CORNWALL COUNCIL

ANTI-MONEY LAUNDERING POLICY

FEBRUARY 2009

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1.0 INTRODUCTION

1.1 The legislation concerning money laundering (the Proceeds of Crime Act 2002 (as amended), the Terrorism Act 2000 (as amended) and the Money Laundering Regulations 2007 (as amended) has broadened the definition of money laundering and increased the range of activities caught by the statutory framework. As a result, the obligations now impact on certain areas of local authority business and require local authorities to establish internal procedures to prevent the use of their services for money laundering.

2.0 SCOPE OF THE POLICY

2.1 This Policy applies to all employees of Cornwall 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 which must be followed (for example the reporting of suspicions of money laundering activity) to enable the Council to comply with its legal obligations.

2.2 Further information is set out in the accompanying **Guidance Note**. Both the Policy and the Guidance Note sit alongside the Council's Confidential Reporting Procedure (Whistle blowing 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 Cornwall Council's Disciplinary Policy and Procedure.

3.0 WHAT IS MONEY LAUNDERING?

3.1 Money laundering means:

- concealing, disguising, converting, transferring criminal property or removing it from the UK (section 327 of the 2002 Act) or
- 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), or
- acquiring, using or possessing criminal property (section 329), or
- becoming concerned in an arrangement facilitating concealment, removal from the jurisdiction, transfer to nominees or any other retention or control of terrorist property (section 18 of the Terrorist Act 2000).

These are the primary money laundering offences and thus prohibited acts under the legislation.

4.0 WHAT IS THE IMPACT ON THE COUNCIL?

4.1 Potentially any member of staff could 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. The Guidance Note gives practical examples and this Policy sets out how any concerns should be raised.

4.2 Whilst the risk to the Council of contravening the legislation is low, ***it is extremely important that all employees are familiar with their legal responsibilities: serious criminal sanctions may be imposed for breaches of the legislation.***

5.0 WHAT ARE THE OBLIGATIONS ON CORNWALL COUNCIL?

5.1 Organisations in the "regulated sector" and which undertake particular types of regulated activity 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
- apply customer due diligence measures in certain circumstances
- obtain information on the purpose and nature of certain proposed transactions/business relationships
- conduct ongoing monitoring of certain business relationships
- maintain record keeping and other specified procedures on a risk sensitive basis
- train relevant staff

the aim being to require such organisations to know their clients and the detail of the transaction being entered into and to monitor the use of their services by clients.

5.2 Not all of the business of the Council is caught by the above: it is mainly the accountancy, tax and audit services carried out by the Finance Department, Payroll Services, front-line services/departments across the authority and the financial, company and property transactions undertaken by the Council's Legal Services. However, the safest way to ensure compliance with the law is to apply most of the requirements to all areas of work undertaken by the Council; therefore, **all staff are required to comply with the reporting procedure set out in section 7 below.**

5.3 The following sections of this Policy provide further detail about the requirements listed in **paragraph 5.1.**

6.0 MONEY LAUNDERING REPORTING OFFICER

6.1 The officer nominated to receive disclosures about money laundering/terrorist financing activity within Cornwall Council is the Audit Services Manager. They can be contacted as follows:

Audit Services
Cornwall Council
New County Hall
Truro
Cornwall TR1 3AY

Telephone: 01872 323245

6.2 In the absence of the MLRO, the Senior Auditor, Jason Carne, is the authorised deputy. He can be contacted at the above address or on telephone number 01872 323240 (direct line).

