



MIDLOTHIAN COUNCIL

ANTI-MONEY LAUNDERING POLICY

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1.0 INTRODUCTION

- 1.1 This policy details Midlothian Council's approach to managing the risk of exposure to money laundering and the procedures that must be followed so that the Council can fulfil its legal and regulatory obligations relating to anti-money laundering contained within the Proceeds of Crime Act 2002 (POCA), the Terrorism Act 2000 (TA) and best practice guidance issued by the Chartered Institute of Public Finance and Accountancy (CIPFA).

2.0 PURPOSE AND SCOPE OF THE POLICY

- 2.1 The policy introduces procedures to help to identify and report on instances where money laundering is suspected. It complements the Council's existing Fraud and Corruption Policy, Whistle Blowing Policy and Financial Directives and contributes to the existing corporate governance framework to aid in ensuring that the Council is managed effectively and fulfils its statutory and regulatory duties.
- 2.2 The risk of exposure to money laundering activities within local government is not regarded as high. Similarly the risks to the Council of contravening money laundering legislation are low with some aspects of the legal and regulatory requirements being inapplicable to public authorities given that the Council is not considered as a "relevant person" under the 2007 Money Laundering Regulations. Relevant persons include: credit and financial institutions; auditors; accountants; tax advisers and insolvency practitioners; independent legal professionals; trust or company service providers; estate agents; high value dealers and casinos.

Nevertheless CIPFA has recommended that councils as *"responsible public bodies, should employ policies and procedures which reflect the essence of the UK's anti-terrorist financing, and anti-money laundering regimes"*.

Additionally, *"CIPFA considers that there is a substantial reputational risk for an authority which does not have such policies and procedures in place"*.

For these reasons the Council has adopted this policy and requires that it is complied with.

- 2.3 Failure by any employee to comply with the procedures set out in this Policy may lead to disciplinary action being taken against them. Disciplinary action will be in accordance with Midlothian Council's Disciplinary Procedures.

Elected members are expected to forward any concerns in line with this policy to the Money Laundering Reporting Officer.

3.0 DEFINITION OF MONEY LAUNDERING

3.1 HMRC defines money laundering as follows:

“Money laundering means exchanging money or assets that were obtained criminally for money or other assets that are 'clean'. The clean money or assets don't have an obvious link with any criminal activity. Money laundering also includes money that's used to fund terrorism, however it's obtained.”

3.2 Money laundering schemes can be very simple or highly sophisticated. Most sophisticated money laundering schemes involve three stages:

- placement - the process of getting criminal money into the financial system;
- layering - the process of moving money in the financial system through complex webs of transactions, often via offshore companies; and
- integration - the process by which criminal money ultimately becomes absorbed into the economy, such as through investment in real estate.

3.3 Prosecutions for money laundering can involve any of these stages in the money laundering process.

4.0 LEGAL AND REGULATORY FRAMEWORK

4.1 The legal and regulatory framework for the UK comprises:

- The Terrorism Act 2000 (TA) (as amended).
- The Proceeds of Crime Act 2002 (POCA) (as amended); and
- The Money Laundering Regulations 2007 (2007 Regulations) (as amended).

4.2 Money laundering is an offence under the TA. The offence of money laundering is committed if a person enters into or becomes concerned in an arrangement relating to the retention or control of property likely to be used for the purposes of terrorism, or resulting from acts of terrorism. It is a defence if a person can prove that he did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.

The TA also makes it the duty of all individuals and businesses in the UK 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 (Section 19 of the TA). It is an offence not to disclose a belief or suspicion, and the information on which it is based, to the police as soon as is reasonably practicable.

Once a report is made, it is an offence to disclose anything which is likely to prejudice the investigation or interfere with any material relevant to the investigation.

4.3 The POCA contains four money laundering offences that apply to the Council:

- 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 (by whatever means) the acquisition, retention, use or control of criminal property (section 328);
- acquiring, using or possessing criminal property (section 329); and
- making a disclosure that prejudices the investigation, including by falsifying, concealing, destroying or otherwise disposing of documents (section 342).

4.4 Fines can be imposed for offences under the POCA not only on corporate bodies (eg the Council, arms length companies etc) but also on individual directors, managers and officers. Individuals involved in the commission of a serious money laundering offence can face an unlimited fine and be imprisoned for up to 14 years.

