Anti- Money Laundering Policy

REVIEWED: July 2014

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1. 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. Scope of the Policy

2.1 This Policy applies to all employees of the Greater Manchester Waste Disposal Authority (Authority) and aims to maintain the high standards of conduct which currently exist within the Authority 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 Authority 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 Authority Fraud and Corruption Policy and associated Whistleblowing 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 the Authority Disciplinary Policy and Procedure.

3. What is money laundering?

3.1 Money laundering means:

a) concealing, disguising, converting, transferring criminal property or removing it from the UK (section 327 of the 2002 Act), or

b) 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

c) acquiring, using or possessing criminal property (section 329), or

d) 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.

3.2 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. This Policy sets out how any concerns should be raised.

3.3 Whilst the risk to the Authority 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.

4. What are the obligations on the Authority?

4.1 Organisations in the "regulated sector" and which undertake particular types of regulated activity must:

a) appoint a Money Laundering Reporting Officer (MLRO) to receive disclosures from employees of money laundering activity (their own or anyone else's);

b) implement a procedure to enable the reporting of suspicions of money laundering;

c) apply customer due diligence measures in certain circumstances;

d) obtain information on the purpose and nature of certain proposed transactions/business relationships;

e) conduct ongoing monitoring of certain business relationships;

f) maintain record keeping and other specified procedures on a risk sensitive basis; and

g) 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.

4.2 Not all of the business of the Authority is caught by the above: it is mainly the accountancy, tax services, company and property transactions undertaken by the Authority. 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 Authority; therefore, **all staff are required to comply with the reporting procedure set out in section 6 below.**

4.3 The following sections of this Policy provide further detail about the requirements listed in **paragraph 4.1.**

5. Money Laundering Reporting Officer

5.1 The Officer nominated to receive disclosures about money laundering/terrorist financing activity within the Authority is the Finance Manager. He can be contacted as follows:

Mark Stenson
Deputy Treasurer
c/o Greater Manchester Waste Disposal Authority
Medtia Chambers
5, Barn Street
Oldham
OL1 1LP
Telephone: 0161 770 4793
Email: mark.stenson@oldham.gov.uk

5.2 In the absence of the MLRO, the Treasurer & Deputy Clerk, John Bland, is authorised to deputise for him. He can be contacted at the above address or on telephone number 0161 770 1747 (direct line) or email address of john.bland@gmwda.gov.uk.

6. Disclosure Procedure

6.1 Reporting to the Money Laundering Reporting Officer

6.1.1 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" of the information coming to your attention, not weeks or months later. Should you not do so, then you may be liable to prosecution.**

6.1.2 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:

a) full details of the people involved (including yourself, if relevant), eg name, date of birth, address, company names, directorships, phone numbers, etc;

b) full details of the property involved and its whereabouts (if known);

c) full details of the nature of their/your involvement;

d) 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;

e) 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;

f) 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 21A of the 2000 Act), or both; and

g) 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; and
- 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 him to prepare his report to SOCA, where appropriate. You should also enclose copies of any relevant supporting documentation

6.1.3 Once you have reported the matter to the MLRO you must follow any directions he 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.

6.1.4 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).

6.1.5 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.

6.2 Consideration of the disclosure by the Money Laundering Reporting Officer

6.2.1 Upon receipt of a disclosure report, the MLRO must note the date of receipt on his section of the report and acknowledge receipt of it. He should also advise you of the timescale within which he expects to respond to you.

6.2.2 The MLRO will consider the report and any other available internal information he thinks relevant e.g.:

a) reviewing other transaction patterns and volumes;

b) the length of any business relationship involved;

c) the number of any one-off transactions and linked one-off transactions; and

d) any due diligence information held.

He will also undertake such other reasonable inquiries he thinks 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.

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

a) there is actual or suspected money laundering taking place; or

b) there are reasonable grounds to know or suspect that is the case;

c) he knows 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

d) whether he needs to seek consent from SOCA for a particular transaction to proceed.

6.2.4 Where the MLRO does so conclude, then he must disclose the matter as soon as practicable to SOCA on their standard report form and in the prescribed manner, **unless** he has 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).

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

6.2.6 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.

6.2.7 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.

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

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

6.2.10 The MLRO commits a criminal offence 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 of whom he knows 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 he believes, or it is reasonable to expect him to believe, that the information will or may assist in such identification and he does not disclose this as soon as practicable to SOCA.

7. Customer due diligence procedure

7.1 Where the Authority is carrying out certain regulated business (accountancy, audit 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 £13,500) 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.

