

ITEM No ...9.....

REPORT TO: POLICY & RESOURCES COMMITTEE – 12 FEBRUARY 2018

REPORT ON: REVISED ANTI-MONEY LAUNDERING (AML) POLICY

REPORT BY: EXECUTIVE DIRECTOR OF CORPORATE SERVICES

REPORT NO: 40-2018

1.0 PURPOSE OF REPORT

To advise of revisions in relation to the current Anti-Money Laundering Council Policy.

2.0 RECOMMENDATION

It is recommended that:

- The Revised Anti-Money Laundering Policy detailed in Appendix A is approved.
- All Council staff receive refresher training.
- Council services provide the Money Laundering Reporting Officer with list of staff who are likely to require specialist training in relation to Anti-Money Laundering.

3.0 FINANCIAL IMPLICATIONS

The training costs for identified staff who have not already undertaken specialist training would be approximately £30 per staff member. Until identified, the volumes are unknown however any costs will be funded by the centralised organisational training budget. The nominated officers undertaking the supporting role will require more in-depth training to enable them to carry out AML duties.

4.0 BACKGROUND

Dundee City Council has had a policy, procedures and guidance in place to try to protect the Council from the impact of money laundering since 2005. Periodically over the years this policy has been reviewed and revised as appropriate, particularly when legislation has changed.

The revisions to the Council's policy attached is due to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017) coming into force on 26 June 2017. This implements the EU's 4th Directive on Money Laundering. In doing so, it replaces the Money Laundering Regulations 2007 (MLR 2007) and the Transfer of Funds (Information on the Payer) Regulations 2007 which were previously in force.

5.0 POLICY IMPLICATIONS

This report has been screened for any policy implications in respect of Sustainability Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. The risks identified in the report will be incorporated into an Anti-Money Laundering Risk Register, following risk assessments.

6.0 CONSULTATIONS

The Council Management Team have been consulted in the preparation of this report.

7.0 BACKGROUND PAPERS

None



Anti-Money Laundering Policy

POLICY STATEMENT

It is the policy of Dundee City Council to do all we can to prevent, wherever possible, the Council 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, however, that it is every member of staff's responsibility to be vigilant of money laundering.

Key points

- The Council is committed to the prevention, detection and reporting of money laundering
- All employees must be vigilant for the signs of money laundering
- Any employee who suspects money laundering activity must report this promptly to the Money Laundering Reporting Officer (MLRO) or nominated officers.
- No payment to the Council will be accepted in cash (*see definition 1*) if it exceeds £13,000 (15,000EUR equivalent)
- Where the Council is carrying out certain regulated activities(*see definition 2*) by way of business then the Customer Due Diligence procedure must be followed
- The Money Laundering Regulations are detailed and complex – if you are in any doubt about the application of this Policy please contact the MLRO or nominated officers.

1 Introduction

- 1.1 Although historically, The Proceeds of Crime Act 2002, the Terrorism Act 2000 and the Money Laundering Regulations 2007 were largely aimed at professionals within the financial and investment sector, they recognised that those involved in criminal conduct were able to 'clean' the proceeds of crime through a wider range of businesses and professional activities, and in this, placing obligations on local authorities with respect to suspected money laundering.
- 1.2 The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017), which transposed the Fourth EU Money Laundering Directive into UK Law, were laid before Parliament on 22 June 2017 and commenced on 26 June 2017. These obligations impact on certain areas of local authority business and, as under the previous regulations of 2007, require local authorities to maintain internal procedures to prevent the use of their services for money laundering.
- 1.3 A key difference of the 2017 Regulations is to require relevant persons to adopt a more risk-based approach towards anti-money laundering, particularly in the conduct of due diligence. Determining

the appropriate level of due diligence requires analysis of risk factors based on the EU Directive and which are set out in MLR 2017.

2 Scope of the Policy

- 2.1 This 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. 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 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 Procedure for Dealing with Breaches of Discipline and Sub-Standard Work Performance. Furthermore, a member of staff could also be subject to criminal conviction.

3 What Is Money Laundering?

- 3.1 Money laundering is the term used for a number of offences involving proceeds of crime or terrorism funds. Under the legislation there are two main types of offences which may be committed:
- Money laundering offences.
 - Failure to report money laundering offences.

