Anti Money Laundering Policy and Procedure

Document Control

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Change History

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0.1	June 2019	Initial draft	
0.2	Sept 2019	Amendments from Finance and Governance Group review	JB
1.0	Nov 2019	Approved by G&E Committee	JB
1.1	Nov 2022	3 year review. Reviewed and Agreed with no further changes by Finance & Governance Group Dec 2022.	JB
1.2	June 2023	Revisions made after discussion at Corporate Board	JG

West Berkshire COUNCIL

Contents

1. Purpose

1.1 The purpose of this Policy is to explain how the Council aims to minimise the risk that the Council's services will be used in money laundering, and to protect employees from the risk of prosecution in the event that they become aware of money laundering activity during the course of their work.

1.2 The legislative requirements concerning anti-money laundering procedures are lengthy and complex. This policy and supporting guidance have been written to support the Council to meet the requirements in a way which is proportionate to the very low risk to the Council of contravening the legislation.

1.3 Although local authorities are not directly covered by the requirements of the UK's Money Laundering Regulations, guidance from the Chartered Institute of Public Finance and Accountancy ("CIPFA") indicates that they should comply with the underlying spirit of the legislation and regulations.

1.4 Whilst the majority of money laundering activity in the UK falls outside of the public sector, vigilance by employees of the Council can help identify those who are or may be perpetrating crimes relating to the financing of terrorism and money laundering. In addition, the Council undertakes certain activities which may be defined as 'relevant business' within the legislation and for which obligations are created, as set out in the guidance to this Policy. Both the Policy and the guidance sit alongside and are consistent with the Council's Anti-Fraud and Corruption Policy and the Whistleblowing Policy and Procedure.

1.5 This Policy and Guidance has been approved by both the Finance and Governance Group, and the Governance Committee.

2. Applicability

2.1 This Policy applies to:

a. All non-school based employees working for the Council, including those working from home or at non-Council locations.

b. Other persons including Elected Members, Consultants, Agency staff and Contractors working for the Council, external organisations working with the Council, whilst engaged on Council business.

2.2 It is the responsibility of each employee and other person mentioned in Section 2.1 to familiarise themselves with and adhere to this Policy.

2.3 Adherence to this Policy is a condition of working for the Council or using its assets.

3. Policy

3.1 There is a statutory duty on the organisation and on individuals to disclose suspicions of money laundering that may arise during the course of normal business. It is the Policy of the Council to prevent, wherever possible, the Council and its staff being exposed to money laundering, to 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. It is every member of staff's responsibility to be vigilant.

3.2 The Council will ensure that:

a. Money Laundering Reporting Officer (MLRO) is appointed to receive disclosures from employees of money laundering activity;
b. A procedure is implemented to enable the reporting of suspicions of money laundering (refer to section 14 in the Guidance and Procedures part of this document);
c. Client identification procedures are maintained in certain circumstances when undertaking relevant business;
d. Appropriate record keeping procedures are maintained;
e. Staff are made aware of the requirements and obligations under the relevant legislation; and
f. Training is provided to those most likely to encounter money laundering.

4. Implementation

This Policy is supported and implemented by the procedures and guidance which form part of this document.

5. Roles and Responsibilities

5.1 The overall responsibility for anti-money laundering within WBC rests with the Executive Director (Resources).

5.2 WBC has nominated the following officers to be responsible for anti-money laundering measures within the organisation:

Money Laundering Reporting Officer (MLRO):

Joseph Holmes, Executive Director (Resources) and s151 Officer (01635) 503540

Deputy MLROs:

Melanie Ellis/Shannon Coleman Slaughter – Acting Heads of Finance and Property (01635) 519142/503225

Sarah Clarke, Service Director, Strategy & Governance, and Monitoring Officer (01635) 519596

5.3 All managers are directly responsible for implementing this Policy and any sub policies and procedures within their service areas, and for the adherence of their staff and others (2.1).

