition of money laundering and increased the range of activities caught by the statutory framework. As a result, the then new obligations impacted upon certain areas of local authority business and required local authorities to establish internal procedures to prevent the use of their services for money laundering.
- 1.2 Further legislation was introduced with the Money Laundering Regulations 2007 and a review of the Council's policy against the revised legislation was undertaken in 2010.
- 1.3 The risks of the Council being involved in Money Laundering activity are relatively low as evidenced by only two Serious and Organised Crime Activity Reports having been made.

2. DETAILS

- 2.1 The previous review of the money laundering policy in 2010 followed an audit of procedures in which a number of weaknesses were identified. These weaknesses were addressed in the revised anti money laundering policy which has now been reviewed and updated as necessary.
- 2.2 The revised anti money laundering policy is attached at Appendix A.

3. FINANCIAL IMPLICATIONS

There are no direct financial implications arising from this report.
[GE/31082011/T].

4. LEGAL IMPLICATIONS

- 4.1 Failure to follow the anti-money laundering policy and associated guidance may result in officers being convicted of a criminal or civil offence.
[MW/26082011/A].

5. EQUAL OPPORTUNITIES IMPLICATIONS

- 5.1 There are no direct equal opportunities implications arising from this report.

6. ENVIRONMENTAL IMPLICATIONS

- 6.1 There are no direct environmental implications arising from this report.

7. SCHEDULE OF BACKGROUND PAPERS

Money Laundering Regulations 2007

**WOLVERHAMPTON CITY COUNCIL
ANTI-MONEY LAUNDERING POLICY**

1. INTRODUCTION

- 1.1 The Proceeds of Crime Act 2002 (POCA) and the Money Laundering Regulations 2003 broadened the definition of money laundering and increased the range of activities caught by the statutory framework. As a result, the new obligations impacted upon certain areas of local authority business and required local authorities to establish internal procedures to prevent the use of their services for money laundering.
- 1.2 The Money Laundering Regulations 2003 have now been revoked and have been replaced by the Money Laundering Regulations 2007 (the 2007 Regulations). Public authorities are not legally obliged to apply the provisions of the 2007 Regulations but, as responsible public bodies, they should employ procedures which reflect the essence of the UK's anti-terrorist financing and anti-money laundering regimes. Authorities and their staff are, therefore, subject to the full provisions of the Terrorism Act 2000 (the TA) and POCA.

2. SCOPE OF THE POLICY

- 2.1 The Policy sets out the procedures which must be followed to enable the Council to comply with its legal obligations. This Policy applies to all officers and members of the Council and aims to maintain the high standards of conduct which currently exist within the Council by preventing criminal activity through money laundering.
- 2.2 Further information is set out in the Guidance Note. Both the Policy and the Guidance Note sit alongside the Council's policies covering Anti-Fraud and Corruption and Whistleblowing.
- 2.3 Failure by a member of staff 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 City Council's Disciplinary Policy and Procedure.

3. WHAT IS MONEY LAUNDERING?

- 3.1 Money laundering is any process which is intended to use, control, hide or disguise monies which are the proceeds of 'crime'. 'Crime' means any action which could be deemed a crime committed within the UK and includes tax fraud and evasion. Money Laundering relates to all property and means:
- concealing, disguising, converting, transferring or removing criminal property from the UK (section 327 of POCA); 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. There are also two secondary offences: failure to disclose any of the three primary offences and tipping off. Tipping off is where someone informs a person or people who are, or who are suspected of being involved in money laundering, in such a way as to reduce the likelihood of their being investigated or prejudicing an investigation.

3.2 Potentially any member of staff could 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. 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 the legislation is low, ***it is extremely important that all employees are familiar with their legal 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.***

4. WHAT ARE THE OBLIGATIONS ON THE COUNCIL?

4.1 Organisations conducting “relevant business” must:

- 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.

Not all of the Council’s business is “relevant” for the purposes of the legislation. Relevant services as defined by the legislation include investments, accountancy and audit services carried out by Resources and Support staff and the financial, company and property transactions undertaken by Property Services and Legal Services. 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 staff are required to comply with the reporting procedure set out in section 6 below.

