ROSSENDALE BOROUGH COUNCIL

Guidance Note

re the Anti-Money Laundering Policy

INTRODUCTION

Historically, legislation seeking to prevent the laundering of the proceeds of criminal activity was aimed at professionals in the financial and investment sector, however it was subsequently recognised that those involved in criminal conduct were able to "clean" the proceeds of crime through a wider range of businesses and professional activities.

New obligations in respect of money laundering were therefore imposed by the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003 which broaden the definition of money laundering and increase the range of activities caught by the statutory control framework; in particular, the duty to report suspicions of money laundering is strengthened and criminal sanctions imposed for failure to do so.

As a result, certain areas of the Council's business are now subject to the legislative controls and the Council is required, by law, to establish procedures designed to prevent the use of its services for money laundering. These procedures are set out in the accompanying **Anti-Money Laundering Policy** and all staff should be aware of the content.

This Guidance Note aims to provide further detail regarding the legal requirements and practical help in implementing the procedures.

THE LEGAL REQUIREMENTS

General

The law requires those organisations in the regulated sector and conducting relevant business to:

- implement a procedure to require the reporting of suspicions of money laundering, including the appointment of a Money Laundering Reporting Officer ("MLRO") to receive disclosures from their staff of money laundering activity (their own or anyone else's);

- maintain certain client identification procedures; and

- maintain record keeping procedures.

from 1 March 2004

Rather than referring to organisations as a whole, relevant business is defined with reference to the nature of the activities undertaken. Some of the Council's business is "relevant" for the purposes of the legislation:

- the provision by way of business of advice about the **tax** affairs of another person by a body corporate ……..
- the provision by way of business of **accountancy** services by a body corporate……..

- the provision by way of business of **audit** services…….

- the provision by way of business of **legal** services by a body corporate……. which involves participation in a **financial** or real **property** transaction (whether by assisting in the planning or execution of any such transaction or otherwise by acting for, or on behalf of, a client in any such transaction);

- the provision by way of business of services in relation to the **formation, operation or management of a company or a trust;**

thus it is mainly the accountancy and audit services carried out by Financial Services and certain financial, company and property transactions undertaken by Legal Services which will be formally subject to the internal procedures, more detail of which is contained later in this Guidance.

However, although the conduct of relevant business does not apply to the Council as a whole, **all members of staff are required to comply with the Council's Anti-Money Laundering Policy in terms of reporting concerns re money laundering**; this will ensure consistency throughout the organisation and avoid inadvertent offences being committed. The client identification procedure is only required to be followed by those engaging in relevant business as defined above.

The Offences

Under the legislation there are two main types of offences which may be committed: money laundering offences and failure to report money laundering offences.

Money Laundering Offences:

Money laundering now goes beyond the transformation of the proceeds of crime into apparently legitimate money/assets: it now covers a range of activities (which do not necessarily need to involve money or laundering) regarding the proceeds of crime. It is technically defined as any act constituting:

- an offence under sections 327 to 329 of the Proceeds of Crime Act 2002 ie:

    - concealing, disguising, converting, transferring criminal property or removing it from the UK (section 327); or

    - 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); or

    - acquiring, using or possessing criminal property (unless there was adequate consideration) (section 329);

and even

    - an attempt, conspiracy or incitement to commit such an offence; or

    - aiding, abetting, counselling or procuring such an offence; and

- an offence under section 18 of the Terrorist Act 2000 namely becoming concerned in an arrangement facilitating concealment, removal from the jurisdiction, transfer to nominees or any other retention or control of terrorist property.

“criminal property” is widely defined: it is property representing a person’s benefit from criminal conduct where you know or suspect that that is the case. It includes all property (situated in the UK or abroad) real or personal, including money, and also includes an interest in land or a right in relation to property other than land.

“terrorist property” means money or other property which is likely to be used for the purposes of terrorism, proceeds of the commission of acts of terrorism, and acts carried out for the purposes of terrorism.

It is likely that the law will treat you as knowing that which you do know or which is obvious, or which an honest and reasonable person would have known given the circumstances and the information you have. Consequently if you deliberately shut your mind to the obvious, this will not absolve you of your responsibilities under the legislation.