4.5 CIPFA have recognised that the size and scope of activities of public service organisations is such that few, if any, are likely to be immune from the risks surrounding money laundering; and that public services have a responsibility for the proper conduct of public business. CIPFA's view, therefore, is that all public service organisations, including those outside the scope of the regulations, put in place appropriate and proportionate anti-money laundering safeguards and reporting arrangements, designed to enable public authorities to detect and avoid involvement in the crimes described in the legislation and regulations.

5.0 RISK EXPOSURE TO MONEY LAUNDERING

- 5.1 There are existing procedures / controls to limit the risk of money laundering activities within the Council. For example:
- 5.2 For Council Tax and Rents receivable, income is received in respect of known customer accounts. Therefore, the ability of a potential launderer to remain anonymous is limited. Additionally, customer balances are monitored at the point of payment to ensure that there is not a significant build up of credit balances which could result in large refunds. Offsetting against other council debt is used where possible before authorising a refund.
- 5.3 The Council's Treasury Management Activities are carried out in compliance with the Code of Practice for Treasury Management in Local Authorities published by CIPFA. This includes procedures for verifying and recording the identity of counterparties, reporting any suspicions and ensuring that staff involved are adequately trained. Also, the Council only borrows from the Public Works Loans Board, other local authorities and public sector bodies and authorised institutions under the Financial Services and Markets Act 2000.
- 5.4 For sales of land, buildings and other assets the Council follows or relies on procedures that will verify the identity of counterparties, mainly through use of external solicitors who are relevant persons for the purpose of the money laundering regulations. Sales of other assets are few and tend to be low value so would not be a lucrative avenue for potential money launderers. Additionally, the Council normally limits the amount it will accept in cash payments (£5,000).
- 5.5 Areas where potentially suspicious activity could occur are outlined below:
- cash payments, for example, where an individual has substantial Council Tax or Rent arrears, or offers to purchase a Council property and settles by making a large cash payment;
 - a customer or supplier who makes substantial overpayments or duplicate payments and subsequently requests large refunds;
 - a customer who receives a business loan and repays it long before the due date and/or partly in cash;
 - where there are concerns regarding the identity, location, honesty or integrity of a client or customer;
 - a customer or supplier who is secretive and refuses to provide information when requested without giving any reasonable explanation;
 - the involvement of a third party without any reason or explanation, eg the unnecessary routing or receipts of funds from third parties or through third party accounts;
 - correspondence / information being received on behalf of other companies;

- poor accounting records and financial control, eg companies tendering for contracts that are unable to provide adequate financial details or requests for grant funding not supported by adequate accounting records;
- requests to pay money overseas or to make payments in foreign currencies with no reasonable explanation;
- other local authorities or companies querying the legitimacy of customers;
- where a 'right to buy' application is received from a council house tenant and records show that the individual receives Council Tax and / or Housing Benefit; and
- unusual property or investment transactions, eg requests to purchase or rent Council assets / land with no clear business motive.

5.6 The above list is not exhaustive, but is intended to give employees an understanding of how the Council could potentially be involved in a transaction that should be brought to the Money Laundering Reporting Officer's (MLRO's) attention.

6.0 ANTI-MONEY LAUNDERING PROCEDURES

6.1 The Council has put in place the following anti-money laundering procedures:

6.2 Cash Controls

As set out in Financial Regulation 12.13, no payment to the Council is accepted in cash if it exceeds £5,000. Cash is defined as notes, coins or travellers' cheques in any currency. If the outstanding balance exceeds £5,000, the maximum cash sum that can be paid towards that balance is £5,000. Exceptionally (for example where there is a proposed eviction) this limit may be increased to £10K with the authority of the Head of Customer and Housing Services. In these circumstances, notification must be passed to the Money Laundering Reporting Officer of why there is or is not a suspicion. Attempts to circumvent the limit should be reported to the MLRO as suspicious activity. For payments made under £5,000 towards an outstanding balance, no action is required unless the employee has reasonable grounds to suspect the payee is involved in money laundering activities or the proceeds of crime or the circumstances under which the payment was made were suspicious.

6.3 Money Laundering Reporting Officer

The Council has a nominated Money Laundering Reporting Officer. Details are set out in **Section 7** of this policy.