7.0 DISCLOSURE PROCEDURE

Reporting to the Money Laundering Reporting Officer

7.1 Where you know or suspect that money laundering activity is taking/has taken place, or you become concerned that your involvement in a matter may amount to a prohibited act under the legislation (see **paragraph 3.1** above), you must disclose this as soon as practicable to the MLRO. **The disclosure should be within "hours" i.e. at the earliest opportunity of the information coming to your attention, not weeks or months later. Should you not do so, then you may be liable to prosecution.**

7.2 Your disclosure should be made to the MLRO using the proforma report attached at **Appendix 1**. The report must include as much detail as possible, for example:

- full details of the people involved (including yourself, if relevant), e.g. name, date of birth, address, company names, directorships, phone numbers, etc
- full details of the property involved and its whereabouts (if known)
- 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 the legislation, then your report must include all relevant details, as you will need consent from the Serious Organised Crime Agency (SOCA), via the MLRO, to take any further part in the transaction - this is the case even if the client 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 activity 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 19 of the 2000 Act), or both
- the dates of such activities, including:
  - ➔ whether the transactions have happened, are ongoing or are imminent
- where they took place
- how they were undertaken
- the (likely) amount of money/assets involved
- why, exactly, you are suspicious –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 and to enable them to prepare their report to SOCA, where appropriate. You should also enclose copies of any relevant supporting documentation

7.3 Once you have reported the matter to the MLRO you must follow any directions they may give you. **You must NOT make any further enquiries into the matter yourself**: any necessary investigation will be undertaken by SOCA. Simply report your suspicions to the MLRO who will refer the matter on to SOCA if appropriate. All members of staff will be required to co-operate with the MLRO and the authorities during any subsequent money laundering investigation.

7.4 Similarly, **at no time and under no circumstances should you voice any suspicions** to the person(s) whom you suspect of money laundering, even if SOCA has given consent to a particular transaction proceeding, without the specific consent of the MLRO; otherwise you may commit a criminal offence of "tipping off" (see the **Guidance Note** for further details).

7.5 Do not, therefore, make any reference on a client file to a report having been made to the MLRO – should the client exercise their right to see the file, then such a note will obviously tip them off to the report having been made and may render you liable to prosecution. The MLRO will keep the appropriate records in a confidential manner.

Consideration of the disclosure by the Money Laundering Reporting Officer

7.6 Upon receipt of a disclosure report, the MLRO must note the date of receipt on their section of the report and acknowledge receipt of it. They should also advise you of the timescale within which they expect to respond to you.

7.7 The MLRO will consider the report and any other available internal information they think relevant e.g.:

- reviewing other transaction patterns and volumes
- the length of any business relationship involved
- the number of any one-off transactions and linked one-off transactions
- any due diligence information held

and undertake such other reasonable inquiries they think appropriate in order to ensure that all available information is taken into account in deciding whether a report to SOCA is required (such enquiries being made in such a way as to avoid any appearance of tipping off those involved). The MLRO may also need to discuss the report with you.

7.8 Once the MLRO has evaluated the disclosure report and any other relevant information, they must make a timely determination as to whether:

- there is actual or suspected money laundering taking place, or
- there are reasonable grounds to know or suspect that is the case
- they know the identity of the money launderer or the whereabouts of the property involved or they could be identified or the information may assist in such identification, and
- whether they need to seek consent from SOCA for a particular transaction to proceed.

7.9 Where the MLRO does so conclude, then they must disclose the matter as soon as practicable to SOCA on their standard report form and in the prescribed manner, **unless**

they have a reasonable excuse for non-disclosure to SOCA (for example, if you are a lawyer and you wish to claim legal professional privilege for not disclosing the information).

7.10 Where the MLRO suspects money laundering but has a reasonable excuse for non-disclosure, then they must note the report accordingly; they can then immediately give their consent for any ongoing or imminent transactions to proceed.

7.11 In cases where legal professional privilege may apply, the MLRO must liaise with the legal adviser to decide whether there is a reasonable excuse for not reporting the matter to SOCA.

7.12 Where consent is required from SOCA for a transaction to proceed, then the transaction(s) in question must not be undertaken or completed until SOCA has specifically given consent, or there is deemed consent through the expiration of the relevant time limits without objection from SOCA.

