



DERBY CITY COUNCIL

AUDIT & ACCOUNTS COMMITTEE 2 December 2010

Report of the Interim Strategic Director -
Resources

ITEM 10

ANTI-MONEY LAUNDERING POLICY

SUMMARY

- 1.1 As a responsible public body, the Council should employ policies and procedures which reflect the essence of the UK's anti-terrorist financing and anti-money laundering regimes. The Council responded to this by implementing an Anti-Money Laundering Policy in 2006. This report seeks approval of the revised Anti-Money Laundering Policy and the revised procedures document.

RECOMMENDATIONS

- 2.1 To approve the revised Anti-Money Laundering Policy.
- 2.2 To approve the revised procedures document.
- 2.3 To request that the Committee receives a report annually, on the issues notified under the Policy.

REASONS FOR RECOMMENDATIONS

- 3.1 The Audit and Accounts Committee is responsible for monitoring council policies on whistleblowing (Confidential Reporting Code), counter fraud measures (including anti-money laundering measures) and the council's complaints process.

SUPPORTING INFORMATION

- 4.1 Money laundering is the process by which criminals attempt to conceal the true origin and ownership of the proceeds of their criminal activity, allowing them to maintain control over the proceeds and, ultimately, providing a legitimate cover for their sources of income.
- 4.2 In response to significant changes to the legislation concerning money laundering (the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003) local authorities were advised to establish internal procedures to prevent the use of their services for money laundering. In 2006, the Council introduced an Anti-Money Laundering Policy which outlined its approach to the legislation. The 2003

regulations have now been replaced with the Money Laundering Regulations 2007.

- 4.3 The 2006 policy included procedural notes on how to report suspicions of money laundering activity. The revised version has removed all procedural guidance and included that in a separate document.
- 4.4 The policy applies to all employees 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. Both the policy and the procedures sit alongside the Council's Confidential Reporting Code and the Anti-Fraud and Corruption Strategy.
- 4.5 The 2003 Regulations stated that 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.
 - Maintain record keeping procedures.

However, the 2003 Regulations had adopted an activity based approach to defining 'relevant business' e.g. undertaking accountancy work or audit work on behalf of others. This created uncertainty as to whether public service organisations' activities might fall within the definition of relevant business. Clarity is provided in the 2007 Regulations because the term 'relevant persons' has replaced 'relevant business' and the list of relevant persons defined in regulation 3 does not include public authorities.

- 4.6 The Chartered Institute of Public Finance and Accountancy (CIPFA) advises that local authorities maintain anti-money laundering policies and procedures. CIPFA considers that there is substantial reputational risk for an authority which does not have such policies and procedures in place. Whilst the majority of activity falls outside of the public sector, vigilance by authorities and their staff can help identify those who are or may be perpetrating crimes relating to the financing of terrorism or money laundering.
- 4.7 CIPFA's guidance advises that all local authorities should:
- Raise awareness of how Members and staff may unwittingly come across reportable fraud or suspicions of terrorism, and what to do should this happen;
 - Put in place internal reporting procedures;
 - Nominate an officer to take responsibility for devising, implementing and maintaining the policy and procedures; and
 - Identify activities vulnerable to money laundering and provide staff in those areas with specific, more targeted training.

- 4.8 Following Committee's approval of the Anti-Fraud Policy and the Fraud Response Plan and the subsequent reviews of the Confidential Reporting Code and the Anti-Money Laundering Policy and procedures, the Head of Audit and Risk Management will be providing briefings for Members and delivering awareness sessions to all Directorates which will cover all of these important documents. Managers will be expected to cascade the information to their staff.
- 4.9 The policy and procedures will be reviewed every 3 years, unless there is any change to legislation around money laundering.

