

**ANTI MONEY LAUNDERING POLICY GUIDANCE & FORMS**

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| **Background / Purpose of Policy:**  This policy identifies Council and staff responsibilities under Money Laundering Regulations, and protocols for record keeping and reporting. The Council is responsible for:   * Appointing a Money Laundering Reporting Officer to receive disclosures from Members or employees * Implement a procedure to enable the reporting of suspicions of money laundering * Maintain client identification procedures in certain circumstances * Maintain records |
| **Version Control:**  V1. January 2020 – approved by Corporate Governance Group October 2020   * This version supersedes ‘Prevention of Money Laundering Procedures’ (June 2009) * Policy updated to reflect current legislation (Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017   V2. March 2022   * Policy updated to reflect change of Money Laundering Reporting Officer |
| **Policy Approval – Officer Level:**   * Suzanne Bennett, Corporate Director   **Policy Approval – Member level:**   * Governance and Audit Scrutiny Committee (21 April 2022) |

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1. **INTRODUCTION**
   1. Although Local Authorities are not directly covered by the requirements of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, 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.
   2. Braintree District Council is committed to the prevention of money laundering and to working with the appropriate authorities to apprehend those who commit offences under the anti-money laundering regulations.
2. **SCOPE OF THE POLICY**
   1. This policy applies to all employees (permanent and temporary), contractors and Members of the Council. The aim of the policy is to enable employees to respond to any concern they have in the course of their duties.
3. **MONEY LAUNDERING DEFINITION**
   1. Money Laundering involves the ‘cleaning’ of illegal proceeds in order to disguise their criminal origin. The proceeds of criminal activity, usually cash but also other illegally gained assets, could be introduced in to the organisation’s systems and processed, enabling them to leave the systems appearing to come from a legitimate source.
   2. Money Laundering occurs when funds from a crime are paid into a bank account or used to buy an asset - layers of complex and numerous transactions are then carried out to conceal the source of the proceeds of crime, and once sufficiently hidden the funds are integrated back into the financial system.
4. **COUNCIL OBLIGATIONS**
   1. The main requirements of Money Laundering Legislation are:

* To appoint a Money Laundering Reporting Officer (see section 5 below)
* Maintain client identification procedures in certain circumstances (see Section 6 below)
* Implement a procedure to enable the reporting of suspicions of money laundering
* Maintain record keeping procedures
  1. Not all areas of Council operations are likely to encounter money laundering risks, however the safest way to ensure compliance is to apply these requirements to all staff and work areas. The obligations on the Council are to establish and maintain appropriate and risk sensitive policies and approaches for the following:
* Customer due diligence measures and ongoing monitoring
* Reporting
* Record-keeping
* Internal control
* Risk assessment and management
* Monitoring and management of compliance with, and the internal communication of relevant policies and procedures
  1. All employees, contractors and Members are required to follow the procedures set out in this policy. This will enable the Council to properly discharge its obligations under the Money Laundering regime. Failure by an employee to comply with the procedures set out in this policy may lead to disciplinary action being taken against them, and failure to comply with legislation may also result in an individual being fined or imprisoned.
  2. The primary duty of any employee, member or third party under this policy is to ensure that any suspicions or concerns that money laundering has occurred or is likely to occur are reported to the MLRO as soon as the suspicion arises. The disclosure should be within hours rather than several days or weeks later.
  3. The Council will take appropriate measures to ensure employees are aware of the law relating to money laundering, and will arrange targeted training to key individuals most likely to be affected.

1. **MONEY LAUNDERING REPORTING OFFICER (MLRO)**
   1. Employees and Members are obliged to report any suspicion of money laundering or terrorist financing to the Council’s nominated Money Laundering Reporting Officer (MLRO).

* The Council’s **MLRO is Phil Myers**, Head of Finance [phil.myers@braintree.gov.uk](mailto:phil.myers@braintree.gov.uk) or 01376 557801
* The **Deputy MLRO is Angela Mitchell**, Audit Insurance & Fraud Manager [angie.mitchell@braintree.gov.uk](mailto:angie.mitchell@braintree.gov.uk) or 01376 557821

