

Summary Sheet

Council Report:

Audit Committee – 21st November 2017

Title:

Anti-Money Laundering Policy and Supporting Guidance

Is this a Key Decision and has it been included on the Forward Plan?

No

Strategic Director Approving Submission of the Report:

Judith Badger (*Strategic Director of Finance and Customer Services*)

Report Author(s):

David Webster (Head of Internal Audit)

Ward(s) Affected:

None

Executive Summary:

This report refers to a proposed update to the Council's Anti-Money Laundering Policy which is designed to ensure that the Policy is in line with current best practice and legislation. The Policy links with the Anti-Fraud and Corruption Policy and Strategy and will be referred to in Fraud Awareness training being rolled out to relevant staff.

Recommendation:

The Audit Committee is asked to approve the Anti-Money Laundering Policy and Supporting Guidance as attached in Appendix A.

Background Papers:

Money Laundering Regulations 2007

Terrorism Act 2000

Proceeds of Crime Act 2002

Consideration by any other Council Committee, Scrutiny or Advisory Panel:

No

Council Approval Required:

No

Exempt from the Press and Public:

No

Title: Anti – Money Laundering Policy and Supporting Guidance.

1. Recommendations

The Audit Committee is asked to approve the Anti-Money Laundering Policy and Supporting Guidance as attached in Appendix A.

2. Background

2.1 Rotherham Metropolitan Borough Council, like every Local Authority, has a duty to ensure that it safeguards the public money that it is responsible for. The Council is committed to the elimination of fraud and corruption and to ensuring that all activities are conducted ethically, honestly and to the highest possible standard.

2.2 The Anti-Money Laundering Policy stands alongside the Anti-Fraud and Corruption Policy and Strategy, the Whistleblowing Policy and Employee / Member Codes of Conduct in providing a framework to minimise and combat the risk of wrongdoing against the Council.

2.3 This report provides a revised Policy taking into account legislation, current best practice and changes to the Council structure.

3. Key Issues

3.1 The updated Anti-Money Laundering Policy is attached at Appendix A. The definition of money laundering is given along with a summary of the relevant legislation. The Guidance gives examples or signs of possible money laundering and the action to be taken if there are any suspicions of attempted money laundering. A template of the form to be completed is also included.

3.2 The Council's Money Laundering Reporting Officer is the Head of Internal Audit, who would be responsible for reporting any suspicious transactions to the National Crime Agency.

3.3 Fraud Awareness training is about to be rolled out to relevant staff. It includes reference to the Policy.

4. Options considered and recommended proposal

4.1 This report is presented to enable the Audit Committee to fulfil its responsibility for ensuring the Council has appropriate arrangements in place for managing the risk of fraud.

5. Consultation

5.1 The proposed Policy and Supporting Guidance have been reviewed by the Monitoring Officer and the Strategic Director Finance and Customer Services.

6. Timetable and Accountability for Implementing this Decision

6.1 The Audit Committee is asked to receive this report at its November 2017 meeting.

7. Financial and Procurement Implications

7.1 There are no direct financial or procurement implications arising from this report.

8. Legal Implications

8.1 The Proceeds of Crime Act 2002, the Money Laundering Regulations 2007 and the Terrorism Act 2000 broaden the definition of money laundering and increase the range of activities covered by statutory controls. They also imposed new obligations in respect of money laundering. These impact on certain areas of the local authority business and require the Council to establish internal procedures to prevent the use of their services for money laundering.

9. Human Resources Implications

9.1 There are no direct Human Resources implications arising from the report.

10. Implications for Children and Young People and Vulnerable Adults

10.1 There are no direct implications for Children and Young People and Vulnerable Adults arising from this report.

11. Equalities and Human Rights Implications

11.1 There are no direct Equalities or Human Rights implications arising from this report.

12. Implications for Partners and Other Directorates

12.1 Implementation of the revised Anti-Money Laundering Policy will contribute towards ensuring the Council operates and maintains a culture in which fraud and corruption are understood to be unacceptable.

13. Risks and Mitigation

13.1 Failure to refresh and maintain the Anti-Money Laundering Policy could expose the Council to increased risk of its services being used for money laundering.

14. Accountable Officer:

David Webster (Head of Internal Audit).



**ANTI - MONEY LAUNDERING POLICY
AND
SUPPORTING GUIDANCE**

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ANTI-MONEY LAUNDERING AND ANTI-TERRORIST FINANCING POLICY AND SUPPORTING GUIDANCE

1. INTRODUCTION

WHAT IS MONEY LAUNDERING?