OTHER OPTIONS CONSIDERED

5.1 N/A

This report has been approved by the following officers:

Legal officer	Olu Idowu – Head of Legal Services (General)
Financial officer	n/a
Human Resources officer	n/a
Service Director(s)	n/a
Other(s)	n/a

For more information contact:	Richard Boneham, Head of Audit & Risk Management 01332 643280 e-mail richard.boneham@derby.gov.uk
Background papers:	None
List of appendices:	Appendix 1 – Implications Appendix 2 – Anti-Money Laundering Policy Appendix 3 – Anti-Money Laundering Procedures

IMPLICATIONS

Financial

- 1.1 None directly arising.

Legal

- 2.1 The existence of the policy ensures the Council can demonstrate compliance with the principles of the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2007.

Personnel

- 3.1 None directly arising.

Equalities Impact

- 4.1 None directly arising.

Health and Safety

- 5.1 None directly arising.

Carbon commitment

- 6.1 None directly arising.

Value for money

- 7.1 None directly arising.

Corporate objectives and priorities for change

- 8.1 The functions of the Committee have been established to support delivery of corporate objectives by enhancing scrutiny of various aspects of the Council's controls and governance arrangements.

DERBY CITY COUNCIL

ANTI-MONEY LAUNDERING POLICY

December 2010

1. Introduction

- 1.1 The Money Laundering Regulations 2007 have updated the position for the Council in terms of the legal responsibilities concerning money laundering. These regulations, together with the Proceeds of Crime Act 2002 (POCA) and the Terrorism Act 2000 (TA) as amended by the Anti-Terrorism and Security Act 2001 and the Terrorism Act 2006), outline the preventative measures intended to eliminate the funding of terrorism and crime.
- 1.2 Although Local Authorities are not legally obliged to apply the Money Laundering Regulations 2007, the Council is bound by the provisions of both the Proceeds of Crime Act and the Terrorism Act. It is good practice to comply with the main measures of the Regulations as part of the governance process. As such, Derby City Council has established this policy to ensure compliance.

2. Scope of the Policy

- 2.1 This policy applies to all employees 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. The Policy sets out the procedures that must be followed (for example the reporting of suspicions of money laundering activity) to enable the Council, its members and employees to comply with its intention to voluntarily comply with the legal requirements of the Regulations
- 2.2 Further information is set out in the accompanying Procedures Guidance document. Both the policy and the procedural guidance document sit alongside the Council's Confidential Reporting Code and the Anti-Fraud and Corruption Policy.
- 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 Council's Disciplinary and Dismissal Procedure Policy. Failure by a Member to comply with the procedures set out in this policy may be referred to the Standards Committee.

3. What Is Money Laundering?

- 3.1 Money laundering is any attempt to use the proceeds of crime for legitimate purposes. Anyone who becomes involved with an activity which they know, or have reasonable grounds to suspect, is related to the proceeds of crime may be guilty of money laundering.
- 3.2 The term money laundering is often used to refer to the complex and large scale procedures used by organised crime and terrorist groups to conceal the illegal nature of their assets by the careful and staged introduction of the proceeds of crime into legitimate financial and commercial streams. The legislation, however, is very broad, and applies to the proceeds of any crime no matter how large or small.

- 3.3 Any Member or employee who, in the course of Council business, becomes aware that criminal property or funds could be involved should report their suspicions promptly, in accordance with the Policy set out in this document. Failure to do this may inadvertently result in an offence, for example relating to concealing, or assisting an arrangement connected with, criminal property.
- 3.4 The risk of the Council contravening the legislation is, however, relatively low and some aspects of the legal and regulatory requirements do not apply to public authorities.
- 3.5 The Terrorism Act 2000 (TA) and the Proceeds of Crime Act 2002 (POCA) place obligations on all of us. The statutory provisions relating to money laundering, in so far as they affect the Council, are summarised in Appendix A to this policy, together with references to further information.