1. **CLIENT IDENTIFICATION PROCEDURES**
   1. Although not a legal requirement, the Council has developed formal client identification procedures which must be followed to verify the identity of a person who is (or is applying to) to business with the Council – including when land or property is being sold or purchased (in the latter the Council must buy only from the owner as verified via Land Registry). These procedures require individuals and if appropriate companies to provide proof of identity and current address. If satisfactory identification is not obtained at the outset of a matter, then the transaction must not be progressed and a disclosure report must be submitted to the MLRO.
   2. Evidence of identification checks conducted must be retained for five years commencing on the date which all activities taking place in the course of the transaction in question were completed

**WHERE SATISFACTORY EVIDENCE OF IDENTITY IS NOT AVAILABLE, THE BUSINESS ARRANGEMENT OR ONE OFF TRANSACTION SHOULD NOT PROCEED FURTHER**

1. **DISCLOSURE PROCEDURE** 
   1. Where you know or suspect that money laundering activity has or may take place, or if you are concerned that your involvement in the matter may amount to a prohibited act (see Section 9.2) you must report all details to the MLRO as consent will be required from the NCA (National Crime Agency) to take any further part in the transaction. This is the case even if the client gives instructions for the matter to proceed before consent is given (you should make it clear in the report if such consent is required and clarify any deadlines for consent eg. a completion date or court deadline).
   2. Once a report has been made to the MLRO you must follow any directions they may give you and NOT make any further enquiries yourself. All staff are required to cooperate with the MLRO and the authorities in any money laundering investigation.
   3. **OFFICERS ARE REMINDED THAT TIPPING OFF IS A SERIOUS OFFENCE**. You must NOT voice any suspicions to the person(s) whom you suspect of money laundering, even if the NCA has given consent to a transaction proceeding – otherwise you may commit an offence of ‘tipping off’ (see section 9.3). This means you should not make any reference on a client file to a report having been made to the MLRO – the MLRO will keep the appropriate records in a confidential manner.
   4. The MLRO will make other reasonable enquiries they consider appropriate to determine whether a report to the NCA is required, and will liaise with the S151 Officer, Monitoring Officer and Audit Manager as appropriate. The MLRO will communicate any NCA instruction to you.
   5. The NCA has a statutory seven day ‘notice period’ in which to make a decision (the day the disclosure is submitted is ‘Day 0’). If the NCA notifies a refusal to give consent, they have a further 31 days to take action – a moratorium period of 31 days starts on the day the Council receives the refusal notice.
   6. The reporting forms are provided at Appendix 1.
2. **LEGISLATION**
   1. The following legislation places obligations on the Council to establish procedures to prevent the use of services for money laundering and the prevention of terrorist financing.

* **Proceeds of Crime Act 2002**
* **Terrorism Act 2000**
* **Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017** (which supersede the Money Laundering Regulations 2007, 2012 and 2015)
  + Establishes that as long as business are not operating within the ‘regulated sector’ then offences of failing to disclose suspicions of money laundering, and tipping off, do not apply – Local Authorities are not included in the list of businesses within the regulated sector
  + However, CIPFA have advised that *‘it is prudent and responsible practice for public service organisations, including those outside the scope of the regulations, to put in place appropriate and proportionate anti-money laundering safeguards and reporting arrangements, designed to enable them to detect and avoid involvement in the crimes described in the legislation and regulations’* and there could be a *‘substantial reputational risk for an authority which does not have such procedures in place’*
  1. Local Authorities are not directly covered by the requirements of the Money Laundering Regulations 2017, even when undertaking regulated activities within the meaning of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, however guidance from finance and legal professions is that it is prudent and responsible practice for public service organisations to comply with the underlying spirit of the legislation and have in place appropriate and proportionate anti-money laundering safeguards. Local Authorities ARE bound by the Proceeds of Crime Act 2002 and the Terrorism Act 2006, both of which place duties and responsibilities on local author employees and Members in order that they do not find themselves subject to criminal prosecution.
  2. This Policy defines the approach which must be followed to enable the Council to demonstrate compliance with its legal obligations. Failure by any employee to comply with these procedures may lead to disciplinary action being taken against them in accordance with the Council’s Disciplinary Rules and Procedures. Appendix 1 contains further guidance on areas of risk for money laundering and examples of due diligence checks.
  3. The Anti Money Laundering (AML) policy is part of the Council’s anti-fraud framework, including the Whistleblowing arrangements, and should be read alongside those documents. It is also part of a wider set of mutually supporting arrangements for corporate governance which are collectively designed to ensure we
* Conduct our business in line with the law and proper standards
* Safeguard and properly account for public money, and spend it economically, efficiently and effectively