Primary Money Laundering Offences

The following are primary money laundering offences and thus prohibited acts under legislation:

- Acquiring, using or possessing criminal property
- Handling the proceeds of crimes such as theft, fraud and tax evasion
- Being knowingly involved in any way with criminal or terrorist property
- Entering into arrangements to facilitate laundering criminal or terrorist property
- Investing the proceeds of crime in other financial products
- Concealing, disguising, converting, transferring criminal property or removing it from the UK
- 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
- Investing the proceeds of crimes through the acquisition of property/assets,
- Transferring criminal property

Further Associated Offences

There are further associated offences regarding due diligence and disclosures:

Due diligence

- Failure to apply customer due diligence
- Failure to apply on-going monitoring of business relationship and customer due diligence
- Failure to comply with timing on verification of clients and any beneficial owner
- Failure to apply enhanced customer due diligence and monitoring where required
- Failure to keep required records
- Continuing with a business relationship where unable to apply customer due diligence

Disclosures

- Making a disclosure to a person which is likely to prejudice a money laundering investigation ("tipping off")
- Failing to disclose
- Prejudicing an investigation

- 3.2 Money laundering regulations apply to cash transactions in excess of 15,000 Euros (approximately £13,000). However, Proceeds of Crime Act applies to **all** transactions and can include dealings with agents, third parties, property or equipment, cheques, cash or bank transfers.
- 3.3 While the risk to the Council of contravening the legislation is low, it is important that all employees are familiar with their responsibilities: serious criminal sanctions may be imposed for breaches of the legislation. The key requirement on employees is to promptly report any suspected money laundering activity to the Money Laundering Reporting Officer (MLRO).

4 What Are The Obligations on the Council?

4.1 As an organisation conducting 'relevant business' the Council must:

- appoint a Money Laundering Reporting Officer ("MLRO") to receive disclosures from employees detecting actual or suspected money laundering activity (their own or anyone else's);
- Implement risk sensitive policies and procedures relating to customer due diligence, reporting, record keeping, internal control, risk assessment and management, the monitoring and management of compliance and the internal communication of such policies and procedures through the following:
 - undertaking relevant risk assessments
 - installing appropriate risk management framework and a reporting regime
 - establishing internal procedures to help prevent money laundering
 - making arrangements to receive and manage the concerns of staff about money laundering and their suspicions of it, to make internal enquiries, and to make reports where necessary to the National Crime Agency (NCA)
 - ensuring that all staff have an awareness of money laundering matters
 - targeting training to staff most likely to encounter money laundering
 - maintaining client identification procedures in certain circumstances
 - maintaining record keeping procedures.

4.2 Not all of the Council's business is "relevant" for the purposes of the legislation: it is mainly the income collection, procurement, treasury management, company and property related transactions, and inward economic development investment. However, the safest way to ensure compliance with the law is to apply them 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.

4.3 It is a requirement of the MLR 2017 that appropriate systems of internal control are in place to prevent activities relating to money laundering and terrorist financing. There must be management controls in place to identify the possibility that criminals may be attempting to launder money or fund terrorism, so as to enable appropriate action to prevent or report it to be taken. MLR 2017 ends "automatic" due diligence. Instead, a "relevant" member of staff needs to consider both customer and geographical risk factors in deciding whether simplified due diligence is appropriate. Another change is the creation of a "black list" of high risk jurisdictions which, if involved in a transaction, makes enhanced due diligence and additional risk assessment compulsory.

5 The Money Laundering Reporting Officer (MLRO) & Nominated Officers

5.1 The officer nominated to receive disclosures about money laundering activity within the council is the Senior Financial Services & Investment Manager. Contact details are shown below:

Tracey Russell
Financial Services & Investment Manager
Corporate Services
Tel: 01382 431333
Email: tracey.russell@dundecity.gov.uk

In the absence of the MLRO, the nominated officers are:

Alison Swan
Banking Services Team Leader
Tel: 01382 433526
Email: alison.swan@dundecity.gov.uk

Karen Lawson
Senior Manager – Procurement
Tel: 01382 433860
Email: karen.lawson@dundeecity.gov.uk

All suspicions should be reported directly to the MLRO or the deputy. All suspicions should be reported on the relevant documentation.

6 Identification of potential money laundering situations

6.1 Criminals have various ways of concealing, moving and legitimising the proceeds of crime. Examples of signs of money laundering where suspicions should arise include:

- Use of cash where other means of payment are normal
- Unusual transactions or ways of conducting business
- Unwillingness to answer questions/general secretiveness
- Use of new/shell companies
- Payment of deposits which are subsequently requested back
- Lack of 'traceability' of persons involved
- Individuals and companies that are insolvent yet have funds

6.2 It is not possible to give a definitive list of ways in which to identify money laundering or how to decide whether to make a report to the MLRO. The following are types of risk factors which may, either alone or cumulatively with other factors, suggest the possibility of money laundering activity:

- Payment of a substantial sum in cash (over £5,000)
- A new customer
- A secretive customer, e.g. refuses to provide requested information without a reasonable explanation
- Concerns about the honesty, integrity, identity or location of a customer
- Illogical third party transaction such as unnecessary routing or receipt of funds from third parties or through third party accounts
- Involvement of an unconnected third party without logical reason or explanation
- Overpayments by a customer
- Absence of an obvious legitimate source of funds
- Movement of funds overseas, particularly to a higher risk country or tax haven
- Transactions which are out of the line of normal expectations, without reasonable explanation
- A transaction without obvious legitimate purpose or which appears uneconomic, inefficient or irrational
- The cancellation or reversal of an earlier transaction
- Requests for release of customer account details other than in the normal course of business
- Transactions at substantially above or below fair market values
- Poor business records or internal accounting controls
- A previous transaction for the same customer which has been, or should have been, reported to the MLRO

6.3 In addition to the money laundering offences, the legislation sets out further offences of failure to report suspicions of money laundering activities. Such offences are committed where, in the course of conducting relevant business you know or suspect, or have reasonable grounds to do so that another person is engaged in money laundering and you do not disclose this as soon as is practicable to the MLRO.

7 Reporting

7.1 All employees who may be affected by this legislation, especially those working in the 'relevant' business areas, must familiarise themselves with this policy and the AML Guidance & Reporting Procedures.

7.2 Any employee who suspects money laundering activity must report their suspicion promptly to the MLRO, or to the nominated officers if appropriate, using the AML Reporting form. If preferred, suspicions can be discussed with the MLRO or the nominated officers first.

- 7.3 The employee must follow any subsequent directions of the MLRO or nominated officers, and must not themselves make any further enquiries into the matter. They must not take any further steps in any related transaction without authorisation from the MLRO.
- 7.4 The employee must not disclose or otherwise indicate their suspicions to the person suspected of the money laundering. They must not discuss the matter with others or note on the file that a report has been made to the MLRO in case this results in the suspect becoming aware of the situation.
- 7.5 The MLRO or nominated officers must promptly evaluate any AML Reporting form received, to determine whether it should be reported to the National Crime Agency (NCA) or to relevant agency.
- 7.6 The MLRO must promptly report the matter to NCA in their standard report form and in the prescribed manner.
- 7.7 It is a criminal offence if the MLRO or nominated officers 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 and they do not disclose this as soon as practicable to SOCA, and they would thus be subject to both disciplinary action as well as criminal action.

8 Consideration of disclosure report by the MLRO

- 8.1 Upon receipt of a disclosure report, the MLRO will record the date of receipt on the report. The MLRO will acknowledge receipt of the report and will give an indication of the timescale within which they expect to respond.
- 8.2 The MLRO will consider the report and any other available internal information they think relevant. This may include:
- Reviewing other transactions patterns and volumes,
 - The length of any business relationship involved,
 - The number of any one-off transactions and linked one-off transactions,
 - Any identification evidence.
- 8.3 The MLRO will undertake any other inquiries deemed appropriate and will ensure that all available information has been obtained. In undertaking any such enquiries the MLRO will avoid any actions which could tip off those involved, or which could give the appearance of tipping them off. Where appropriate Corporate Fraud will investigate on behalf of the MLRO.
- 8.4 The MLRO may also need to discuss the report with the employee who reported the case.
- 8.5 The MLRO will then consider all aspects of the case and will decide whether a report to NCA is required. The MLRO must make a timely determination as to:
- Whether there is actual or suspected money laundering taking place,
 - Whether there are reasonable grounds to know or suspect that money laundering is taking place,
 - Whether they need to seek consent from the NCA for a particular transaction to proceed.
- 8.6 Where the MLRO concludes one or more of the above the MLRO will record the conclusion and disclose the matter as soon as possible to National Crime Agency (NCA) online or submit their standard report form which can be downloaded from the internet at <http://www.nationalcrimeagency.gov.uk>.
- 8.7 Once the MLRO has made a disclosure, NCA consent will be needed before you can take any further part in the transaction. Consent will be received in the following way:
- Specific consent,
 - No refusal of consent during the notice period (seven working days starting with the first working day after the MLRO makes the disclosure),
 - Refusal of consent during the notice period but the moratorium period has expired (31 days starting with the day on which the MLRO receives notice of refusal of consent).