4. The policy

- 4.1 This policy is complemented by the Council's Anti Money Laundering Procedures which set out the details of how the policy is to be applied. The aims of the Policy and Procedures, taken together, are to:
- assist the staff and Members of Derby City Council to understand money laundering and their personal legal obligations and responsibilities arising from the requirements of the legal and regulatory provisions
 - prevent Council services being used for money laundering purposes, and
 - set out the procedures which must be followed to enable the Council and its staff to comply with their legal obligations.
- 4.2 Derby City Council will do all it can to:
- prevent the Council and its staff being exposed to money laundering;
 - identify the potential areas where it may occur; and
 - comply with all legal and regulatory requirements, especially with regard to the reporting of actual or suspected cases of money laundering.
- 4.3 All employees are required to:
- report promptly all reasonable suspicions¹ of money laundering activity to the Money Laundering Reporting Officer (MLRO) or Deputy MLRO. This may initially be by a direct discussion or by using the form provided in the Anti-Money Laundering Procedures.
 - follow any subsequent directions of the MLRO or Deputy.
- 4.4 The nominated officers for reporting issues are:
- MLRO: Strategic Director - Resources (Section 151 Officer)
 - Deputy MLROs: Head of Audit & Risk Management and the Director of Legal and Democratic Services (Monitoring Officer)

¹ There is no definition of what constitutes reasonable suspicion. There must be genuine reasons or grounds for the suspicion: it is more than speculation or hunch and common sense will be needed.

Full contact details are provided in the Anti- Money Laundering Procedures.

- 4.5 The MLRO or Deputy must promptly:
- evaluate all concerns raised by staff to determine whether it is appropriate to make a report to the Serious and Organised Crime Agency (SOCA)
 - if appropriate, ensure that an internal report is completed, using the form provided in the Anti- Money Laundering Procedures.
 - if appropriate, submit a Suspicious Activity Report to SOCA using SOCA's standard form (available at www.soca.gov.uk).
- 4.6 Those receiving, or arranging to receive, cash on behalf of the Council must ensure they are familiar with the Council's Anti-Money Laundering Procedures.
- 4.7 No payment to the Council will be accepted in cash if it exceeds £13,000.
- 4.8 Although there is no legal requirement for the Council to have formal procedures for evidencing the identity of those they do business with, staff should be alert to potentially suspicious circumstances. Where there may be doubt and in particular, when forming a new business relationship or considering a significant one-off transaction, the identification procedures in the Council's Anti- Money Laundering Procedures should be followed.
- 4.9. The Council will:
- make all staff aware of the obligations placed on the Council, and on themselves as individuals, by the anti-money laundering legislation
 - give targeted training to those most likely to encounter money laundering activity.

5. Summary

- 5.1 Members and staff of Derby City Council need to be vigilant for signs of money laundering. The Council has a mechanism for reporting suspicious activity, will provide appropriate training and has procedures for identification checks.

Money Laundering: Legal and Regulatory Framework

The Terrorism Act 2000

This Act applies in full, as it does to all individuals and businesses in the UK. If, in the course of business or employment, you become aware of information which provides knowledge or gives reasonable grounds for belief or suspicion that proceeds have come from or are likely to be used for terrorism, it must be reported. This will prevent commission of the money laundering offence relating to being implicated in illegal activity.

The Proceeds of Crime Act 2002

This Act defines six principal money laundering offences, only the first four of which are likely to apply to the Council:

- a) concealing, disguising, converting, transferring, or removing from the UK, any criminal property (S327)
- b) becoming concerned in an arrangement which you know or suspect facilitates the acquisition, retention, use, or control of criminal property (S328)
- c) acquiring, using, or possessing criminal property (S329)
- d) doing something that might prejudice an investigation (for example, falsifying a document) (S342)
- e) failing to disclose known or suspected money laundering offences (S330-332)
- f) “tipping off”, by giving information to someone suspected of money laundering in such a way as to reduce the likelihood of their being investigated or prejudicing an investigation (S333A).

The offences of failing to disclose and tipping off will not apply so long as the Council does not undertake activities which might be interpreted, under POCA, as falling within the regulated sector. The regulated sector refers to activities which should be regulated under the Financial Services and Markets Act 2000.

