

## PROCEEDS OF CRIME / ANTI-MONEY LAUNDERING

### The Council's and your own personal responsibilities

#### Purpose

These notes are important. They are designed to help you familiarise yourself with the legal and regulatory requirements relating to Money Laundering and the Proceeds of Crime, as they affect both the Council and you personally.

#### What is Money Laundering?

Money Laundering is the term used for a number of offences involving the proceeds of crime. It is the process by which the identity of "dirty" money (i.e. the proceeds of crime and the ownership of those proceeds) is changed so that the proceeds appear to originate from legitimate "clean" sources.

Although the term "Money Laundering" is generally used when describing the activities of organised crime – for which the legislation and regulations were first and foremost 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 financially from dishonest activities.

Sometimes, and this is where the Council is most likely to encounter it, it can simply involve receiving payment for goods or services with "dirty" money – usually cash. For the purposes of the new legislation it now includes possessing, or in any way dealing with, or concealing, the proceeds of any crime.

#### What is the new legislation?

The Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003 both came into force last year. The legislation places specific obligations on persons who are involved in "relevant business". Relevant business is defined as:

- various regulated activities
- operating a bureau de change or casino
- estate agency work
- provision **by way of business** of tax advice, accountancy, audit, or legal services
- dealing in goods by way of business whenever a transaction involves high value payments, that is accepting a total cash payment of €15,000 or more (say over £10,000).

Council officers are involved in some of the above services, however they do so within the Authority and therefore not specifically by way of business.

The Consultative Committee of Accountancy Bodies' (CCAB) guidance on Money Laundering states that the legislation also lays significant obligations on all citizens who encounter money laundering, or those who could be involved in it (knowingly or have suspicions). We are still monitoring national developments as to the legislation's full impact on the Council, however it is strongly recommended that all employees who deal with income for goods and services (or other income), particularly where subsequent large refunds may be made or large amounts of cash are received, should consider how the Regulations might effect them, bearing in mind that:

- the obligations represent good practice,
- it is still possible that the scope of the Regulations could be extended to include the Public Sector,
- as controls are tightened in the private sector, criminals may target the public sector to a greater degree.

### What are the aims and requirements of the legislation?

The Regulations have two main aims:

- to enable suspicious transactions to be recognised and reported to law enforcement agencies,
- to ensure that if a business' client comes under investigation in the future, the business can provide its part of the audit trail.

The Regulations require:

- identification procedures – that you have confirmed the identity of those you are dealing with,
- record-keeping procedures – to maintain an audit trail, records must be kept for at least 5 years,
- internal reporting procedures – disclosures should be made via a nominated officer,
- procedures to prevent money laundering – these should be proportionate to the perceived risks, and are therefore unlikely to be complicated,
- training of employees – relating to the procedures and the recognition of money laundering transactions, and to the law relating to money laundering.

### What are the offences and penalties?

There are three principal Money Laundering offences:

- **laundering** the proceeds of crime or assisting in that process – conviction resulting in a maximum 14 years imprisonment and/or a fine (this applies to everyone),
- **failing to report** a knowledge or suspicion of money laundering – conviction resulting in a maximum 5 years imprisonment and/or a fine (this only applies to persons in the Regulated Sector),
- **tipping-off** – conviction resulting in a maximum 5 years imprisonment and/or a fine (this applies to everyone).

### What is the Council's policy on Money Laundering?

Our policy is to do all we can to prevent wherever possible the Authority 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.

We cannot stress too strongly that it is every member of staff's responsibility to be vigilant.

Alan Perry, Chief Auditor, is the nominated officer who is responsible for anti-money laundering measures within the Council.

In the field of treasury management, the Council is alert to the possibility that it may become the subject of an attempt to involve it in a transaction involving Money Laundering. Accordingly, we will maintain procedures for verifying and recording the identity of counterparties and reporting suspicions, and will ensure that staff involved in treasury management are properly trained.

### What are the implications for the Council and its staff?

The Council has accepted the responsibility to ensure that those of its staff who are most likely to be exposed to Money Laundering can make themselves fully aware of the law and, where necessary, are suitably trained.

The Council has also implemented procedures for reporting suspicious transactions and, if necessary, making an appropriate report to the National Criminal Intelligence Service (NCIS).