5.4 All personnel detailed at 2.1 have an individual responsibility to adhere to this Policy and any relevant Standards and/or Procedures.

5.5 Any member of staff who has any concerns whatsoever regarding a financial transaction, should contact the MLRO in the first instance.

6. Failure to comply with the Anti Money Laundering Policy and Procedure

6.1 This document provides staff and others with essential information regarding anti-money laundering requirements, and sets out conditions to be followed. It is the responsibility of all to whom this Policy document applies to adhere to these conditions. Failure to do so may result in:

a. withdrawal of access to relevant services
b. informal disciplinary processes
c. formal disciplinary action
d. Complaint and action under the Members Code of Conduct.

6.2 Additionally if a criminal offence is suspected (for example, Tipping Off under the Proceeds of Crime Act 2002), the Council may contact the police or other appropriate enforcement authority to investigate whether a criminal offence has been committed.

7. Review

7.1 This policy and procedure will be reviewed to respond to any changes and at least every three years.

7.2 The Governance Committee will be required to review and approve any revisions to the Anti Money Laundering Policy.

DETAILED GUIDANCE AND PROCEDURES

8. What is money laundering?

8.1 Money laundering is the term used for a number of offences involving proceeds of crime or terrorist funds. The term goes beyond the transformation of the proceeds of crime into apparently legitimate money or assets; it also covers a range of activities, which do not necessarily need to involve money.

8.2 It includes all forms of using, possessing or transferring criminal property or terrorist property (as well as facilitating the use or possession) regardless of how it was obtained.

8.3 "Criminal property" is widely defined as a person's benefit from criminal conduct. It includes all property, in the UK or abroad, including money, and also includes an interest in land or a right in relation to property other than land. It can also refer to a reduction in a liability. It does not matter how small the value of the benefit is.

8.4 "Terrorist property" means money or other property that is likely to be used for the purposes of terrorism, proceeds of the commission of acts of terrorism, and acts carried out for the purposes of terrorism.

8.5 Money laundering activity can include a single act (for example, possessing the proceeds of one's own crime), complex and sophisticated schemes involving multiple parties, multiple methods of handling and transferring criminal property, or concealing criminal property or entering into arrangements to assist others to conceal criminal property.

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

9. What is the law?

9.1 The UK's money laundering regulations were amended with effect from September 2022 the 2002 Proceeds of Crime Act is the primary legislation and defines the offences that constitute money laundering:

a. Concealing, disguising, converting, transferring criminal property or removing it from the UK (Section 327 of the Proceeds of Crime Act 2002); or
b. 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);
c. Acquiring, using or possessing criminal property (section 329); or
d. 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 Terrorism Act 2000).

9.2 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 primary offences and **tipping off**. 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 their being investigated, or prejudicing an investigation.

9.3 Potentially any member of staff could be implicated 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.

9.4 All the money laundering offences may be committed by an organisation or by the individuals working for it. Whilst it is considered most unlikely that a member of staff would commit one of the three principle 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 of 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.

10. What are the penalties?

The consequences for officers of committing an offence are potentially very serious, including up to 14 years' imprisonment and/or an unlimited fine.

11. How do I know whether money laundering is taking place?

There is no clear definition of what constitutes suspicion – common sense will be needed. Although you do not need to have actual evidence that money laundering is taking place, mere speculation or gossip is unlikely to be sufficient to give rise to knowledge or suspicion that it is. However, if you deliberately disregard the obvious, this will not absolve you of your responsibilities under the legislation.