7.2 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 s/he or it is 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 staff).

7.3 In the above circumstances, staff in the relevant Unit of the Authority 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.

7.4 In the Authority, 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 Terms of Business Letters, Service Level Agreements or other written record which will record the necessary details.

7.5 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 Terms of Business Letter, Service Level 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:

a) complex or unusually large transactions;

b) unusual patterns of transactions which have no apparent economic or visible lawful purpose; and

c) any other activity particularly likely by its nature to be related to money laundering or terrorist financing.

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

7.7 Once instructions to provide regulated business have been received, and it has been established that any of **paragraphs 7.1 (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:

7.8 Internal clients:

7.8.1 Internal clients are part of the Authority. 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, identity of internal clients should continue to be checked as before by ensuring that signed written instructions on Authority headed notepaper or via email are obtained at the outset of a particular matter. Such correspondence should then be placed on the Authority'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.

7.9 External Clients

7.9.1 Most of the external clients to whom the Authority provides regulated business services are local 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 (eg designated public bodies), using the following procedure.

7.9.2 The MLRO will maintain a central file of general client identification evidence regarding the external organisations to which the Authority provide professional services. 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.

7.9.3 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 Authority'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).

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

7.9.5 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.

7.9.6 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).

7.9.7 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.

8. Ongoing monitoring and record keeping procedures

8.1 Each Directorate of the Authority 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 the their knowledge of the client, its business and risk profile.

8.2 We must also maintain records of:

a) client identification/verification evidence obtained (or references to it); and

b) 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.

8.3 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 Units of the Authority 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 7.4 to 7.6**.

9. Training

9.1 The Authority 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.

10. Risk Management and Internal Control

10.1 The risk to the Authority 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

10.2 The adequacy and effectiveness of, promotion of, and compliance by employees with, the documentation and procedures will also be monitored through the Authority's Audit Committee.

11. Conclusion

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

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

12. Review of the Policy

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

Date of last review: July 2014

1. Introduction

1.1 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.

1.2 More wide ranging obligations in respect of money laundering have therefore been imposed by the Proceeds of Crime Act 2002 (as amended) and the Money Laundering Regulations 2007 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.

1.3 As a result, certain areas of Greater Manchester Waste Disposal Authority (Authority) business are now subject to the legislative controls and the Authority is required, by law, to establish, maintain and monitor appropriate 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.

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

2. The Legal Requirements

2.1 General

2.1.1 Some parts of the anti-money laundering framework apply, potentially, to everybody whereas other parts only apply to particular organisations which are in the regulated sector or carrying out certain regulated activities

2.1.2 Some of the regulated activities specified in the legislation are relevant to the Authority's areas of work, for example:

a) the provision to other persons of **accountancy** services by a firm … who by way of business provides such services to other persons;

b) the provision of advice about the **tax** affairs of other persons by a firm … who by way of business provides advice about the tax affairs of other persons;

c) the participation in **financial** or real **property** transactions concerning:

⇒ the buying and selling of real property … or business entities;

⇒ the managing of client money, securities or other assets;

⇒ the opening or management of bank, savings or securities accounts;

⇒ the organisation of contributions necessary for the creation, operation or management of companies; or

⇒ the creation, operation or management of trusts, companies or similar structures, by a firm … who by way of business provides **legal** or notarial services to other persons;

d) the provision to other persons by way of business by a firm … of any of the [following] services….

⇒ **forming companies** or other legal persons;

⇒ acting, or arranging for another person to act:

(i) as a **director** or secretary of a company;

(ii) as a **partner** of a partnership; or

(iii) in a similar position in relation to other legal persons;

⇒ providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or arrangement;

⇒ acting, or arranging for another person to act, as:

(i) a trustee of an express trust or similar legal arrangement; or

(ii) a nominee shareholder for a person other than a company whose securities are listed on a regulated market

2.1.3 Under the 2002 Act, regulation is defined by reference to activities (as can be seen from the above list), however under the 2007 Regulations, regulation is defined by reference to the profession of relevant persons, eg:

a) auditors, insolvency practitioners, external accountants and tax advisers;

b) independent legal; or

c) trust or company service providers.

However, the practical effect is the same.