The consequences for staff of committing an offence are potentially very serious. Whilst it is considered most unlikely that a member of staff would commit one of the three principal offences, the failure to disclose a suspicion of a case of Money Laundering 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.

### **What are the areas at risk of Money Laundering?**

Possible examples relating to the Council include:

- Conveyancing, including Housing Right-to-Buy transactions,
- Housing Benefit fraud,
- payments in excess of £10,000 e.g. business rates, business rents, hall hire etc.
- refunds of large overpayments to accounts e.g. as above, plus: Council Tax, hire fees etc.
- suspiciously low tenders.

### **How can suspicious activity be identified?**

Employees dealing with transactions which involve income for goods and services (or other income), particularly where subsequent large refunds may be made or large amounts of cash are received, will need to consider issues such as:

For new customers:

- is checking their identity proving difficult, is the individual reluctant to provide details?
- is there a genuine reason for using the services provided?
- is the customer attempting to introduce intermediaries to either protect their identity or hide their involvement?
- is the customer requesting a large cash transaction?
- is the source of the cash known and reasonable?

For regular and established customers:

- is the transaction reasonable in the context of the service provider's normal business?
- is the size or frequency of the transaction consistent with the normal activities of the customer?
- has the pattern of the transaction changed since the business relationship was established?

Generally speaking, for the types of transactions the Council is involved with which are at risk in relation to Money Laundering, for example the sale of a capital asset, the risk is mitigated because these transactions will be with large, well known companies who will be represented by their solicitors who have their own professional duties regarding the Money Laundering Regulations. Conversely, where we have similar transactions with un-represented individuals or bodies this is an area of greater risk and our response will need to reflect this.

You may well have reason to suspect that payments received at Court are made from the proceeds of crime! Legal Services have advised that a recent Court of Appeal case decided that there was no duty on lawyers involved in litigation to report suspicions of money laundering.

It should be remembered that the Money Laundering regime adopts an “all crimes” approach. Whilst it is largely concerned with significant transactions which organisations may effect with third parties, the offences under POCA (notably sections 327 – 329) may apply to a very wide range of more everyday activities within the Council. For example, being complicit in crimes involving the falsification of claims; benefiting from the non-compliance with the conditions attaching to a grant, or facilitating employment on which tax is not paid.

### What do I have to do now?

You need to respond as follows:

- all staff who are likely to be exposed to suspicious situations, e.g. officers who deal with income for goods and services (or other income), particularly where subsequent large refunds may be made or large amounts of cash are received, will need to be made aware of the Regulations and how they are affected by them,
- large individual cash payments must be treated with caution. It is recommended that any individual or organisation who attempts to make a cash payment in excess of £3,000 should be requested to deposit the cash at their bank or with their solicitor and to make the payment by cheque, banker’s draft or solicitors cheque,
- where appropriate officers should attend Money Laundering training,
- consideration needs to be given to implementing pro-active good practice initiatives, e.g. identification procedures.

### What should I do if I suspect a case of Money Laundering?

You need to respond as follows:

- anyone who suspects that a money laundering investigation is on-going **must not disclose** any material to anyone that might prejudice the investigation,
- any transaction (or series of linked transactions) involving **more than £10,000 in cash** should be reported immediately to the Chief Auditor,
- anyone who suspects that a transaction could be **linked to money laundering or the proceeds of crime** should report the matter to the Chief Auditor.

You should make the report to Alan Perry, Chief Auditor using the Proceeds of Crime / Anti-Money Laundering reporting form available on the intranet. A signed copy of the form should be faxed to 83210 (secure) or alternatively the form can be emailed to: alan.perry@redbridge.gov.uk. If you prefer you can call Alan Perry on ext. 83130 to discuss your suspicions. On receiving your report the Chief Auditor will decide whether the transaction is suspicious and whether to make a report to the NCIS. There is no clear definition of what constitutes suspicion – common sense will be needed.

### Further information

A copy of this guidance will shortly be made available on the Council’s intranet site together with other relevant information / forms etc.

Please contact Alan Perry, Chief Auditor, ext. 83130, if you have any queries relating to Money Laundering.