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

5. THE MONEY LAUNDERING REPORTING OFFICER (MLRO)

5.1 The officers nominated to receive disclosures about money laundering activity within the Council are the Assistant Director - Corporate Services (S151 Officer), Assistant Director - Governance and Head of Audit Services. The main point of contact is Brian Burgess, Head of Audit Services who may be contacted in writing at Wolverhampton City Council, Civic Centre, St Peter's Square, Wolverhampton, WV1 1RL. Additional contact details are as below:

Brian Burgess

Head of Audit Services

Tel: (01902) 554460

Fax: (01902) 554040

E-mail: Brian.Burgess@wolverhampton.gov.uk

Pat Main

Assistant Director - Corporate Services (S151 Officer)

Tel: (01902) 554500

Fax: (01902) 554406

E-mail: Pat.Main@wolverhampton.gov.uk

Susan Kembrey

Assistant Director - Governance

Tel: (01902) 554910

Fax: (01902) 554970

E-mail: Susan.Kembrey@wolverhampton.gov.uk

5.2 In the absence of the MLROs listed above, the Head of Strategic Financial Services, Mark Taylor or Senior Audit Manager, Richard Morgan are authorised to deputise for the Assistant Director - Corporate Services (S151 Officer) and Head of Audit Services respectively and can be contacted at the above address or as follows:

Richard Morgan 01902 554466 (Richard.Morgan@wolverhampton.gov.uk)

Mark Taylor 01902 556609 (Mark.Taylor@wolverhampton.gov.uk)

6. DISCLOSURE PROCEDURE

Cash Payments

6.1 **To help prevent money laundering, cash payments (including notes, coin or travellers cheques in any currency) above £5,000 will not be accepted for any Council service.**

This is not designed to prevent customers making payments for Council services but to minimise the risk to the Council of high value cash transactions.

Reporting to the Money Laundering Reporting Officer (MLRO)

- 6.2 Where an employee knows or suspects that money laundering activity is taking/has taken place, or becomes concerned that their involvement in a matter may amount to a prohibited act under the legislation, they must disclose this as soon as practicable to the MLRO. The disclosure should be within “hours” of the information coming to their attention, not weeks or months later. **Failure to report the matter to the MLRO as described here may render the employee to prosecution.**
- 6.3 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:
- Full details of the people involved (including the employee, if relevant), e.g. name, date of birth, address, company names, directorships, phone numbers, etc;
 - Full details of the nature of involvement;
 - If the employee is concerned that their involvement in the transaction would amount to a prohibited act under sections 327 – 329 of the 2002 Act, then the report must include all relevant details, as the employee will need consent from the Serious Organised Crime Agency (SOCA), 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.
 - The employee 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;
 - 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 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;
 - 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 – SOCA 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 SOCA, where appropriate. Copies of any relevant supporting documentation should be enclosed.

- 6.4 Once the matter is reported to the MLRO, employees must follow any directions he may give. The employee **must NOT make any further enquiries into the matter themselves**: any necessary investigation will be undertaken by SOCA. All members of staff will be required to co-operate with the MLRO and the authorities during any subsequent money laundering investigation.
- 6.5 Similarly, **at no time and under no circumstances should the employee voice any suspicions** to the person(s) suspected of money laundering, even if SOCA has given consent to a particular transaction proceeding, without the specific consent of the MLRO; otherwise a criminal offence of “tipping off” (see the Guidance Note for further details) may be committed.
- 6.6 No reference should be made 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 and may render an employee liable to prosecution. The MLRO will keep the appropriate records in a confidential manner.

Consideration of the disclosure by the Money Laundering Reporting Officer

- 6.7 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 the employee of the timescale within which he expects to respond.
- 6.8 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 SOCA 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 the employee.

- 6.9 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 SOCA for a particular transaction to proceed.