12. Risks and indications of money laundering activity:

12.1 It is impossible to give a definitive list of ways in which to spot 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:

General:

a. A new client;
b. A secretive client: e.g., refuses to provide requested information without a reasonable explanation;
c. Concerns about the honesty, integrity, identity or location of a client;
d. Illogical third party transactions: unnecessary routing or receipt of funds from third parties or through third party accounts;
e. Involvement of an unconnected third party without logical reason or explanation;
f. Payment of a substantial or unusual sum in cash;
g. Overpayments by a client, particularly where a refund is requested by cheque or bank transfer, which could be an attempt to launder cash proceeds of criminal activity into the legitimate banking sector;
h. Absence of an obvious legitimate source of funds or assets – a client could have been offered a bribe or kick-back to make a transaction or to pay for services, using somebody else's criminal proceeds;

i. Movement of funds overseas, particularly to a higher risk country or tax haven;
j. Where, without reasonable explanation, the size, nature and frequency of transactions or instructions (or the size, location or type of a client) is out of line with normal expectations;
k. A transaction without obvious legitimate purpose or which appears uneconomic, inefficient or irrational e.g. rent or rates being paid on a property which becomes unoccupied; services being offered at below market rates;
l. The cancellation or reversal of an earlier transaction, particularly where a refund is requested by cheque or bank transfer;
m. Requests for release of client account details other than in the normal course of business;
n. 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;
o. Poor business records or internal accounting controls;
p. A previous transaction for the same client, which has been, or should have been, reported to the MLRO.

Property Matters:

a. Unusual property investment transactions if there is no apparent investment purpose or rationale;
b. Instructions to receive and pay out money where there is no linked substantive property transaction involved (surrogate banking);
c. 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.

12.2 Facts that tend to suggest that something odd is happening may be sufficient for a reasonable suspicion of money laundering to arise.

13. Examples of money laundering activity:

Consider the following hypothetical scenarios:

13.1 An application for a license is received and in the course of assessing the application, the licensing officer has reason to become suspicious that the premises or service is likely to be used for acquiring or transferring criminal property.

13.2 A social worker is assessing a service user's finances to calculate how much he should pay towards the cost of care, and then goes on to arrange for services to be provided and charged for. In the course of this process the social worker becomes aware of, or suspects the existence of criminal property.

13.3 A care service provider is new to the market and offering services at what appears to be excellent value. In the course of undertaking procurement due diligence, it becomes apparent that the care staff may not all have the right to work in the UK. This service provider may be a front end for a variety of criminal activity, including people trafficking or modern slavery, and criminals may be obtaining the benefit of free or cheap labour.

13.4 In these scenarios the officers concerned may commit an offence under section 328 of POCA by "being concerned in an arrangement" which s/he

knows/suspects “facilitates the acquisition, retention use or control of criminal property” if they do not report their concerns. Any lawyer involved could also be guilty of an offence if they assist in the transaction.

14. What should I do if I suspect a case of money laundering?

14.1 First please ensure you are aware of the Tipping Off offences (see section 16). Where you know or suspect that money laundering activity is taking or has taken place, or become concerned that your involvement in a matter may amount to a prohibited act under the legislation, you must disclose this as soon as practicable to the MLRO or Deputy MLRO named in section 5.2. Should you not do so, then you may be liable to prosecution.

14.2 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 years’ imprisonment, or both).

14.3 You must still report your concerns, even if you believe someone else has already reported their suspicions of the same money laundering activity. Such reports to the MLRO will be protected in that they will be exempt from disclosures requested under the Freedom of Information Act.

14.4 Your report to the MLRO must include as much detail as possible including:

a. Full details of the people involved e.g. name, date of birth, address, company names, directorships, phone numbers, etc;
b. Full details of the nature of their and your own involvement;
c. If you are concerned that continuing the transaction would amount to a prohibited act under sections 327 to 329 of the 2002 Act, then your report must include all relevant details, as consent will be needed from the National Crime Agency (NCA) via the MLRO for the transaction to proceed.
d. You 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;
e. 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;
f. The dates of such activities, including whether the transactions have happened, are ongoing or are imminent;
g. Where they took place;
h. How they were undertaken;
i. The (likely) amount of money/assets involved;
j. Why, exactly, you are suspicious 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 the MLRO to prepare a report to the National Crime Agency (NCA) if appropriate. You should also enclose copies of any relevant supporting documentation.

14.5 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.