The Money Laundering Regulations 2007

The Regulations are not legally binding on public authorities because they are neither ‘relevant persons’ (as defined in the MLR) nor part of the ‘regulated sector’ (as defined in POCA 2002). There is, however, a distinct reputational risk for any authority that does not have adequate policies and procedures in place. Following CIPFA’s guidance, a “prudent and responsible” council will adopt “appropriate and proportionate” policies and procedures designed to “detect and avoid involvement in the crimes described in the legislation and regulations”.

DERBY CITY COUNCIL

ANTI-MONEY LAUNDERING PROCEDURES

December 2010

1. What are the obligations on the Council?

- 1.1 The Chartered Institute of Public Finance and Accountancy (CIPFA) guidance advises that Councils should:
- Maintain robust record keeping procedures.
 - Make those members and employees who are likely to be exposed to or suspicious of money laundering activities to be aware of the requirements and obligations placed on Derby City Council, and on themselves as individuals, by the Proceeds of Crime Act and related legislation.
 - Provide targeted training to those considered most likely to encounter money laundering activities e.g. how to recognise and deal with potential money laundering offences.
 - Implement formal systems for members and employees to report money laundering suspicions to the MLRO.
 - Establish internal procedures appropriate to forestall and prevent money laundering and make relevant individuals aware of the procedures.
 - Report any suspicions of money laundering to Serious Organised Crime Agency (SOCA) (this is a personal legal obligation for the MLRO).
 - Put in place procedures to monitor developments in the 'grey' areas of the legislation and to keep abreast of further advice and guidance as it is issued by relevant bodies.
- 1.2 The safest way to ensure compliance with the requirements of these legislations is to apply them to **all areas** of work undertaken by the Council; therefore, **all members and employees** are required to comply with the policy and these procedural guidance notes.

2. The Money Laundering Reporting Officer

- 2.1 The officer nominated to receive disclosures about money laundering activity within the Council is the Strategic Director – Resources, who can be contacted as follows:

Strategic Director - Resources Derby City Council Saxon House Heritage Gate, Friary Street Derby DE1 1AN Telephone: 01332 643552

- 2.2 Disclosures by staff to the MLRO should, where appropriate, be made through their Strategic Director or Service Director or Head of Service.
- 2.3 In the absence of the MLRO, the Head of Audit and Risk Management, or the Director of Legal and Democratic Services (the Monitoring Officer) are authorised to deputise for him.
- 2.4 The MLRO will determine whether the information or other matters contained in the report he has received give rise to a *knowledge* or *suspicion* that a person is engaged in money laundering.
- 2.5 In making this judgement, he will consider all other relevant evidence (information) available to the Council concerning the person or business to who the initial report relates. This may include reviewing other transaction patterns and volumes, the length of the business relationship, and referral to identification records held.
- 2.6 If after completing this review, he is *satisfied* with the suspicions that the *suspect* is engaged in money laundering, then the MLRO must ensure that the information is disclosed to the SOCA.

3. Disclosure Requirements

Reporting to the Money Laundering Reporting Officer

- 3.1 Where you know or suspect that money laundering activity is taking / has taken place or is about to take 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 possible to the MLRO.
- 3.2 The disclosure should ideally be made within “hours” of the information coming to your attention wherever practicable, not weeks or months later.
- 3.3 Your disclosure should be made to the MLRO using the *proforma* attached at Appendix A of these guidance notes. The report should enclose copies of any relevant supporting (evidence) documentation and must contain as much detail as possible which should include the following:
- Full details when known of the people involved (including yourself, if relevant), i.e. name, address, company names, directorships, phone numbers, etc.
 - Full details of the nature of their/your involvement:
 - If you are concerned that your involvement in the transaction would amount to a prohibited act under sections 327 – 329 or s342 of the 2002 Act, (explained in the Anti-Money Laundering Policy) then your report must include all relevant details, as you will need consent from the SOCA, via the MLRO, to take any further part in the transaction - this is the case even if the party giving rise to concern gives instructions for the matter to proceed before such consent is given.