6.4 Reporting Procedure for Employees and the MLRO

Details of how to report suspicions of money laundering are set out in **Section 8** of this policy. The standard reporting form can be found in **Appendix 1**.

6.5 Due Diligence and Client Identification Guidance

Although this is not a legal requirement, this policy outlines some areas where consideration should be given to carrying out due diligence procedures where circumstances are potentially suspicious. This is explained in **Section 10**.

7.0 **THE COUNCIL'S MONEY LAUNDERING REPORTING OFFICER**

7.1 The officer nominated to receive disclosures about money laundering activity within the Council is the Head of Finance & Integrated Service Support (s95 officer). Although the Council is not legally obliged to have a formally appointed MLRO, it is best practice. The duties of the MLRO are the establishment and regular review of the Council's anti-money laundering policies and procedures, receiving and reviewing any submitted reports from elected members or employees, following up employee concerns and managing correspondence with the National Crime Agency ("the NCA" - which replaced the Serious Organised Crime Agency in October 2013), maintaining a register of submitted forms and retaining all paperwork securely. The Contact details of the MLRO are as follows:

- Head of Finance & Integrated Service Support (s95 officer)
- Directorate Resources
- Buccleuch Street
- Midlothian House
- Dalkeith
- EH22 1DN
- 0131 271 3110

7.2 In the absence of the MLRO the following officer is delegated to act as deputy:

- Financial Services Manager
- Resources Directorate
- Buccleuch Street
- Midlothian House
- Dalkeith
- EH22 1DN
- 0131 271 3113

8.0 **HOW TO REPORT TO THE MLRO**

8.1 All elected members and employees under this policy have a duty to ensure that any suspicions or concerns that money laundering has occurred are reported to the Council's nominated MLRO or his / her deputy. This procedure must be followed regardless of the financial amount in question.

- 8.2 To support the above process, a form is available in **Appendix 1** to guide elected members and employees to ensure that sufficient and appropriate information is provided to the MLRO. This will allow the MLRO to quickly decide how to proceed and whether a report to the NCA should be made.
- 8.3 Suspicions can also be raised by direct contact with the MLRO. In many instances it may be appropriate to have an initial discussion with the MLRO. The MLRO will keep a written record of the discussion and will then decide whether a report to the NCA is needed. The employee should endeavour to report suspicions as soon as practical to the MLRO.
- 8.4 Once the matter has been reported to the MLRO, the elected member or employee must not make any further enquiries or highlight any suspicions to the persons suspected of money laundering and should not discuss the matter with other elected members or employees without prior approval from the MLRO. If this procedure is not followed there is a risk of ‘tipping-off’ the suspected money launderer which could potentially prejudice an investigation. Additionally, to ensure that the risk of “tipping-off” is minimised, the MLRO will only inform anyone of the suspicion where there is a genuine business need. Confidentiality on the matter must be respected at all times.

9.0 DUTIES OF MLRO ON REPORTS SUBMITTED

- 9.1 The MLRO will assess the report made by the elected member or employee and whether a referral to the NCA is required using the form in **Appendix 2**. In assessing whether a referral is required, the MLRO may review internal information that could be relevant eg:
- reviewing the pattern or volume of transactions;
 - reviewing any unusual one-off transactions and any linked transactions;
 - the duration of the relationship with the client/person; and
 - information on the client’s identity.
- 9.2 Where appropriate, Internal Audit may undertake investigative work on behalf of the MLRO. The report submitted to the MLRO may need to be discussed with the elected member or employee who reported the suspicion. In carrying out this work, care will be taken to avoid “tipping off” those suspected of money laundering.
- 9.3 The MLRO will then consider the reported case and internal evidence and come to a decision as to whether a report to the NCA is required. The MLRO will make a referral where he / she has a suspicion that money laundering has taken place. There does not have to be certainty. This assessment needs to be undertaken within a reasonable timeframe and a decision taken on

whether consent needs to be sought from the NCA for a particular transaction to proceed.