Money Laundering is the process of concealing, disguising, converting, transferring or removing the proceeds of crime.

This can be characterised as making “dirty” money “clean”; i.e. giving it the appearance of having come from a legitimate source.

Money laundering is also linked to terrorist financing, whereby the process can often be reversed; i.e. “clean” money is diverted into “dirty” purposes; e.g. the funding of a terrorist operation

- 1.1 The primary legislation relating to suspected money laundering is the Terrorism Act 2000, (TA); Proceeds of Crime Act 2002 (POCA) and the Money Laundering Regulations 2017, (MLR). Public Authority employees, as members of the public, have a personal duty to comply with specific aspects of the legislation, (noting that Public Authorities and staff are subject to the full provisions of the Terrorism Act 2000). Public Authorities, (not being regulated businesses as defined within the legislation), are not legally obliged to apply the provisions of all the Money Laundering Regulations unless they are undertaking a service ‘by way of business’ i.e. provision of a service to a 3rd party for which formal remuneration is received (provision of legal advice / service outside of the authority). However best practice, including detailed guidance produced by the Chartered Institute of Public Finance & Accountancy, (CIPFA), in 2009 suggests that as responsible bodies they should employ policies and procedures which reflect the essence of the UK’s anti-terrorist financing and anti-money laundering regimes.
- 1.2 As a result, the Council has formal internal policies and procedures to prevent the use of its services for money laundering. It is extremely important that all employees / Members are familiar with their responsibilities. Under the Money Laundering Regulations 2017 there is a requirement for all ‘relevant persons’ to be supervised by an appropriate anti money laundering supervisory authority (i.e. a member of the CCAB, HMRC etc.) However it should be noted that members of accounting bodies such as CIPFA, CIMA and AAT who are employed by Public Authorities are not required to register for anti-money laundering purposes.
- 1.3 Whilst the full implications of the above legislation are lengthy and complex, this Policy and supporting guidance meets the Council’s obligations relating to the legislation, and associated professional good practice, and will be subject to periodic review and revision as deemed appropriate.

2. POLICY STATEMENT AND SCOPE

2.1 This Policy and Guidance applies to all Council employees, (including Agency / temporary workers and partners), and elected Members of the Council. It aims to maintain the high standards of conduct which currently exist within the Council by preventing criminal activity through money laundering. The Guidance sets out the procedures which must be followed (for example the reporting of suspicions of money laundering activity) to enable the Council's "Responsible Officers" to comply with all legal and professional obligations.

The term "Responsible Officer" refers to all employees and Members to which this document applies as described above.

2.2 This Policy sits alongside the Council's Anti-Fraud & Corruption and Whistle-blowing Policies and Employee / Member Codes of Conduct as a key document in creating a sound framework to minimise and combat the risk of wrongdoing against the Council.

2.3 The Council's aim is to do all it can to prevent wherever possible, taking account of resource implications, the Council and its "Responsible Officers" being exposed to money laundering, to identify the potential areas where it may occur, and to comply with all legal and professional requirements, especially with regard to the reporting of actual or suspected cases. It cannot be stressed too strongly, however, that it is every "Responsible Officer's" duty to be vigilant.

2.4 In order to achieve the above aim the following key procedures and actions will be implemented and subject to ongoing review:

2.4.1 Named officers within the Council will be assigned responsibility to fulfil the role of Money Laundering Reporting Officer, (MLRO) and Deputy MLRO. (Officers details are outlined in Section 5 of this document). Such officers will be responsible for:

- ❖ Producing and revising relevant policies, procedures and guidance which are both proportionate and cost effective;
- ❖ Providing training as deemed appropriate;
- ❖ Receiving and managing concerns of "Responsible Officers", including giving advice as to action required;
- ❖ Co-ordinating Suspicious Activity Reports (SARS) to the National Crime Agency (NCA), where necessary;
- ❖ Pro-active management of all risks associated with money laundering activity.