- 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.
- The types of money laundering activities 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 and a note stating whether the activity has happened, on-going or imminent.
- Location where the activity took place i.e. department, section, depot etc.
- How the activities were undertaken.
- The (likely) amount of money/assets involved (if known).
- Why, exactly, you are suspicious of the activity– the 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.
 - to enable him to prepare his report to the SOCA, where appropriate. You should also enclose copies of any relevant supporting documentation.

4. Recognition of Suspicious Transactions

- 4.1 As the types of transactions which may be used by money launderers are almost unlimited, it is difficult to define a suspicious transaction.
- 4.2 Sufficient guidance will be given to staff to enable them to recognise suspicious transactions. The Council will also consider monitoring the types of transactions and circumstances that have given rise to suspicious transaction reports, with a view to updating internal instructions and guidelines from time to time.
- 4.3 The Council has set a general transaction limit of £13,000 (in line with the 2007 Regulations) over which any transaction or group of transactions from the same source should automatically be classified or deemed as suspicious. This does **not** however mean to say that any transactions under these limits on which you have suspicions should not be reported. All suspicious transactions irrespective of their values should be reported.

5. Reporting of Suspicious Transactions

- 5.1 The Council has a clear obligation to ensure that members and employees know to which person(s) they should report suspicions and that there is a clear reporting chain under which those suspicions will be passed without delay to the MLRO.

Once a member or an employee has reported his/her suspicions to the MLRO, he/she has fully satisfied their own statutory obligation.

6 Record Keeping Procedures

- 6.1 Each section of the Council conducting relevant business (Accountancy, Audit and certain Legal Services) must maintain appropriate 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 into money laundering.
- 6.2 The precise nature of the records to be held is not prescribed by law however they must be capable of providing an audit trail during any subsequent investigation, for example distinguishing the party giving rise to concern and the relevant transaction and recording in what form any funds were received or paid.
- 6.3 In practice, the business units of the Council will be routinely making records of work carried out for various parties, customers and clients in the course of normal business and these should suffice in this regard.

7. Conclusion

- 7.1 The legislative requirements concerning anti-money laundering procedures are lengthy and complex. The policy and these procedural guidance notes have been written so as to enable the Council to meet the legal requirements in a way that is proportionate to the Council's risk of contravening the legislation.
- 7.2 Should you have any concerns whatsoever regarding any transactions then you should contact the MLRO or his deputy.

STRICTLY CONFIDENTIAL

Report to: Money Laundering Reporting Officer (MLRO)
Re: money laundering activity suspicion

To:, DCC Money Laundering Reporting Officer or Deputy MLRO

From: Name.....Post.....
[Insert name of member, or employee and post title]

Directorate: Ext/Tel No:
[Insert department, business unit and contact details]

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]

[Please continue on a separate sheet if necessary]

Nature, value and timing of activity involved:

[Please include full details e.g. what, when, where, how]

Nature of suspicions regarding such activity:

Have you discussed your suspicions with anyone else?

11

7

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

Has any investigation been undertaken (as far as you are aware)?

11

9

If yes, please include details below:

16

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:

[Please continue on a separate sheet if necessary]

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:

[Please continue on a separate sheet if necessary]

Are you involved in a transaction which might be a prohibited act under sections 327- 329 or 342 of the Act and which requires appropriate consent from the SOCA?

[Please tick the relevant box]

☐ Yes

☐ No

If yes, please enclose details in the box below:

[Please continue on a separate sheet if necessary]

Please set out below any other information you feel is relevant:

[Please continue on a separate sheet if necessary]

DECLARATION:

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 or member:

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 member or employee for any prohibited act transactions to proceed:

Other relevant information:

Signed:.....Dated:.....

THIS REPORT IS TO BE RETAINED FOR AT LEAST FIVE YEARS