1. **MONEY LAUNDERING OFFENCES**
   1. Money Laundering offences concern the improper handling of funds that are the proceeds of criminal acts, or terrorist acts, so that they appear to have come from a legitimate source, and include both the activities of organised crime but also to those who benefit financially from dishonest activities such as receiving stolen goods
   2. The **PROCEEDS OF CRIME ACT 2002** (amended by the Serious Organised Crime and Police Act 2005, and further amended by the Serious Crime Act 2015), creates criminal offences arising from dealing with proceeds of crime – the main offences that may be committed under money laundering legislation (known as ‘**Prohibited Acts’**) are:

* **Concealing, disguising, converting, transferring or removing criminal property** from anywhere in the UK (POCA 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 (POCA Section 328)
* **Acquiring, using or possessing criminal property**\* (POCA Section 329)

*\*Criminal property – something which constitutes a person’s benefit from criminal conduct or represents such benefit; it is not limited to money and there is no minimum value*

* 1. There are also two offences applicable to the regulated sector (credit institutions or financial institutions) – *therefore these will not* *always strictly apply to local authorities, however all individuals and organisations have an obligation to report knowledge, reasonable grounds for belief or suspicion about the proceeds from terrorism, proceeds of acts carried out for the purposes of terrorism or finance likely to be used for terrorism, where that information has come to them in the course of their business or employment.*
* **Failing to disclose information relating to money laundering** offences (in respect of both criminal property and terrorist property) where there is reasonable ground for knowledge or suspicion (POCA Section 330)
* **Tipping off or informing** someone who is, or is suspected of being involved in money laundering activities, in such a way as to reduce the likelihood of or prejudice an investigation (POCA Section 333A)
  1. The **TERRORISM ACT 2000** (amended by the Anti-Terrorism and Security Act 2001 and Terrorism Act 2006, and further amended by the Money Laundering Regulations 2007) lists the following offences:
* Offence to become **concerned in an arrangement relating to the retention or control of property likely to be used for the purposes of terrorism** or resulting from acts of terrorism
* Obligation on individuals and businesses 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 which comes to them in the course of their business or employment

**General Guidance**

A money laundering issue may arise where officers unwittingly become concerned or involved in an arrangement in which they know or suspect enables criminal property to be retained or acquired by a third party. Some offences and suspicions may be difficult to identify, staff should be willing to question where something just does not look right. Types of activity which could be affected are:

|  |  |
| --- | --- |
| **Area** | **The Types of activity that may be affected:** |
| New customers with high value transactions | * Selling property or renting out property to individuals or businesses * Entering into other lease agreements * Undertaking services for other organisations |
| Secretive clients | * Housing benefit claimants who have sums of money entering into / out of their bank account (even if we do not award them benefit, we should still consider money laundering implications) * People buying or renting property from the Council who may not want to say what it is for * People receiving grant funding refusing to demonstrate how funding was used |
| Customers who we think are acting dishonestly or illegally | * People paying for Council services who do not provide details about themselves * People making odd or unusual requests for payment arrangements |
| Illogical transactions | * People paying in cash and then requesting refunds * Requests for the Council to pay seemingly unconnected third parties in respect of goods / services provided to the Council * Requests for the Council to pay in foreign currencies with no legitimate reason |
| Payments of substantial sums by cash | * Large debt arrears paid in cash * Refunding overpayments * Deposits / payments for property |
| Movement of funds overseas | * Requests to pay monies overseas such as ‘for tax purposes’ |
| Cancellation of earlier transactions | * Third party ‘refunds’ grant payment as ‘no longer needed’ * No payment demanded after good / service has been provided * Sudden and unexpected termination of lease agreements |
| Requests for client account details outside normal course of business | * Queries from other companies regarding legitimacy of customers * Council receiving correspondence / information on behalf of other companies |
| Extensive and over complicated client business structures / arrangements | * Requests to pay third parties in respect of goods / services * Receipt of business payments (rent, business rates) in settlement from seemingly unconnected third parties |
| Poor accounting records and internal financial controls | * Requests for grant funding / business support indicates third party not supported by financial information * Companies tendering for contracts unable to provide proper financial information / information provided raises concerns * Tender for a contract which is suspiciously low |
| Unusual property investments/transactions | * Requests to purchase Council assets / land with no apparent purpose * Requests to rent Council property with no apparent business motive |
| Overcomplicated legal arrangements / multiple solicitors | * Property transactions where the Council is dealing with several different parties |
| Evidence of Identity not available | * Property transactions – land or property purchases should only be via the actual owner verified through Land Registry * Be wary if dealing with a company (particularly if overseas company) |