Although you do not need to have actual evidence that money laundering is taking place, mere speculation or gossip is unlikely to be sufficient to give rise to knowledge or suspicion that it is.

So the legislation now goes beyond major drug money laundering operations, terrorism and serious crime to cover the proceeds of potentially any crime, no matter how minor and irrespective of the size of the benefit gained. The case of P v P (8 October 2003) confirmed that “an illegally obtained sum of £10 is no less susceptible to the definition of criminal property than a sum of £1million. Parliament clearly intended this to be the case.”

The broad definition of money laundering means that potentially anybody (and therefore any Council employee, irrespective of what sort of Council business they are undertaking) could contravene the money laundering offences if they become aware of, or suspect the existence of criminal or terrorist property, and continue to be involved in the matter without reporting their concerns. The Council has appointed the Head of Financial Services as its Money Laundering Reporting Officer to receive reports from employees of suspected money laundering activity.

Examples of money laundering activity:

By way of example, consider the following hypothetical scenario:

A social worker is assessing a service user's finances to calculate how much they should pay towards the cost of care, and then goes on to arrange for services to be provided and charged for, in the course of which s/he becomes aware of, or suspects the existence of, criminal property.

In this scenario the social worker may commit an offence under section 328 by “being concerned in an arrangement” which s/he knows/suspects “facilitates the acquisition, retention, use or control of criminal property” if s/he does not report their concerns. Any lawyer involved could also be guilty of an offence if s/he assists in the transaction.

Any person found guilty of a money laundering offence is liable to 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.

Defences are available if, for example, the person:

- makes an 'authorised disclosure' under section 338 of the 2002 Act to the National Criminal Intelligence Service (“NCIS”) or the MLRO and NCIS gives consent to continue with the transaction; such a disclosure will not be taken to breach any rule which would otherwise restrict that disclosure;

- intended to make such a disclosure but had a reasonable excuse for not doing so;

- re section 329, acquired, used or possessed the property for adequate consideration. The Law Society Guidance states that this particular defence "…may also apply to the services provided by a solicitor. Crown Prosecution Service guidance for prosecutors (www.cps.gov.uk) states that the defence will apply where professional advisers, such as solicitors or accountants, receive money for or on account of costs (whether from the client or from another person on the client's behalf). However, the fees charged must be reasonable in relation to the work carried out, or intended to be carried out, as the defence will not be available if the value of the work is significantly less than the money received for or on account of costs."

- did not know and had no reasonable cause to suspect the arrangement related to terrorist property.

Possible signs of money laundering

It is impossible to give a definitive list of ways in which to spot 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:

General

- A new client;

- A secretive client: eg, refuses to provide requested information without a reasonable explanation;

- Concerns about the honesty, integrity, identity or location of a client;

- Illogical third party transactions: 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;

- Payment of a substantial sum in cash (over £10,000);

- Overpayments by a client;

- Absence of an obvious legitimate source of the funds;

- Movement of funds overseas, particularly to a higher risk country or tax haven;

- Where, without reasonable explanation, the size, nature and frequency of transactions or instructions (or the size, location or type of a client) is out of line with normal expectations;

- 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 client account details other than in the normal course of business;

- Companies and trusts: extensive use of corporate structures and trusts in circumstances where the client's needs are inconsistent with the use of such structures;

- Poor business records or internal accounting controls;

- A previous transaction for the same client which has been, or should have been, reported to the MLRO;

Property Matters

- Unusual property investment transactions if there is no apparent investment purpose or rationale;

- Instructions to receive and pay out money where there is no linked substantive property transaction involved (surrogate banking);

- Re property transactions, funds received for deposits or prior to completion from an unexpected source or where instructions are given for settlement funds to be paid to an unexpected destination;

Facts which tend to suggest that something odd is happening may be sufficient for a reasonable suspicion of money laundering to arise.

In short, the money laundering offences apply to your own actions and to matters in which you become involved. If you become aware that your involvement in a matter may amount to money laundering under the 2002 Act then you must discuss it with the MLRO and not take any further action until you have received, through the MLRO, the consent of NCIS. The failure to report money laundering obligations, referred to below, relate also to your knowledge or suspicions of others, through your work.