14.6 There are various defences against non-disclosure, including: where you have a reasonable excuse for non-disclosure (e.g. a lawyer may be able to claim legal professional privilege for not disclosing the information); where you did not know or suspect that money (or other criminal property) was being laundered and had not been provided with appropriate training by the Council.

14.7 Given the low risk to the Council of money laundering activity, this Guidance Note will provide sufficient training for most members of staff, although further guidance may be issued from time to time and targeted training provided to those staff more directly affected by the legislation.

15. What will the MLRO do?

15.1 Upon receipt of a disclosure report, the MLRO must note the date of receipt on the report, acknowledge receipt and advise the discloser of the timescale within which they can expect a response.

The MLRO will consider the report and any other available internal information they think relevant e.g.

a. reviewing other transaction patterns and volumes;
b. the length of any business relationship involved;
c. the number of any one-off transactions and linked one-off transactions;
d. any identification evidence held.

15.2 The MLRO will undertake such other reasonable inquiries deemed appropriate in order to ensure that all available information is taken into account in deciding whether a report to the National Crime Agency (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.

15.3 Once the MLRO has evaluated the disclosure report and any other relevant information, they must make a timely determination as to whether:

a. there is actual or suspected money laundering taking place; or
b. there are reasonable grounds to know or suspect that is the case; and
c. whether they need to seek consent from the NCA for a particular transaction to proceed.

15.4 There are a small number of exemptions for non-disclosure to the NCA (for example, if you are a lawyer and you wish to claim legal professional privilege for not disclosing the information) however, if in any doubt, always disclose.

15.5 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 on the report accordingly and consent given in writing for any ongoing or imminent transactions to proceed. The MLRO should consult with the Chief Executive before reaching a non-disclosure decision. Consent can then be given for a transaction to continue, where applicable.

15.6 In cases where legal professional privilege may apply, the MLRO must liaise with the Chief Executive to decide whether there is a reasonable reason for not reporting the matter to NCA.

15.7 Where consent is required from NCA for a transaction to proceed, then the transaction(s) in question must not be undertaken or completed until NCA has

specifically given consent, or there is deemed consent through the expiration of the relevant time limits without objection from the NCA.

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

16. Tipping Off Offences

16.1 Where you suspect money laundering and report it to the MLRO, you must not mention this to others afterwards: you may commit a further offence of "tipping off" (section 333 of the 2002 Act) if, knowing a disclosure has been made, you say or do anything which is likely to prejudice any investigation that might be conducted. It is important not to disclose that an investigation into allegations that an offence has been committed is being contemplated, or is being carried out. If and when clearance is given by the MLRO and/or the NCA, you should proceed as if nothing has happened.

16.2 You must not make any reference on a file to a report having been made to the MLRO because, should the client exercise their right to see the file under Data Protection or FOI 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.

17. Specific obligations when conducting 'relevant business'

17.1 Money laundering may occur in a wide variety of personal and business transactions, and all Council staff should remain vigilant to the presence of criminal property, and should report their suspicions as set out in this procedure. However, there is also a class of activities known as '**relevant business'**, and for these activities, some specific and additional obligations are created.

17.2 *'Relevant business' would usually refer to the accountancy and audit services carried out by the financial service functions within the Council and the financial, company and property transactions undertaken by Legal Services, where conducted 'by way of business'.*

Relevant business does not include:

- *public authorities serving members of the public free of charge, or for a fee to cover the cost of providing the service only*
- *public authorities that provide these services as part of their statutory duties and charge a fee*

17.3 Under the 2017 (amended 2019) Regulations, the Council is responsible for ensuring that those of its staff who are most likely to be exposed to money laundering ('relevant' employees) can make themselves fully aware of the law and, where necessary, are suitably trained. Areas of the Council's business that could be deemed to be 'relevant' are required to obtain, verify and maintain evidence and records of the identity of new clients and transactions undertaken, and report suspicions to the MLRO.