2.1.4 What is the significance of carrying out regulated activities? Under the legislation, certain offences (eg failure to report money laundering activity) may only be committed in the course of a business in the regulated sector and there are additional requirements on organisations undertaking such business to:

a) 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);

b) apply certain customer due diligence procedures where necessary;

c) obtain information on the purpose and nature of certain proposed transactions/business relationships;

d) conduct ongoing monitoring of certain business relationships (including scrutiny of transactions undertaken);

e) maintain record keeping and other specified procedures (eg internal control, risk assessment and management) on a risk sensitive basis; and

f) regularly train relevant employees.

2.1.5 Thus it is mainly the accountancy, tax and property transactions undertaken by Legal which will be formally subject to the internal procedures, more detail of which is contained later in this Guidance. It is clear these activities are not intended to be caught within the regulated sector: however, such work may bring the Authority within the regulated sector.

2.1.6 However, although the conduct of regulated activity does not apply to the AUTHORITY as a whole, **all members of staff are required to comply with the Authority'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 Customer Due Diligence Procedure and other internal procedures referred to later are only required to be followed by those engaging in regulated business as defined above.

3. 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.

3.1 Money Laundering Offences

3.1.1 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:

a) 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

b) 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.

3.1.2 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.

3.1.3 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.

3.1.4 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."

3.1.5 The broad definition of money laundering means that the Act applies to a very wide range of everyday activities within the Authority and therefore potentially anybody (and therefore any Authority employee, irrespective of what sort of Authority 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 Authority has appointed the Finance Manager as its MLRO to receive reports from employees of suspected money laundering activity. The Treasurer and Deputy Clerk is the Deputy MLRO and should be contacted regarding money laundering queries in the event that the MLRO is unavailable.

3.2 An Example of money laundering activity:

By way of example, consider the following hypothetical scenario:

A waste disposal site operative in receipt of income to pay for waste disposal charges from a third party becomes aware of, or suspects the existence of, criminal property.

3.2.1 In this scenario the waste disposal site operative 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.

3.2.2 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.

3.2.3 Defences are available if, for example, the person:

a) makes an 'authorised disclosure' under section 338 of the 2002 Act to the Serious Organised Crime Agency (SOCA) or the MLRO and SOCA give consent to continue with the transaction; such a disclosure will not be taken to breach any rule which would otherwise restrict that disclosure;

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

c) was carrying out a function s/he has relating to the enforcement of the 2002 Act or any other enactment relating to criminal conduct (or benefit from it); and

d) re section 329, acquired, used or possessed the property for adequate consideration. The Law Society Guidance states that in relation to this particular defence "The Crown Prosecution Service guidance for prosecutors states that the defence applies 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. Disbursements are also covered. The fees charged must be reasonable and the defence is not available if the value of the work is significantly less than the money received"; or

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

3.3 Possible signs of money laundering

3.3.1 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:

a) General:

- a new client;
- a secretive client: eg, refuses to provide requested information without a reasonable explanation;
- a client you have not met;
- concerns about the honesty, integrity, identity or location of a client eg a client who is not present in the area and there is no good reason

why they would instruct us, or information reveals that the client is linked with criminality;

- complex or unusually large transactions/systems;
- illogical third party transactions: unnecessary routing or receipt of funds from third parties or through third party accounts;
- the source or destination of funds differs from the original details given by the client;
- 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 (or money given on account); care will need to be taken, especially with requests for refunds eg a significant overpayment which results in a repayment should be properly
- absence of an obvious legitimate source of the funds;
- movement of funds overseas, particularly to a higher risk country or tax haven;
- providing assistance in setting up trusts or company structures, which could be used to obscure ownership of property;
- 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;
- unusual patterns of transactions which have no apparent economic, efficient or visible lawful purpose;
- the cancellation or reversal of an earlier transaction (where the client is likely to request the return of previously deposited monies;
- 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; or
- any other activity … particularly likely by its nature to be related to money laundering or terrorist financing;

b) Property Matters:

- a cash buyer;

- sudden change of buyer;
- the client's financial profile does not fit;
- 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);
- for 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;
- no clear explanation as to the source of funds along with lack of clarity as to how the client would be in a position to finance the purchase; or
- money comes in from an unexpected source.

3.3.2 Property transactions are a slightly higher risk for the Authority. For example, if the Authority agrees to sell a parcel of land to a developer or other third party, at a price that is far in excess of its estimated value, or the buyer offers to pay the full price in cash, then this may be evidence of money laundering activity.

3.3.3 Facts which tend to suggest that something odd is happening may be sufficient for a reasonable suspicion of money laundering to arise. Employees need to be on the look out for anything out of the ordinary. **If something seems unusual, stop and question it.** If you are unsure, seek guidance from the MLRO.