Failure to report money laundering offences:

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 in the regulated sector, you know or suspect, or have reasonable grounds to do so (even if you did not actually know or suspect), that another person is engaged in money laundering and you do not disclose this as soon as is practicable to the MLRO (section 330 of the 2002 Act and section 21A of the 2000 Act).

The Council's Anti-Money Laundering Policy makes it clear that all members of staff should report any concerns they may have of money laundering activity, irrespective of their area of work and whether it is relevant business for purposes of the legislation.

If you know or suspect, through the course of your work, that anyone is involved in any sort of criminal conduct then it is highly likely, given the wide definition of money laundering, that the client is also engaged in money laundering and a report to the MLRO will be required. As explained earlier, the value involved in the offence is irrelevant. If, for example, you reasonably suspect that someone has falsified their expenses claim, even if just by £1, then you would need to report that to the MLRO.

There are various defences, for example where you have a reasonable excuse for nondisclosure (eg a lawyer may be able to claim legal professional privilege for not disclosing the information) or you did not know or suspect that money was being laundered and had not been provided by the Council with appropriate training. Given the very low risk to the Council of money laundering, this Guidance Note will provide sufficient training for most members of staff, although further guidance

may be issued from time to time and targeted training provided to those staff more directly affected by the legislation.

You must still report your concerns, even if you believe someone else has already reported their suspicions of the same money laundering activity.

Such disclosures to the MLRO will be protected in that they will not be taken to breach any restriction on the disclosure of information.

If you are in any doubt as to whether or not to file a report with the MLRO then you should err on the side of caution and do so – remember, failure to report may render you liable to prosecution (for which the maximum penalty is an unlimited fine, five years' imprisonment, or both). The MLRO will not refer the matter on to the NCIS if there is no need.

Tipping off offences

Where you suspect money laundering and report it to the MLRO, be very careful what you say to others afterwards: you may commit a further offence of "tipping off" (section 333 of the 2002 Act) if, knowing a disclosure has been made, you make a disclosure which is likely to prejudice any investigation which might be conducted. For example, a lawyer who reports his suspicions of a money laundering offence by a client to the MLRO, may commit a tipping off offence if he then reports his disclosure to that client. However, preliminary enquiries of a client to obtain more information (eg confirm their identity, clarify the source of funds) will not amount to tipping off unless you know or suspect that a report has been made.

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.

Prejudicing an Investigation offence

If you know or suspect that an appropriate officer is, or is about to be, conducting a money laundering investigation and you make a disclosure to a third party that is likely to prejudice the investigation, then you commit an offence (section 342 of the 2002 Act).

Any person found guilty of a tipping off or prejudicing an investigation offence is liable to imprisonment (maximum 5 years), a fine or both.

However, defences are available for both such offences, for example:

- the person did not know or suspect that the disclosure was likely to be prejudicial; or
- he is a professional legal adviser and the disclosure was:
    - to a client (or his representative) in connection with the giving of legal advice;
    - to any person in connection with legal proceedings (existing or contemplated);

but NOT where the information was given with the intention of furthering a criminal purpose.

Consideration of disclosure report by MLRO

Where the MLRO receives a disclosure from a member of staff and concludes that there is actual/ suspected money laundering taking place, or there are reasonable grounds to suspect so, then he must make a report as soon as practicable to the NCIS on their standard report form and in the

prescribed manner, unless he has a reasonable excuse for non-disclosure. Where relevant, the MLRO will also need to request appropriate consent from the NCIS for any acts/transactions, which would otherwise amount to prohibited acts under section 327 – 329 of the 2002 Act, to proceed.

The MLRO may receive appropriate consent from the NCIS in the following ways:

- 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); or

- 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).

The MLRO commits a criminal offence under section 331 of the 2002 Act if he knows or suspects (or has reasonable grounds to do so) through a disclosure being made to him, that another person is engaged in money laundering and he does not disclose this as soon as practicable to the NCIS.

Relevant Guidance

When considering any offence under the legislation, the Court will consider whether you followed any relevant guidance approved by the Treasury, a supervisory authority, or any other appropriate body which includes, for example, the Law Society, the Financial Services Authority, the Institute of Chartered Accountants in England and Wales and other such bodies. Such guidance is available for lawyers and accountants by their respective professional bodies.