2.4.2 All senior managers, relevant staff and Members will receive mandatory awareness training on the key principles of Money Laundering;

- 2.5 Any “Responsible Officer” 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.
- 2.6 It is important that all “Responsible Officers” are familiar with their responsibilities as serious criminal sanctions may be imposed for breaches of the legislation. Additionally failure to comply with the requirements of this Policy could result in internal disciplinary investigation and action being instigated, in accordance with the Council’s disciplinary procedures.
- 2.7 The key requirement on “Responsible Officers” is to promptly report any suspected money laundering activity to the Money Laundering Reporting Officer. If the matter involves a proposed transaction (e.g. the sale of property) you should not proceed with the transaction without approval from the MLRO. You should defer the transaction in such a way as not to alert anyone else to your suspicions.
- 2.8 Not all the Council’s business is relevant for these purposes. It is mainly the accountancy services carried out by Finance and certain financial, company and property transactions carried out by Legal Services. However, the safest way to ensure compliance with the law is to apply it to all areas of work undertaken by the Council. Therefore all employees are required to comply with the Policy in terms of reporting concerns about possible money laundering.

GUIDANCE SUPPLEMENTING THE POLICY STATEMENT

3. MONEY LAUNDERING – AN EXPANDED DEFINITION

- 3.1 The phrase “money laundering” means the process by which the identity and true ownership of “dirty money”, i.e. the proceeds of any crime, is changed so that these proceeds appear to originate from a legitimate source.
- 3.2 Although the term “money laundering” has traditionally been used when describing the activities of organised crime, for which the regulations were first introduced, to most people who are likely to come across it, or be affected by it, it involves a suspicion that someone they know, or know of, is benefiting from dishonest activity.
- 3.3 Most crime, for example the drugs trade, is almost wholly cash driven. For many years, the most common means of laundering money was to deposit large sums of cash at banks. However as the high street banks have tightened their controls in this area, the launderers have turned to more obscure methods, frequently involving buying and selling assets, (including antiques, etc.), property and businesses, to achieve their aims. This has made it much more difficult to detect and prevent money laundering.
- 3.4 The money laundering process comprises three distinct phases summarised as:

Placement = initial disposal of cash representing proceeds of crime into the system by either deposit at a bank, (or

equivalent), purchase of property, shares or other assets;

Layering = breaking any link back to the original proceeds of crime. This includes buying / selling properties, companies or other assets (such as shares, antiques or arts) back to back and transferring funds around the world via various accounts. Launderers often use a legitimate front business to hide illegal activities;

Integration = funds coming back to the individual / group to finance a luxurious lifestyle and possibly fund further criminal activity.

- 3.5 Examples / signs of money laundering activity include transactions where the other party:
- 3.5.1 Enters into transactions which make little or no financial sense or which go against normal practice;
 - 3.5.2 Make large cash payments;
 - 3.5.3 Is happy to enter into an apparent bad deal for them;
 - 3.5.4 Is unwilling to explain the purpose of a transaction or refuse to provide information requested without reasonable explanation;
 - 3.5.5 Suddenly change their pattern of activity;
 - 3.5.6 Enter into arrangements / possess assets beyond their apparent financial means;
 - 3.5.7 Take part in transactions across a number of different jurisdictions;
 - 3.5.8 Use offshore accounts, companies or structures in circumstances where their needs do not support such economic requirements;
 - 3.5.9 Unnecessarily route funds through third party accounts.
- 3.6 Some examples of where money laundering activity could take place within the Local Authority environment include:
- 3.6.1 Sale of items through auctions, (such as property / land / furniture / antiques), where cash payments are made;
 - 3.6.2 Large cash payments in respect of other land / property transactions;
 - 3.6.3 Large cash payments to settle debts due to the Council, including Council Tax, NDR, Benefits overpayments and other high value transactions;
 - 3.6.4 Overpayment of debts by way of cash, leading to requests for large refunds to be made by way of cheque;

3.6.5 "Partners" making large contributions towards projects / initiatives in the form of cash / cheque and then shortly after requesting refunds by credit note for part of the contribution;

3.7 In addition to the above, "Responsible Officers" may come across suspicions of money laundering in the form of identifying customers / clients who appear to be "living well above their means", e.g. property and "luxury items" that does not appear to be in line with their income.

3.8 Within the legislation governing money laundering and terrorist financing there are no de minimis levels = any suspicions need consideration.

4 ANTI-MONEY LAUNDERING PROCEDURES

General Levels

4.1 As referred to earlier in this guidance, within the legislation relating to money laundering and terrorist financing, there are no de minimis financial or activity levels for reporting concerns, **all suspicions should be raised through the MLRO.**

Cash Payments

4.2 To reduce the Council's exposure to potential money laundering activity, limits have been set for individual financial transactions.

In order to help ensure that the Council does not contravene the requirements of the Money Laundering Regulations 2017, no cash collection point / individual officer, should accept cash payments of £10,000 or more in one transaction.