- 6.10 Where the MLRO does so conclude, then he must disclose the matter as soon as practicable to SOCA on their standard report form and in the prescribed manner, unless he has a reasonable excuse for non-disclosure to SOCA (for example, a lawyer can claim legal professional privilege for not disclosing the information).
- 6.10.1 Where the MLRO suspects money laundering but has a reasonable excuse for non-disclosure, then he must note the report accordingly; he can then immediately give his consent for any ongoing or imminent transactions to proceed.
- 6.10.2 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 SOCA.
- 6.10.3 Where consent is required from SOCA for a transaction to proceed, then the transaction(s) in question must not be undertaken or completed until SOCA has specifically given consent, or there is deemed consent through the expiration of the relevant time limits without objection from SOCA.
- 6.11 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.
- 6.12 All disclosure reports referred to the MLRO and reports made by him to SOCA must be retained by the MLRO in a confidential file kept for that purpose, for a minimum of five years.
- 6.13 ***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 SOCA.***

7. CLIENT IDENTIFICATION PROCEDURE (DUE DILIGENCE)

- 7.1 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.
- 7.2 Customer due diligence means:
- (a) identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source
 - (b) identifying, where there is a beneficial owner who is not the customer, the beneficial owner and taking adequate measures, on a risk-sensitive basis, to verify his identity so that the relevant person is satisfied that he knows who the beneficial owner is, including, in the case of a legal person, trust or similar legal arrangement, measures to understand the ownership and control structure of the person, trust or arrangement; and

- (c) obtaining information on the purpose and intended nature of the business relationship.

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

- Is the service a regulated activity (see 7.3)?
- 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 there is no need to carry out customer due diligence

If the answer to all these questions is **yes** then customer due diligence must be carried out **before** any business is undertaken for that client. If there is uncertainty whether customer due diligence is required then the MLRO should be contacted for advice.

7.3 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 €15,000 or more."

7.4 Where customer due diligence is required then evidence of identity must be sought, 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
- seeking evidence from the key contact of their personal identity, for example their passport, and position within the organisation.

7.5 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.

7.6 If, at any time, it is suspected that a client or customer for whom the Council is currently, or is planning to carry out, a regulated activity is carrying out money laundering or terrorist financing, or has lied about their identity then this must be reported to the MLRO.

7.7 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
- 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.

7.8 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 it is believed that enhanced customer due diligence is required then the MLRO should be consulted prior to carrying it out.

8 RECORD KEEPING PROCEDURES

8.1 Each unit of the Council conducting relevant business 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.

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

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 Any concerns whatsoever regarding any transactions should be reported to the MLRO.

10 FURTHER INFORMATION

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

www.soca.gov.uk – website of the Serious and Organised Crime Agency

“Proceeds of Crime (Anti-Money Laundering) – Practical Guidance for Public Service Organisations” – CIPFA

“Anti-Money Laundering (Proceeds of Crime and Terrorism) – Second Interim Guidance for Accountants” – CCAB (**www.ccab.org.uk**)

Money Laundering Guidance at **www.lawsociety.org.uk**

SI 2007 No. 2157 The Money Laundering Regulations 2007 at: http://www.hm-treasury.gov.uk/consultations_and_legislation/money_laundering_directive/consult_moneylaundering_2007.cfm

September 2011

CONFIDENTIAL

Report to Money Laundering Reporting Officer

To: Money Laundering Reporting Officer

From:
[insert name]

Directorate: Ext/Tel No:.....
[insert post title and Business Unit]

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:
[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)?
[Please tick the relevant box]

Yes No

If yes, please include details below:

Have you discussed your suspicions with anyone else?

[Please tick the relevant box]

Yes No

If yes, please specify below, explaining why such discussion was necessary:

Have you consulted any supervisory body guidance re money laundering? (e.g. the Law Society)

[Please tick the relevant box]

Yes No

If yes, please specify below:

Do you feel you have a reasonable excuse for not disclosing the matter to the SOCA?
(E.g. are you a lawyer and wish to claim legal professional privilege?)

[Please tick the relevant box]

Yes No

If yes, please set out full details below:

Are you involved in a transaction which might be a prohibited act under sections 327-329 of the Act and which requires appropriate consent from the SOCA?

[Please tick the relevant box]

Yes No

If yes, please enclose details below:

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.

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

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 SOCA?
[Please tick the relevant box]

Yes No

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

Details of liaison with the SOCA regarding the report:

Notice Period: to

Moratorium Period: to

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

Yes No

If yes, 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 reasonable excuse 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