3.3.4 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 SOCA. The failure to report money laundering obligations, referred to below, relate also to your knowledge or suspicions of others, through your work.

3.5 <u>Failure to report money laundering offences:</u>

3.5.1 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 business in the regulated sector:

a) 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;

b) you can identify the money launderer or the whereabouts of the laundered property (or you believe, or it is reasonable to expect you to believe, that the information you have will assist you to identify the person/property); and

c) 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).

3.5.2 The Authority'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 regulated business for purposes of the legislation.

3.5.3 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 paid fees to the Authority, even if just by £1, then you would need to report that to the MLRO.

3.5.4 There are various defences, for example where you have a reasonable excuse for non-disclosure (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 Authority with appropriate training. Given the very low risk to the Authority 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.

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

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

3.5.7 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 SOCA if there is no need.

3.6 Tipping off offences

3.6.1 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/her suspicions of a money laundering offence by a client to the MLRO, may commit a tipping off offence if s/he then reports his/her 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.

3.6.2 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.

3.7 Prejudicing an Investigation offence

3.7.1 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).

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

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

a) you did not know or suspect that the disclosure was likely to be prejudicial; or

b) you are a professional legal adviser and the disclosure was:

⇒ to a client (or his representative) in connection with the giving of legal advice; or

⇒ 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.

3.8 Consideration of disclosure report by MLRO

3.8.1 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, and he can identify the money launderer or the whereabouts of the laundered property (or he believes, or it is reasonable to expect him to believe, that the information he has will assist in identifying the person/property), then he must make a report as soon as practicable to SOCA 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 SOCA for any acts/transactions, which would otherwise amount to prohibited acts under section 327 – 329 of the 2002 Act, to proceed.

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

a) specific consent;

b) no refusal of consent during the notice period (seven working days starting with the first working day after the MLRO makes the disclosure); or

c) 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).

3.8.3 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, he can identify the money launderer or the whereabouts of the laundered property (or he believes, or it is reasonable to expect him to believe, that the information he has will assist in identifying the person/property) and he does not disclose

this as soon as practicable to SOCA.

3.9 Relevant Guidance

3.9.1 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 Conduct Agency, 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.

4. Internal Procedures

4.1 As mentioned earlier, the Money Laundering Regulations 2007 impose specific obligations on those carrying out regulated business, requiring them to:

a) obtain sufficient knowledge to ascertain the true identity of clients in certain circumstances, by applying **customer due diligence measures**;

b) know the intended nature of business relationships and undertake ongoing monitoring of them (eg scrutiny of transactions for anything unusual);

c) maintain **record keeping procedures** (eg for evidence of identity obtained, details of transactions undertaken, for at least 5 years afterwards); and

d) establish and maintain other appropriate and risk-sensitive **policies and procedures** re reporting of concerns, internal control, risk assessment and management, the monitoring and management of compliance with, and the internal communication of, such policies and procedures, in order to prevent activities related to money laundering and terrorist financing.

4.2 These procedures are contained in the Anti-Money Laundering Policy and further explanation of them is given below. Failure to comply with the above requirements is a criminal offence for which you may be liable to imprisonment for up to 2 years, a fine or both. The Court will take in to account whether any relevant guidance was followed.

4.3 *Only those staff dealing with regulated business need comply with these procedures.*

5. Customer Due Diligence Procedure

5.1 Where the Authority is carrying out regulated business (accountancy, tax, audit and certain legal services – see before) and:

a) forms an ongoing business relationship (a business, professional or commercial relationship which is expected to have an element of duration) with a client; or

b) undertakes an occasional transaction (a transaction other than as part of a business relationship) amounting to 15,000 euro (£11,000 approx) or more, whether carried out in a single operation or several linked operations ; or

c) suspects money laundering or terrorist financing (cannot apply simplified due diligence in this scenario); or

d) doubts the veracity or adequacy of documents, data or information previously obtained for the purposes of identification or verification;

then the Customer Due Diligence Procedure must be followed before any business is undertaken for that client. Verification may be carried out during the establishment of the business relationship where this is necessary not to interrupt the normal conduct of business and there is little risk of money laundering/terrorist financing occurring, provided that the verification is completed as soon as practicable after contact is first established.

5.2 Due diligence measures should also be considered and applied as necessary at other appropriate times to existing clients.

5.3 Due diligence essentially means identifying the client and verifying their identity on the basis of documents, data or information obtained from a reliable and independent source and obtaining information on the purpose and intended nature of the business relationship.