NB: Cash is defined as including notes, coins or travellers' cheques in any currency;

The above limits will be subject to review and change in line with best practice / professional advice.

Should any employee be offered a cash payment of £10,000 or more, it should be pointed out that cash can only be accepted up to this limit. Any cash payment below £10,000 should be accepted and receipted in the normal way. Should any employee have suspicion of money laundering activity relating to any transaction involving cash payments, they should raise it in accordance with the procedure set out in paragraphs 4.3 and 4.4 below.

Reporting suspicions

4.3 "Responsible Officers" who suspect any level of money laundering activity must immediately contact the MLRO, or the deputy MLRO if appropriate, to report their suspicion. Following consideration of the matter the MLRO / Deputy MLRO will decide whether the formal referral form, (attached at Appendix 1), should be completed.

4.4 The "Responsible Officer" 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 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 "Responsible Officer" must follow any subsequent directions of the MLRO or deputy, 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.
- 4.6 The MLRO or deputy must promptly evaluate any disclosure, to determine whether it should be reported to the National Crime Agency
- 4.7 The MLRO or deputy must, if they so determine, promptly report the matter to the National Crime Agency on their standard report form and in the prescribed manner.
- 4.8 The MLRO or deputy will commit a criminal offence if they know or suspect, or have reasonable grounds to do so, through a disclosure being made to them, that another person is engaged in money laundering and they do not disclose this as soon as practicable to the National Crime Agency.

Exemptions

- 4.9 Generally the requirements of this Policy and associated procedures must be adhered to by all "Responsible Officers" within the Council. There are however some exemptions within the legislation, relating to "relevant professional advisers" where information / suspicions come to them in "privileged circumstances". Such exemptions apply mainly to the legal, external audit / accountants and tax adviser professions and would not normally be relevant to Council "Responsible Officers".

Record Keeping / Reporting

- 4.10 Where "Responsible Officers" carry out due diligence assessments, records and details of the relevant transaction(s) for that client must be retained for at least five years after the end of the business relationship. Further information relating to the requirement to maintain records of due diligence assessments, will be communicated to relevant officers outside of this guidance.
- 4.11 An electronic copy of every customer due diligence record must be sent to the MLRO to comply with best practice.
- 4.12 The MLRO will maintain a record of all suspicions of money laundering received and outcomes, including cases reported to the National Crime Agency. Periodic reports will be submitted to senior management and appropriate Members summarising details of the number of money laundering referrals.

5. THE MONEY LAUNDERING REPORTING OFFICER (MLRO)

- 5.1 The officer nominated to receive disclosures about money laundering or terrorist financing activity within the Council is the Head of Internal Audit – David Webster. He can be contacted as follows:

David Webster
Head of Internal Audit
Finance and Customer Services
Rotherham MBC
Wing C - Floor 3
Riverside House
Rotherham
S60 1AE

Telephone: 01709 823282

E Mail: david.webster@rotherham.gov.uk

- 5.2 In the absence of the MLRO, Principal Auditors Mitch Chapman (Mitch.Chapman@rotherham.gov.uk Tel: 01709 823299) or Andy Furniss (Andy.furniss@rotherham.gov.uk Tel: 01709 823294) at the same address, are authorised to deputise for him.

6 GUIDANCE AND TRAINING

- 6.1 In support of this policy and guidance, the Council will:

- make all “Responsible Officers” aware of the requirements and obligations placed on the Council and on themselves as individuals by the anti-money laundering legislation;
- include reference to the Money Laundering Policy within “Responsible Officer” induction programmes;
- through the MLRO, respond to any requests for further / more detailed guidance or advice on any issue relating to money laundering;
- include a page on the Council’s Internet / Intranet sites containing this policy and all relevant supporting guidance.

7 KEY RISK CONSIDERATIONS

- 7.1 In applying the policy and procedures recorded within this document, consideration should be given to the associated risks to the Council and “Responsible Officers”. The key risks are identified as:

7.1.1 Failure to identify relevant legislative requirements/good practice and implement effective anti money laundering & anti terrorist financing arrangements within the Council;

7.1.2 Failure to effectively communicate the money laundering procedures / requirements to all “Responsible Officers”;

7.1.3 Failure to report suspicions of money laundering to the MLRO and / or the National Crime Agency);

7.1.4 Failure to protect the personal safety of “Responsible Officers”, who report suspicions of money laundering.

7.2 The above risks, and any others deemed relevant, will be recorded and monitored by the MLRO through inclusion in a Risk Register, within the Council’s formal Risk Management system.