17.4 Relevant business is defined with reference to the nature of the activities undertaken rather than referring to organisations as a whole. There is the possibility that some of the Council's business could be classed as "relevant" for the purposes of the legislation:

a. the provision, by way of business, of advice about the tax affairs of another person by a body corporate,
b. the provision, by way of business, of accountancy services by a body corporate,
c. the provision, by way of business, of audit services,
d. the 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),
e. the provision, by way of business, of services in relation to the formation, operation or management of a company or a trust,
f. the 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 £13,400 as at September 2019) or more.
g. the activity of dealing in and managing investments 'by way of business'.

18. What do I do if I am involved in an activity deemed to be 'relevant business'?

18.1 The 2017 Regulations impose specific obligations on those carrying out **relevant business**, requiring them to:

a. obtain sufficient knowledge to ascertain the true identity of clients, by maintaining client identification procedures;
b. ensure evidence of identity obtained and details of transactions undertaken are held for at least 5 years.

18.2 Where the Council is carrying out relevant business (e.g. financial and certain legal services) and:

a. forms an ongoing business relationship with a client; or
b. undertakes a one-off transaction involving payment by, or to, the client of 15,000Euro (approximately £13,400) or more; or
c. undertakes a series of linked one-off transactions involving total payment by or to the client(s) of 15,000 Euro (approximately £13,400) or more; or
d. it is known or suspected that a one-off transaction (or a series of them) involves money laundering;

then the Client Identification Procedure (Customer Due Diligence – see section 19) should be followed before any business is undertaken with that client.

19. Client Identification Procedure (Customer Due Diligence) when undertaking relevant business

19.1 Satisfactory evidence of identity establishes, to the satisfaction of the person receiving it, that the client is who they claim to be. The Council's Client Identification Procedure requires basic identity checks for **existing clients** as follows:

a. internal clients: signed, written instructions on Council headed notepaper or an email on the internal email system at the outset of the business relationship;
b. external clients: signed, written instructions on the organisation in question's headed paper at the outset of the business relationship.

19.2 The reason for this low level procedure (simplified due diligence) is because the Council's risk of exposure to money laundering is assessed as low, so the procedure is considered appropriate to this perceived risk. The risk assessment takes account of regulations that restrict the extent to which services can be provided and the organisations with which the Council can contract.

19.3 Customer due diligence should be carried out over the lifetime of the business relationship, proportionate to the risk, and based on the officers' knowledge of the client and regular scrutiny of the transactions involved.

19.4 The Client Identification Procedure should enable us to have confidence in accepting instructions from a known client. If, however, you are undertaking work for a **new client**, then you may also wish to seek additional evidence, for example:

a. check the organisation's website to confirm the identity of personnel, its business address and any other details;
b. meet the client at their business address;
c. confirm that the organisation is included in the telephone directory;
d. ask the key contact officer to provide evidence of personal identity and position within the organisation, for example: passport, photo ID card, driving licence;
e. signed, written confirmation from the Service Director/Head of Service or Chair of the
relevant organisation that such person works for the organisation.
f. where there is a beneficial owner who is not the client, the Council should take reasonable measures to verify their identity, and where the beneficial owner is a trust or similar, the Council should understand the nature of the control structure of that trust.

19.5 The law states that particular care must be taken when the client is not physically present when being identified; this is often likely to be the case for the Council.

20. Record Keeping Procedure

20.1 Each Service of the Council conducting **relevant business** must maintain records of:

a. client identification evidence obtained; and
b. 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 into money laundering by the authorities.

20.2 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.

21. Conclusion

Given the nature of the Council's services and for whom these services can be provided, instances of suspected money laundering are unlikely to arise very often, if at all. However, we must be mindful of the legislative requirements, as failure to comply with them may render individuals liable to prosecution.

Other Relevant Documentation

The following policies, procedure documents and codes of conduct should be read in conjunction with the Anti Money Laundering Policy:

Anti-Fraud & Corruption Policy and Procedure
Whistleblowing Policy and Procedure