5.4 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 Authority).

5.5 Where there is a beneficial owner who is not the client, adequate measures should be taken, on a risk-sensitive basis, to verify the beneficial owner's identity, so that you are satisfied that you know who they are, 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. In terms of clients for whom Finance and Legal provide services, "beneficial owner" would include, re bodies corporate (eg our public Authority clients), any individual who exercises control over the management of the body (e.g. Clerk to the Authority).

5.6 **However**, the legislation does allow organisations to vary customer due diligence and monitoring according to the risk of money laundering or terrorist financing which depends on the type of customer, business relationship, product or transaction. This recognises that not all clients present the same risk. The law states that particular care must be taken, and enhanced due diligence carried out, (eg obtaining additional evidence of identity or source of funds to be used in the relationship/transaction) where:

a) the client is not physically present when being identified as it presents a higher risk situation. This is always likely to be the case for the Authority, given that its regulated business can only be undertaken for other local authorities and designated public bodies (not individuals) and therefore instructions will usually be given in writing;

b) the client is a "politically exposed person" (an individual who at any time in the preceding year has held a prominent public function outside of the UK, and EU or international institution/body, their immediate family members or close associates). This is unlikely to ever be relevant to the Authority but the provision must be included in local procedures;

5.7 Conversely, where there is a low risk of money laundering or terrorist financing, simplified due diligence measures may be applied: under the legislation, there is **no need** to apply customer due diligence measures where the client is a **UK public Authority.** Given that the Authority is limited in who it can act for/provide services to, and most of these are public authorities or designated public bodies under the Local Authorities Goods and Services Act 1970, most clients will be covered by the exemption.

You will note, however, that the Authority's Anti-Money Laundering Policy advocates that low level identity checks should continue to be made as specified in the Policy.

6. Satisfactory evidence of identity

6.1 Satisfactory evidence is that which:

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

b) does in fact do so.

6.2 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.

6.3 You will see, however, that the Authority's Customer Due Diligence Procedure provides for only the most basic of identity checks:

a) for internal clients, signed, written instructions on Authority headed notepaper or an email on the internal email system at the outset of a particular matter; and

b) for external clients:

⇒ a 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.

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

6.5 The following factors suggest a minimum level client identification and due diligence procedure for the Authority (in practice, Finance and Legal Services) is appropriate:

a) for internal clients:

⇒ we all work for the same organisation and therefore have detailed awareness of individuals and their location through previous dealings;

b) for external clients:

⇒ the Authority, 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; and

⇒ most are repeat clients, well known to us in terms of people and the business address.

6.6 The Authority therefore has a stable client base.

c) generally:

⇒ we know most of our clients and those through whom they are acting - there is no, or very little, doubt as to their identity;

⇒ regulated business activities undertaken are provided for the Authority or for clients who are UK public authorities/ designated public bodies;and

⇒ we are not in private practice and are therefore subject to tight and prescriptive public sector controls eg:

d) the Authority's Treasury Management arrangements are carried out in accordance with CIPFA codes of practice;

⇒ the majority of the Authority's income is received from other public service organisations or government bodies;

⇒ the Authority does not carry out significant trading activity which would generate a large cash income;

⇒ through its Financial Procedure Rules the Authority has placed a maximum limit of £10,000 on the amount of cash income it will accept – anything above that threshold should be viewed as potentially suspicious; and

⇒ we are not large, city firms of lawyers and accountants, with international client bases.

6.7 The Customer Due Diligence 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:

a) checking the organisation's website to confirm the identity of key personnel, its business address and any other details;

b) conducting an on-line search via Companies House to confirm the nature and business of the client and to confirm the identities of any directors;

c) attending the client at their business address;

d) a search of the telephone directory; or

e) asking the key contact Officer and/ or any individual who exercises control over the management of the body (e.g. the Clerk to the Authority) to provide evidence of their personal identity and position within the organisation, for example:

⇒ Passport;

⇒ photocard driving licence;

⇒ birth certificate;

⇒ medical card;

⇒ bank/building society statement (but not if used to prove address and no older

than 3 months);

⇒ National Insurance number; or

⇒ signed, written confirmation from their Head of Service or Chair of the relevant organisation that such person works for the organisation.

6.8 If such additional evidence is obtained, then copies should be sent to the MLRO for his central client identification file.

7. Conclusion

7.1 Given the nature of what the Authority 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 personally liable to prosecution.

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

Reviewed: July 2014