**Undertaking Customer Due Diligence Checks**

The Council may undertake activities that may be considered under Money Laundering Regulations to be regulated, however it does not undertake these activities by way of business and therefore would not normally be expected to undertake due diligence in respect of any clients to whom it provides these services. The activities that are regulated are:

* Credit and Financial institution
* Legal, Auditors, Accountants and Tax Advisors
* Trust of Company service providers
* Estate Agents
* Casinos
* High value dealers (ie dealing in goods of any description whenever a transaction involves accepting a total cash payment of more than £8750 / €10,000 (value defined by HMRC))

It is good practice that whenever the Council does enter into such activities with a third party that due diligence checks are actioned before establishment of a relationship or transaction. These checks should remain proportionate to the risks of the individual business and the relationship, and can take a number of forms. If the other party is not physically present, certified copies (by a practicing solicitor known to the Law Society) are required. HMRC have issued core guidance which recommends taking one or more of the following where applicable:

* Confirming the identity of the client via documentation, data or information obtained from a reliable and independent source (eg passport/photo driving licence, and/or position within an organisation where appropriate).
* Obtaining information from Companies House of details of Company registration and business
* Seeking electronic verification such as performing credit checks
* Obtaining confirmation from regulated industry bodies (eg for accountants check to CCAB certified bodies)
* Requesting copies of financial statements
* Requesting details of interests and beneficial ownerships (an individual holding more than 25% of the shares voting rights or interest in a company, partnership or trust)
* Obtaining information on the purpose and intended nature of the business relationship

Evidence of current address may include bank or credit card statement, mortgage or insurance details, or a utility bill. Other information may be available from internal sources:

* Other transaction patterns or volumes, or number of one-off or linked one-off transactions
* Length of business relationship and identification evidence held

Further information may be obtained from the MLRO and the following

* National Crime Agency [www.nationalcrimeagency.gov.uk](http://www.nationalcrimeagency.gov.uk)
* Guidance for the Accountancy Sector [www.ccab.org.uk](http://www.ccab.org.uk)
* Guidance for the legal sector [www.lawsociety.org.uk](http://www.lawsociety.org.uk)

**REPORT TO THE MONEY LAUNDERING REPORTING OFFICER**

**RE: SUSPECTED MONEY LAUNDERING ACTIVITY**

To: **Money Laundering Reporting Officer / Deputy Money Laundering Reporting Officer**

|  |  |
| --- | --- |
| Report From: | |
| Name |  |
| Directorate / Department |  |
| Phone |  |
| Details of Suspected Offence: | |
| ***Names and addresses of persons involved:***  ***If company / body – details of the nature of their business:***  ***(Please enclose copies of any relevant supporting documentation)*** | |
| ***Nature, value, timing of activity involved (including timing of any deadlines for giving consent):*** | |
| ***What are your suspicions regarding the activity:*** | |
| ***Has any investigation been undertaken:*** | |
| ***Have you discussed your suspicion with anyone else?:*** | |
| ***Have you consulted any supervisory body eg. The Law Society?:*** | |
| ***Any further information you think relevant:*** | |

Signed\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dated\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

***Please do not discuss the content of this report with anyone you believe to be involved in suspected money laundering***

**MONEY LAUNDERING DISCLOSURE FORM – TO BE COMPLETED BY THE**

**MONEY LAUNDERING REPORTING OFFICER**

|  |  |
| --- | --- |
| Form completed by: |  |
| Date Form Received: |  |
| Date acknowledged: |  |
| Unique case reference number: |  |
| Are there reasonable grounds for suspecting money laundering activity? Provide details: | |
| If yes – details of reporting to National Crime Agency (NCA) : | |
| Date reported: |  |
| Details of liaison with NCA: | |
| Is consent required from NCA for any ongoing or imminent transactions which would otherwise be prohibited? If yes, details: | |
| Date consent received from NCA to proceed with the transaction: |  |
| Date consent given to employee to proceed with the transaction: |  |
| If there are reasonable grounds to suspect money laundering but you do not intend to report the matter to NCA: | |
| Detail reasons for non-disclosure: | |
| Date consent given to employee to proceed with the transaction: |  |

Signed\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dated\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

***RETAIN THIS REPORT FOR AT LEAST 5 YEARS***