- 9.4 If approval is needed before the Council can proceed in processing a transaction then the MLRO will notify the relevant elected member or employees of this. Once a request has been submitted to the NCA no action should take place for 7 working days or until the NCA specifically gives consent to the transaction. If the NCA does not respond after 7 working days they are assumed to have given consent. If the NCA refuses to give consent, a standstill of 31 calendar days is applied and starts from the day notice of refusal was received. The Council cannot proceed with the transaction during this period. If the NCA again does not respond after 31 calendar days they are also deemed to have given consent. Care must be taken to avoid “tipping-off” the suspected persons during any notice or moratorium period.
- 9.5 The MLRO should keep records of all referrals made to the NCA, including records of correspondence. This includes the forms in **Appendix 1 and 2**. Records should be kept for a minimum period of 5 years and the confidentiality of the records maintained.

10.0 DUE DILIGENCE AND CLIENT IDENTIFICATION GUIDANCE

- 10.1 Although it may not be a legal requirement to put in place formal procedures for evidencing the identity of those the Council does business with, in practice, it is sensible that elected members or employees ensure they are alert to potentially suspicious circumstances. Examples include situations where funds flow through the Council from a source with which it is unfamiliar (for example a third party paying Council Tax or Rent arrears). Additionally, the risk is higher if the parties concerned are not physically present or appear to be acting for absent third parties.
- 10.2 In particular, if the Council is forming a new business relationship, and/or is considering undertaking a significant one-off transaction, then consideration should be given to following client identification procedures for the parties involved. Also, if the client acts, or appears to act for another person, then reasonable measures must be taken to identify that person.
- 10.3 If it is considered necessary to confirm a client’s identity, then the client should be asked to provide satisfactory evidence. For an individual’s identity this can include passport or driving licence and one other document with their name or address (eg utility bill, bank/credit card/mortgage documents, tax/pension/benefit documents - mobile telephone documents are not considered satisfactory evidence). For a corporate identity this can include company or trust formation documents and/or business rates documents. If satisfactory evidence is not provided then the relationship or transaction

should not proceed. Records should be maintained for the duration of the contract/relationship.



Appendix 1

Report to Money Laundering Reporting Officer

STRICTLY CONFIDENTIAL

Elected Member / Employee Details:

Name: _____

Job Title: _____

Team: _____

Date: _____

Contact Details: _____

Details of Suspected Offence:

Name(s) and address(es) of person(s) involved:

(if a company/public body please also include details of the nature of the business)

Nature, whereabouts, value and timing of activity/property involved:

(Please include full details eg what, when, where and how. Please include whereabouts of the laundered property where appropriate so far as you are aware. Continue on a separate sheet if necessary)

Nature of suspicions regarding such activity:

(Please continue on a separate sheet if necessary)

Has an investigation been undertaken as far as you are aware?

☐

Yes

☐

No

(Please tick the relevant box)

If yes, please include details here:

Have you discussed your suspicions with anyone else, including any advisory bodies (eg the law society)?

(Please tick the relevant box)

☐

Yes

☐

No

If yes, please include details here:

Do you feel there is any reason why you believe this should not be disclosed to the NCA?

(Please tick the relevant box)

☐

Yes

☐

No

If yes, please include details here:

Please detail below any further information you believe is relevant:

Signed

Date

This form should be passed directly to the Money Laundering Reporting Officer or one of the MLRO's deputies.

Please do not discuss the content of this report with anyone you believe to be involved in the suspected money laundering activity.

THIS REPORT IS TO BE RETAINED FOR AT LEAST FIVE YEARS



Appendix 2

Money Laundering Disclosure Form

This form is to be completed by the Money Laundering Reporting Officer or an appropriate deputy.

Date Report Received _____

Date Receipt of Report Acknowledged _____

Consideration of Disclosure:

Action Plan:

Are there reasonable grounds for suspecting money laundering activity?

(Please tick the relevant box)

☐

Yes

☐

No

If yes, please include details here:

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

☐☐

(Please tick the relevant box)

Yes

No

If yes, please note the date the report has been submitted to the NCA:

Details of liaison with the NCA regarding the report:

Notice period: _____ to _____ (7 workings days)

Moratorium Period: _____ to _____ (31 calendar days)

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

(Please tick the relevant box)

☐

Yes

☐

No

If yes, please include details here:

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:

Please include other relevant information here:

Signed: _____

Dated: _____

THIS REPORT IS TO BE RETAINED FOR AT LEAST FIVE YEARS