- 8.8 The MLRO 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. completion date or court deadline.
- 8.9 Where the MLRO concludes that there are no reasonable grounds to suspect money laundering this will be recorded appropriately and he will give his consent for any ongoing or imminent transaction(s) to proceed.
- 8.10 All disclosure reports referred to the MLRO and reports made by him to NCA must be retained by the MLRO in a confidential file kept for that purpose, for a minimum of five years.
- 8.11 The MLRO commits a criminal offence if they know or suspect, or has reasonable grounds to do so, through a disclosure being made, that another person is engaged in money laundering and they do not disclose this as soon as possible to the NCA.

9 Additional requirements for Relevant Staff

- 9.1 In addition to the disclosure procedure set out above, some relevant employees providing council services must also comply with the customer identification procedure, 'due diligence' and the record keeping procedures.
- 9.2 There are various levels of 'due diligence', the regulations require due diligence to be carried out on a risk sensitive basis (taking account of customer and geographical risk factors), so that:
- Under MLR 2017 simplified due diligence is only permitted where it is determined that the business relationship or transaction presents a low risk of money laundering or terrorist funding, taking into account the risk assessment
 - 'Enhanced due diligence' (Regulation 33) for those with a high-risk status, for example remote transactions where the customer is not physically present to be identified would require additional appropriate documents to be requested.
 - The 'beneficial owner', the individual that ultimately owns or controls the customer or on whose behalf a transaction or activity is being conducted, should be identified.
 - The business relationship should be scrutinised throughout its existence and not just at the beginning.

Reliance may be placed on due diligence undertaken by those regulated by the FCA or supervised by a listed professional regulator e.g. the Law Society. Any information obtained may be used as evidence in any subsequent investigation by the relevant enforcement authorities into money laundering.

- 9.3 In all cases, the evidence of the customer identification and record of the relationship/transaction should be retained for at least five years from the end of the business relationship of transaction(s). The records that must be kept are:
- A copy of, or references to, the evidence of the identity obtained under the customer due diligence requirements in the Regulations,
 - The supporting evidence and records in respect of the business relationships and occasional transactions which are the subject of customer due diligence measures or ongoing monitoring,
 - A copy of the identification documents accepted and verification evidence obtained,
 - References to the evidence of identity,
 - Transaction and business relationship records should be maintained in a form from which a satisfactory audit trail may be compiled, and which may establish a financial profile of any suspect account or customer.
- 9.4 If satisfactory evidence of identity is not obtained at the outset of the matter then the business relationship or one off transaction(s) **cannot** proceed any further.
- 9.5 The customer identification procedure must be carried out when the Council is carrying out 'relevant business' and:
- Forms a business partnership with a customer,
 - Undertakes a one-off transaction (including a property transaction or payment of a debt) involving payment by or to a customer of £5,000 or more,

- Undertakes a series of linked one-off transactions involving total payment by or to the customer(s) of £5,000 or more,
- It is known or suspected that a one-off transaction, or a series of them, involves money laundering.

This must be completed before any business is undertaken for that customer in relation to accountancy, procurement, asset management, audit and legal services with a financial or real estate transaction.

9.6 In the above circumstances, employees must:

- Identify the person seeking to form the business relationship or conduct the transaction (an individual or company),
- Verify their identity using reliable, independent sources of information,
- Identify who benefits from the transaction,
- Monitor transactions to make sure they are consistent with what you understand about that person or country,
- Understand the source of their funds,
- Ensure there is a logical reason why they would want to do business with the Council.

9.7 This applies to existing customers, as well as new ones, but identification evidence is not required for matters entered into prior to 1 March 2004.

9.8 In relation to Council business appropriate evidence would be signed written instructions on Council headed note paper or an e-mail at the outset of a particular matter. Such correspondence should then be placed on file along with a prominent note explaining which correspondence constitutes the evidence and where it is located.

9.9 Records must be capable of providing an audit trail during any subsequent investigation, for example distinguishing the client and the relevant transaction and recording in what form any funds were received or paid. In practice, the Council will be routinely making records of work carried out in the course of normal business and these should suffice in this regard.

10 Failure to report money laundering offences or suspicions

10.1 Failure to report money laundering offences means that potentially any employee 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.

10.2 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. Any person found guilty of a money laundering offence is liable for imprisonment (maximum of 14 years), a fine, or both however, an offence is not committed if the suspected money laundering activity is reported to the MLRO and, where necessary, official permission obtained to continue in the transaction.

10.3 If you report a suspicion of money laundering to the MLRO you should not discuss it with anyone else: you may commit a further offence of 'tipping off' if, knowing a disclosure has been made, you make a disclosure which is likely to prejudice any investigation which might be conducted.

