



Scottish Borders Council

Anti-Money Laundering Policy

DRAFT

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ANTI-MONEY LAUNDERING POLICY

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1. Introduction

- 1.1 The Council, as a public body with responsibilities for the stewardship of public money, requires to have in place an agreed policy for the prevention of money laundering. Significant changes have occurred to the statutory framework surrounding money laundering as a result of the following legislation, and as a consequence the council's previous policy has been reviewed and updated:
 - Proceeds of Crime Act (2002)
 - Terrorism Act (2006)
 - Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (as amended 2019).
- 1.2 The UK's Anti-Money Laundering regime is primarily designed with the objective of identifying and combating large scale organised crime. The Proceeds of Crime Act (2002) imposed requirements on those conducting 'relevant business' to have systems in place to: obtain evidence of the identity of their clients, keep records, train staff, and make internal reports. The Money Laundering Regulations (2017) outline the specific requirements for those identified as conducting 'relevant business.'
- 1.3 CIPFA (Chartered Institute of Public Finance & Accountancy) produced guidance for public sector organisations in their publication 'Proceeds of Crime (Anti-Money Laundering) Practical Guidance for Public Service Organisations' (2005).
- 1.4 In this guidance CIPFA recognise that the regulations related to 'relevant business' do not necessarily apply to public service organisations because their treasury management activities are largely service based. However, as the main money laundering offences and obligations apply in law to all organisations and persons in the UK, all public service organisations should "embrace the underlying principles behind the money laundering legislation". The Council is therefore required to establish internal procedures and policies to prevent and detect the use of their services for money laundering activities.
- 1.5 The Policy links into, and has a synergy with, the Council's Corporate Counter Fraud Strategy and its appendices:
 - Counter Fraud Policy Statement
 - Corporate Counter Fraud Response Plan
 - Whistleblowing Policy

2. Scope

- 2.1 This Policy applies to all employees, including agency staff and locums, and aims to maintain the high standards of conduct by working together to prevent and detect criminal activity through money laundering. It sets out the requirements which must be followed to enable the Council to comply with its legal obligations, and the guidance provided by CIPFA.

3. Definition of Money Laundering

- 3.1 CIPFA defines money laundering as “possessing or in any way dealing with or concealing the proceeds of any crime”.
- 3.2 The Proceeds of Crime Act (2002) states that money laundering covers a range of activities and it is technically defined as any act constituting an offence under sections 327 to 329 of the Act, as summarised below:
- Concealing, disguising, converting, or transferring criminal property, or removing it from the UK (section 327)
 - Entering into, or becoming concerned in, an arrangement which a person knows (or suspects) facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person (section 328)
 - Acquiring, using or possessing criminal property (section 329)
 - An attempt, conspiracy or incitement to commit such an offence
 - Aiding, abetting, counselling or assisting in the procurement of such an offence.
- 3.3 Criminal property is widely defined as property representing a person’s benefit from criminal conduct. It includes all proceeds from crime such as property (in the UK or abroad), money, and other assets that could also cover any interest held in land, land rights and/or property.
- 3.4 In court proceedings in order to secure a conviction it is only necessary to prove that the laundered property was criminal property. In other words even if the criminal property was generated as a result of the criminal activity of another person, the individual holding that property can be convicted of money laundering under the Proceeds of Crime Act (2002).
- 3.5 The Terrorism Act (2006) also deals with the laundering of ‘terrorist property’ i.e. property likely to be used for the purposes of terrorism or property gained as a result of terrorism. In complying with the Act, the Council has a duty to be vigilant against its services being used in such a way that it “facilitates the retention or control by or on behalf of another person of terrorist property”.
- 3.6 In addition to the actual offences of money laundering the Proceeds of Crime Act (2002) sets out related offences of failing to report where a person has knowledge, suspicion or reasonable grounds for knowledge or suspicion that money laundering is taking/has taken place. It is a criminal offence to directly, or indirectly, “tip off a suspect”, or to do anything that might prejudice an investigation. This may include for example falsifying a document.

- 3.7 The Court of Appeal has clarified the meaning of "suspicion" in money laundering legislation. The Court stated that suspicion would arise when "there was a possibility which was more than fanciful, that the relevant facts existed".