7.13 Where the MLRO concludes that there are no reasonable grounds to suspect money laundering then they shall mark their report accordingly and give their consent for any ongoing or imminent transaction(s) to proceed.

7.14 All disclosure reports referred to the MLRO and reports made by them to SOCA must be retained by the MLRO in a confidential file kept for that purpose, for a minimum of five years.

7.15 ***The MLRO commits 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 of whom they know the identity or the whereabouts of laundered property in consequence of the disclosure, that the person or property's whereabouts can be identified from that information, or they believe, or it is reasonable to expect them to believe, that the information will or may assist in such identification and they do not disclose this as soon as practicable to SOCA.***

8.0 CUSTOMER DUE DILIGENCE PROCEDURE

8.1 Where the Council is carrying out certain regulated business (accountancy, audit and tax services and legal services re financial, company or property transactions) and:

(a) forms an ongoing business relationship with a client

(b) undertakes an occasional transaction amounting to 15,000 Euro (approximately £11,000) or more whether carried out in a single operation or several linked ones

(c) suspects money laundering or terrorist financing, or

(d) doubts the veracity or adequacy of information previously obtained for the purposes of client identification or verification

then customer due diligence measures must be applied and this Customer Due Diligence Procedure must be followed before the establishment of the relationship or carrying out of the transaction.

8.2 Applying customer due diligence means:

(a) identifying the client and verifying the client's identity on the basis of documents, data or information obtained from a reliable and independent source

(b) identifying the beneficial owner (where they are not the client) so that we are satisfied that we know who the beneficial owner is, including, in the case of a legal person, trust or similar legal arrangement, measures to understand the ownership and control structure of the person, trust or arrangement, and

(c) obtaining information on the purpose and intended nature of the business relationship.

Please note that unlike the reporting procedure, the Customer Due Diligence Procedure is restricted to those employees undertaking relevant business, (e.g. Finance and Legal Services).

8.3 In the above circumstances, staff in the relevant Service/Unit of the Council must obtain satisfactory evidence of the identity of the prospective client, and full details of the purpose and intended nature of the relationship/transaction, as soon as practicable after instructions are received.

8.4 In Cornwall Council, details of proposed transactions are usually, as a matter of good case management practice, recorded in writing in any event and proposed ongoing business relationships are usually the subject of Agreements (legally binding agreements entered into between the Council and third parties) or other written record which will record the necessary details.

8.5 There is also now an ongoing legal obligation to check the identity of existing clients and the nature and purpose of the business relationship with them at appropriate times. Opportunities to do this will differ, however one option is to review these matters as part of the ongoing monitoring of the business arrangements, as is usually provided for in the Agreement or other written record. The opportunity should also be taken at these times to scrutinise the transactions undertaken throughout the course of the relationship (including, where necessary, the source of funds) to ensure they are consistent with your knowledge of the client, its business and risk profile. Particular scrutiny should be given to the following:

- complex or unusually large transactions;
- unusual patterns of transactions which have no apparent economic or visible lawful purpose; and
- any other activity particularly likely by its nature to be related to money laundering or terrorist financing.

8.6 Council staff conducting regulated business need to be able to demonstrate that they know their clients and the rationale behind particular instructions and transactions.

8.7 Once instructions to provide regulated business have been received, and it has been established that any of **paragraphs 8.1 (a) to (d)** apply, or it is otherwise an appropriate time to apply due diligence measures to an existing client, evidence of identity and information about the nature of the particular work should be obtained/checked as follows:

Internal clients:

8.8 Internal clients are part of the Council. Under the legislation, there is **no need to apply customer due diligence measures where the client is a UK public authority.** However, as a matter of good practice, the identity of internal clients should be checked by ensuring that signed, written instructions or via email on the Council's system are obtained at the outset of a particular matter. Such correspondence should then be placed on the Council's client file along with a prominent note explaining which correspondence constitutes the

evidence and where it is located. Full details about the nature of the proposed transaction should be recorded on the client file.