8 FURTHER INFORMATION

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

- ❖ www.nationalcrimeagency.gov.uk – website of the National Crime Agency;
- ❖ Money Laundering Guidance at www.lawsociety.org.uk;
- ❖ <https://www.gov.uk/government/consultations/money-laundering-regulations-2017>

CONFIDENTIAL

REPORT TO MONEY LAUNDERING REPORTING OFFICER

Re: suspected money laundering activity

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

From:

[insert name of employee]

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 record details below, including by who, when, how and outcomes:

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 for 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 National Crime Agency (NCA)? (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:

LEGISLATIVE CONTEXT

The key elements of the 3 main acts relating to the offence of money laundering are summarised below.

1 Proceeds of Crime Act 2002 (POCA)

- 1.1 Concealing, disguising, converting, transferring or removing criminal property from England and Wales, from Scotland or from Northern Ireland (**section 327**);
- 1.2 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**);
- 1.3 Acquiring, using or possessing criminal property (**section 329**);
- 1.4 Doing something that might prejudice an investigation – for example falsifying a document (**section 342**)

The above offences **apply to all** persons in the UK in both a personal and professional capacity and anyone involved in them risks a criminal conviction.

Other offences under the POCA include:

- 1.5 Failure to disclose money laundering offences (**sections 330 – 332**);
- 1.6 Tipping off a suspect either directly or indirectly (**section 333**).

The above offences **only apply to certain organisations / classes of people** (the regulated sector including Banks, Building Societies, Private Solicitors / Accountants, Casinos) and exclude Local Authorities. However in line with best practice the Council requires all its "Responsible Officers" to adhere to the principles of each one.

2 Terrorism Act 2000 (TA)

- 2.1 Establishes the offence of money laundering in relation to becoming concerned in an arrangement relating to the retention or control of property, (including finances), likely to be used for the purposes of terrorism, or resulting from acts of terrorism.
- 2.2 All individuals and businesses in the UK have an obligation 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, irrespective of the amounts involved.

3 Money Laundering Regulations 2017 (MLR)

- 3.1 Both POCA 2002 and TA 2000 contain offences which may be committed by individuals or entities, whereas the MLR 2017, whilst re-affirming the key

elements of the above legislation, deal with the systems and controls which “Regulated Businesses” are required to have and contain offences which may be committed by businesses as well as the key individuals within them.

3.2 The specific requirements of the MLR 2017, outside of the TA 2000 and POCA 2002, do not apply to Local Authorities as they are outside of the definition of “Relevant Persons” undertaking “Regulated Activity”. However due to the nature of business carried out by Local Authorities and an ethical and professional obligation to help “protect the public purse”, the Council will follow CIPFA Guidance which suggests the principles of the MLR 2017 legislation should be applied within a Local Authority environment, specifically relating to policies and procedures aimed at preventing money laundering covering:

- ❖ identification and scrutiny of complex or unusually large transactions, unusual patterns of transactions, with no apparent economic or lawful purpose, or other activity likely to be of a nature of money laundering / terrorist financing;
- ❖ prevention of use of products favouring anonymity;
- ❖ determination of whether a client is a Politically Exposed Person (PEP);
- ❖ customer due diligence, i.e. procedures designed to acquire knowledge about the organisation’s clients and prospective clients and to verify their identity as well as monitor business relationships and transactions;
- ❖ internal reporting, including appointment of a MLRO to receive money laundering reports and a system for making those reports;
- ❖ record keeping, including details of customer due diligence and supporting evidence for business relationships and records of transactions, which need to be kept for 5 years after the end of a relationship;
- ❖ internal control, risk assessment and management, compliance monitoring, management and communication;
- ❖ making relevant employees aware of the law relating to money laundering and terrorist finance, and to train those employees in how to recognise and deal with transactions which may be related to money laundering or terrorist financing.

3.3 MLR 2017 covers in some detail and complexity the issue of “Customer Due Diligence”, whereby “Relevant Persons” carrying out certain “Regulated Activities” must take extra care to check the identity of the customer or client.

Whilst these regulations do not apply to Local Authorities due to them not being classed as a "Regulated Body", the following principles of "Due Diligence" should be applied, on a risk sensitive basis, in relation to existing and prospective clients / customers:

- ❖ seeking evidence of identity, 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.

- ❖ 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, (an individual who at any time in the preceding year has held a prominent public function outside of the UK, and EU or international institution / body, their immediate family members or close associates);
 - 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.

- ❖ 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 must be consulted prior to carrying it out.