4. Requirements of Staff and the Council

- 4.1 Individuals can be found to be criminally liable for failing to report money-laundering activity where it is known or suspected. This could result in serious criminal charges and/or sanctions being imposed on the Council and/or its employees. It is therefore important that policies and procedures exist to establish internal reporting arrangements and ensure compliance with the guidance and the law.
- 4.2 The Council's Code of Conduct is designed to protect individuals when making a disclosure from any fear of victimisation or harassment.
- 4.3 The Council has appointed a nominated officer – the Money Laundering Reporting Officer (MLRO). The purpose of this role is to act as a point of contact to receive and investigate reports about suspected and known instances of money laundering activity involving the Council's services. The officer nominated to receive disclosures about money laundering activity within the Council is the **Pension & Investment Manager**. In the absence of the MLRO, please contact the **Financial Services Manager**.
- 4.4 Reports can be made from staff, members of the Council, contractors, the public, the Police, or any other related party or partner. Once a report is received, it is then for the MLRO to investigate where necessary and decide whether there are reasonable grounds for suspicion. Should the MLRO feel it is warranted, a report will be made to the National Crime Agency (NCA) by way of a Suspicious Activity Report (SAR) form, which can be submitted using the secure SAR online system on the NCA website.
- 4.5 Submitting a SAR to NCA is a statutory requirement if there are grounds to do so. If there is no actual knowledge that money laundering is taking place however, or there are no reasonable grounds for suspicion, then the nominated officer (MLRO) does not commit an offence by not making a report to NCA.
- 4.6 Whilst the risk to the Council of contravening the legislation is low, it is very important that all members of staff are familiar with their legal responsibilities. For those staff affiliated to a professional body (e.g. accountants and lawyers) there is also the risk of disciplinary action being taken by the respective body's Disciplinary Committee.

5. Reporting your Suspicions to the MLRO

- 5.1 It is not possible to provide an exhaustive list of the ways to spot money laundering or state every scenario in which you should be suspicious. It will very much depend on the circumstances.

5.2 However, in providing guidance NCA has produced a list of possible 'indicators of suspicion' for money laundering activity:

- Is the person's behaviour unusual in the circumstances?
- Has the person refused to supply any form of identification and if so, why?
- Is the activity unusual in itself?
- Is the activity unusual for the customer?
- Do I have other knowledge which leads me to believe the customer or activity is criminal?
- Do I think the property may be criminal?

5.3 In developing this guide the list below provides examples relevant to the Scottish Borders Council activity, in which money laundering could be taking place:

- Payment of a substantial sum in cash (over £5,000) by a single client in a single transaction or over a short period of time. As a general rule, staff in the Council who collect cash payments are asked to provide the details of any cash transaction over £5,000 to the MLRO so that precautionary checks can be performed.
- Overpayments or duplicate payments made by a client followed by a refund, or a request for a refund.
- Purchase of land and buildings re-sold within 3-12 months.
- Purchase of council assets re-sold within 3 months.

6. The Money Laundering Reporting Procedure

- 6.1 All cases where there are genuine reasons for suspicion will be investigated, and no time should be wasted once you suspect the Council's services may be being used to launder money.
- 6.2 In the first instance (and where possible) you should call the MLRO where you will be free to discuss your concerns in confidence. Where it is deemed necessary, and is requested by the MLRO, this discussion should be followed by your submission of a Money Laundering Reporting Form (MLRF). Where practical this must be submitted the same day as the initial telephone call.
- 6.4 The MLRO will communicate with your line manager/Chief Officer/ Service Director if and when necessary. Having raised concerns, you must not take any further action without the expressed permission of the MLRO, as this may hamper the investigation process. You should also be aware of the need for confidentiality in relation to the suspected and/or known instances of money laundering. You should not do anything that may "tip off" individuals suspected of being involved.
- 6.5 The MLRO has a duty to consider your submission promptly and undertake any investigation as necessary prior to deciding whether to contact NCA or another relevant Law Enforcement Agency (LEA). If a disclosure is made in the form of a request for consent (prior to a prohibited act occurring) the MLRO may need to ask NCA or LEA for consent. The MLRO cannot then

grant consent until receiving this back from NCA unless the 7 working day Notice Period for receiving a reply to a request for consent has expired.