External Clients

8.9 Most of the external clients to whom the Council provides regulated business services are UK public authorities and consequently, as above, there is no need to apply customer due diligence measures. However, again as a matter of good practice, full details about the nature of the proposed transaction should be recorded on the client file, and the identity of such external clients should continue to be checked, along with other external clients (e.g. designated public bodies), using the following procedure.

8.10 The MLRO will maintain a central file of general client identification evidence regarding the external organisations to whom Finance, Legal Services and Payroll Services provide professional services (e.g. Town and Parish Councils, Probation Service and local colleges). You should check with the MLRO that the organisation in respect of which you require identification is included in the MLRO's central file and check the precise details contained in relation to that organisation.

8.11 You should also then obtain the appropriate additional evidence: For external clients, appropriate additional evidence of identity will be written instructions on the organisation's official letterhead at the outset of the matter or an email from the organisation's e-communication system. Such correspondence should then be placed on the Council's client file along with a prominent note explaining which correspondence constitutes the evidence and where it is located (and including a reference to a search of the MLRO's central file, if undertaken).

8.12 In some circumstances, however, enhanced due diligence must be carried out – please see the **Guidance Note** for further details.

8.13 With instructions from new clients, or further instructions from a client not well known to you, you may wish to seek additional evidence of the identity of key individuals in the organisation and of the organisation itself: please see the **Guidance Note** for more information.

8.14 In all cases, the due diligence evidence should be retained for at least five years from the **end** of the business relationship or transaction(s).

8.15 ***If satisfactory evidence of identity is not obtained at the outset of the matter then generally the business relationship or one off transaction(s) cannot proceed any further and any existing business relationship with that client must be terminated.***

9.0 ONGOING MONITORING AND RECORD KEEPING PROCEDURES

9.1 Each Service Unit of the Council conducting regulated business must monitor, on an ongoing basis, their business relationships in terms of scrutinising transactions undertaken throughout the course of the relationship (including, where necessary, the source of funds) to ensure that the transactions are consistent with their knowledge of the client, its business and risk profile.

9.2 We must also maintain records of:

- client identification/verification evidence obtained (or references to it), and
- details of all regulated business transactions carried out for clients

for at least five years from the end of the transaction/relationship. This is so that they may be used as evidence in any subsequent investigation by the authorities into money laundering.

9.3 The precise nature of the records is not prescribed by law however they must be capable of providing an audit trail during any subsequent investigation, for example distinguishing the client and the relevant transaction and recording the source of, and in what form, any funds were received or paid. In practice, the Service Units of the Council will be routinely making records of work carried out for clients in the course of normal business and these should suffice in this regard. See also **paragraphs 8.4 to 8.6**.

10.0 TRAINING

10.1 The Council will take appropriate measures to ensure that all employees are made aware of the law relating to money laundering and will arrange targeted, ongoing, training to key individuals most likely to be affected by the legislation.

11.0 RISK MANAGEMENT AND INTERNAL CONTROL

11.1 The risk to the Council of contravening the anti-money laundering legislation will be assessed on a periodic basis and the adequacy and effectiveness of the Anti-Money Laundering Policy, Guidance and procedures will be reviewed in light of such assessments.

11.2 The adequacy and effectiveness of, promotion of, and compliance by employees with, the documentation and procedures will also be monitored through the Council's Corporate Governance and Counter Fraud Policy frameworks.

12.0 CONCLUSION

12.1 The legislative requirements concerning anti-money laundering procedures are lengthy, technical and complex. This Policy has been written so as to enable the Council to meet the legal requirements in a way which is proportionate to the very low risk to the Council of contravening the legislation.

12.2 Should you have any concerns whatsoever regarding any transactions then you should contact the MLRO.

13.0 REVIEW OF THE POLICY

13.1 The Policy will be subject to review as and when required.

November 2008