10.4 Even if you have not reported the matter to the MLRO, if you know or suspect that such a disclosure has been made and you mention it to someone else, this could amount to a tipping off offence. Be very careful what you say and to whom, in these circumstances. Any person found guilty of tipping off or prejudicing an investigation offence is liable to imprisonment (maximum five years), a fine or both.

10.5 A new criminal offence was created in 2017: any individual who recklessly makes a statement in the context of money laundering which is false or misleading commits an offence punishable by a fine and/or up to 2 years' imprisonment.

11 Risk Register

- 11.1 Whilst all employees must be aware of the existence of the Anti-Money Laundering Policy, Procedures and Reporting Arrangements, it is possible to identify those areas of Council business most at risk of potential involvement in money laundering, in order to target training at those relevant employees. Under MLR 2017, risk mitigation policies must be in writing and be proportionate to the risks identified. They must include internal controls over money-laundering and terrorist financing risks. They must also include revised customer due diligence procedures as well as reporting, record keeping and monitoring requirements.
- 11.2 In order to identify such areas of Council business the MLRO will established and will maintain a Money Laundering Risk Register. In order to do this a number of steps have require to be taken to determine how to manage and mitigate the money laundering and terrorist financing risks faced by the Council. The steps followed were to:
- Identify the money laundering and terrorist financing risks that were relevant to the Council.
 - Assess the risks presented by the particular customers, products and services, delivery channels and geographical area.
 - Design and implemented controls to manage and mitigate these assessed risks.
- 11.3 The steps that will be followed to continuously mitigate the risks associated with money laundering are:
- Applying customer due diligence measures to verify the identity of customers and any beneficial owners obtaining additional information on customers,
 - Conducting ongoing monitoring of the transactions and activity of customers with whom there is a business relationship,
 - Having systems to identify and scrutinise unusual transactions and activity to determine whether there are reasonable grounds for knowing or suspecting that money laundering or terrorist financing may be taking place.
- 11.4 Risks will be reviewed continuously as part of the annual review of the Council Risk Register.
- 11.5 Regulation 18 MLR 2017 requires a written risk assessment to identify and assess the risk of money laundering and terrorist financing that the Council faces. This will: -
- Assist in developing policies, procedures and controls to mitigate the risk of money laundering and terrorist financing
 - Help in applying a risk-based approach to detecting and preventing money laundering terrorist financing
 - Inform an assessment of the level of risk associated with particular business relationships and transactions and enable appropriate risk-based decisions about clients and retainers
- 11.6 In carrying out risk assessments we will take into account information on money- laundering and terrorist financing risks made available by the Law Society and/or SRA, and risk factors relating to: -
- Customers
 - Geographic areas where the Council operates
 - Products and services
 - Transactions
 - Delivery channels

12 Guidance and Training

- 12.1 In support of the policy and guidance, the Council will:
- make all staff aware of the requirements and 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; and
 - ensure that all Executive Directors ensure awareness and training needs of new staff are addressed and include details in service induction manuals/sessions.

13 Record Keeping

- 13.1 Under Regulation 40 copies of documents and information used to fulfil customer due diligence obligations will be kept for a period of 5 years following the completion of a transaction or the end of a business relationship. At the end of the 5-year period personal data will be deleted unless: -
- It is required to be retained under an enactment or for the purposes of court proceedings or there are reasonable grounds for believing the records need to be maintained for legal proceedings
 - The consent of the person whose data it is has consented
- 13.2 Under Regulation 41 personal data obtained for the purposes of the regulations will not be processed for any other purpose unless it is permitted under an enactment or the consent of the person whose data it is has been obtained.

14 Further Information

- 14.1 Further information can be obtained from the MLRO and the following sources:
- Website of the National Crime Agency:
<http://www.nationalcrimeagency.gov.uk/>
 - Draft CCAB Anti-Money Laundering Guidance for the Accountancy Sector
<http://www.ccab.org.uk/documents/TTCCABGuidance2017regsAugdraftforpublication.pdf>
 - Quick guide to the Money Laundering Regulations 2017 from the Law Society
<http://www.lawsociety.org.uk/support-services/advice/articles/quick-guide-to-the-money-laundering-regulations-2017/>
 - SI 2017 No. 692 The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017
http://www.legislation.gov.uk/uksi/2017/692/pdfs/uksi_20170692_en.pdf

Definitions

- 1 *Cash is defined as including notes, coins or travellers' cheques in any currency.*
- 2 *"Regulated activity is defined as the provision 'by way of business' of: advice about tax affairs; accounting services; treasury management, investment or other financial services; audit services; legal services; estate agency; services involving the formation, operation or arrangement of a company or trust or; dealing in goods wherever a transaction involves a cash payment of €15,000 or more."*