- 6.6 The MLRO must maintain records of reports received and disclosures made, so that they may be used as evidence in any subsequent investigation by appropriate agencies. The records must be capable of providing an audit trail that identifies the client and the relevant transaction. All such information will be held in a confidential file for a minimum of 5 years. The MLRO will also maintain a confidential log of activities, including details of the checks made on cash transactions over £5,000 – as notified to the MLRO by cashiers and other teams receiving large cash payments.

7. Ensuring the Policy is Followed

- 7.1 The Corporate Fraud Steering Group provides guidance and directs counter fraud activity across the Council. Activity of this group includes raising fraud awareness in an effort to prevent rather than detect fraudulent activity, including money laundering.
- 7.2 Service Directors are responsible for ensuring that their services remain free from fraudulent activity, including the regular completion of fraud risk assessments.
- 7.3 All Service Directors must ensure that these procedures are brought to the attention of all staff.
- 7.4 Awareness training will be provided for those staff in high risk roles, where they are more likely to experience possible signs of money laundering. This will be coordinated by the MLRO and will mainly be done through the use of E Learning modules.
- 7.5 Staff who fail to follow the rules and procedures laid out will be in breach of the Council's rules and could as such be subject to disciplinary procedures, as well as potentially being criminally liable and face prosecution.
- Appendix 1: Responsibilities Regarding Making a Disclosure
 - Appendix 2: Money Laundering Reporting Form (MLRF)

8. Reviewing the Anti-Money Laundering Strategy

- 8.1 Internal Audit undertake to look at all control frameworks in all planned audits including money laundering by substantive testing of transactions.
- 8.2 The Finance and Regulatory Services department will undertake to review this policy on a yearly basis. Next Review due – April 2021.

Responsibilities Regarding Making a Disclosure

Reporting by staff to the Money Laundering Reporting Officer

1. Staff members must:

- (a) Report their suspicions or knowledge of money laundering activity;
- (b) Retain full documentation about the transaction;
- (c) Not arouse suspicion that they are concerned;
- (d) Not tip off any persons involved or suspected to be involved.

Consideration of disclosure by the Money Laundering Reporting Officer

- 2. Upon receipt of a disclosure report, the MLRO must note the date of receipt on his/her section of the report and acknowledge receipt of it. He/she should also advise you of the timescale within which he/she expects to respond to you.
- 3. The MLRO will consider the report and any other available internal information he/she thinks relevant and undertakes any reasonable inquiries he/she thinks appropriate in order to ensure that all available information is taken into account in deciding whether a report to the NCA is required. The MLRO may also need to discuss the report with you.
- 4. Where the MLRO concludes that it is necessary to make a disclosure, he/she must disclose the matter as soon as practicable to the NCA on their standard report form (SAR) and in the prescribed manner. The only exception to this is where it is felt that there is good reason for non disclosure to the NCA. An example of this would be if a lawyer wished to claim legal professional privilege for not disclosing the information. Consideration of disclosures by NCA and Law Enforcement Agencies (LEA).
- 5. Where an internal report is made to the MLRO before a prohibited act (an act of money laundering), and a SAR is made to NCA or another Law Enforcement Agency, the MLRO is not allowed to give consent to the act until they receive consent from NCA that this can go ahead. The exception to this is where the Notice Period for reply has expired. The Notice Period runs for 7 working days beginning the day after the report is received.

Appendix 2

REPORT TO MONEY LAUNDERING OFFICER	
Staff members' name	
Title/Department	
Phone	
Email	
Details of Suspected Offence	
Names and addresses of persons/company involved (if a company the nature of their business)	
Transaction details including: location, value, timing of activity	
Nature of suspicions	
Has any investigation been undertaken?	
Have you discussed your suspicions with someone else – please provide details.	
Signed and dated	
For Completion by the MLRO	
Date received	
Date acknowledged	
Unique reference number	
Are there reasonable grounds for suspecting money laundering ?	
If yes, confirm date of report to National Crime Agency.	
Date consent given to employee for transaction to proceed	
Categories	<div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;">1. Overpayment</div> <div style="width: 50%;">2. Refund</div> <div style="width: 50%;">3. Debt/charge</div> <div style="width: 50%;">4. Cashier error</div> <div style="width: 50%;">5. House or Asset resale within 3 months</div> <div style="width: 50%;">6. Other</div> </div>
Signed and dated	
THIS REPORT TO BE RETAINED FOR AT LEAST FIVE YEARS	