Internal Procedures

As mentioned earlier, the Money Laundering Regulations 2003 impose specific obligations on those carrying out relevant business, requiring them to:

- obtain sufficient knowledge to ascertain the true identity of clients in certain circumstances, by maintaining **client identification procedures**;

- ensure **record keeping procedures** (eg for evidence of identity obtained, details of transactions undertaken, for at least 5 years aferwards).

These procedures are contained in the Anti-Money Laundering Policy and further explanation of them is given below. **Only those staff dealing with relevant business need comply with these procedures.**

Client Identification Procedure

From 1 March 2004, where the Council is carrying out relevant business (accountancy, audit and certain legal services) and:

a) forms an ongoing business relationship with a client; or

b) undertakes a one-off transaction involving payment by or to the client of 15,000 Euro (approximately £10,000) or more; or

c) undertakes a series of linked one-off transactions involving total payment by or to the client(s) of 15,000 Euro (approximately £10,000) or more; or

d) it is known or suspected that a one-off transaction (or a series of them) involves money laundering;

then the Client Identification Procedure must be followed before any business is undertaken for that client. Where the client is acting or appears to be acting for someone else, reasonable steps must also be taken to establish the identity of that other person (although this is unlikely to be relevant to the Council).

The law states that particular care must be taken when the client is not physically present when being identified: this is always likely to be the case for the Council, given that its relevant business can only be undertaken for other local authorities and designated public bodies (not individuals) and therefore instructions will usually be given in writing.

There are a limited number of exceptions where identification evidence does not need to be obtained, however these are unlikely to ever be relevant to the Council, given that it can only act for other public authorities and designated public bodies.

Satisfactory evidence of identity

Satisfactory evidence is that which:

- is capable of establishing, to the satisfaction of the person receiving it, that the client is who they claim to be; and

- does in fact do so.

General guidance on the money laundering legislation suggests that fairly rigorous identification checks should be made: for example, in relation to an organisation, that evidence should be obtained as to the identity of key individuals within the organisation along with evidence of the identity of the business entity and its activity.

You will see, however, that the Council's Client Identification Procedure provides for only the most basic of identity checks:

- for internal clients, signed, written instructions on Council headed notepaper or an email on the internal Groupwise email system at the outset of a particular matter;

and

- for external clients:

  - check of the MLRO's central client identification file (which will contain extracts from the Municipal Year Book relating to such external clients and their chief officers and other miscellaneous evidence of such clients); and

  - signed, written instructions on the organisation in question's headed paper at the outset of a particular matter.

The reason for this low level Procedure is not because client identification is not important, but because of the need to introduce a procedure which is workable, appropriate to the nature of the Council as an organisation and proportionate to the risk to the Council of money laundering, which has been assessed as extremely low.

The following factors suggest a minimum level client identification procedure for the Council (in practice Financial Services and Legal Services) is appropriate:

- For internal clients:
    - we all work for the same organisation and therefore have detailed awareness of individuals and their location through previous dealings;
- For external clients:
    - the Council, as a matter of law can only provide services to local authorities and designated public bodies:
        - they are therefore heavily regulated by their very nature;
        - most are repeat clients, well known to us in terms of people and the business address;
- Generally:
    - We know most of our clients;
    - We are not in private practice and are therefore subject to public sector controls;
    - We are not large, city firms of lawyers and accountants, with international client bases.

The Client Identification Procedure should enable us to have confidence in accepting instructions from a known client. If, however, you are undertaking work for a new client, then you may also wish to seek additional evidence, for example:

- checking the organisation's website to confirm the identity of personnel, its business address and any other details;
- attending the client at their business address;
- a search of the telephone directory;
- asking the key contact officer to provide evidence of their personal identity and position within the organisation, for example:
    - passport, photocard driving licence;
    - signed, written confirmation from their Head of Service or Chair of the relevant organisation that such person works for the organisation.

CONCLUSION

Given the nature of what the Council does and who it can provide services for, instances of suspected money laundering are unlikely to arise very often, if at all; however we must be mindful of the legislative requirements, as failure to comply with them may render individuals liable to prosecution.

Please take prompt and proper action if you have any suspicions and feel free to consult the MLRO at any time should you be concerned regarding a matter.