

## WARWICK DISTRICT COUNCIL MONEY LAUNDERING POLICY

- 1.1 Money laundering is the concealing, disguising, converting, transferring or removing the proceeds of crime. This can be characterised as making “dirty” money “clean”; i.e. giving it the appearance of having come from a legitimate source. Money laundering can also be linked to terrorism. In such cases the process is often reversed; i.e. “clean” money (say from a apparently bona fide charity) is diverted into “dirty” purposes (for example the funding of a terrorist operation).
- 1.2 New Money Laundering Regulations 2003 (the Regulations), were enabled by the European Communities Act 1972 and the Financial Services and Markets Act 2000. These Regulations have the effect of widening the number of organisations responsible for actively taking steps to prevent money laundering. In addition, these regulations run alongside The Proceeds of Crime Act 2002 (POCA) which extends the criminal sanctions for money laundering to the proceeds of any criminal conduct; i.e. in respect of *any* crime, no matter how minor, and for *any* amount, however small.
- 1.3 The Proceeds of Crime Act 2002 was designed to consolidate existing legislation on the confiscation of the proceeds of crime and law relating to money laundering. Additional responsibilities were added and the definition of the regulated sector was extended. The definition of criminal conduct was widened to all crime and a new offence of failing to report was created.
- 1.4 The offences under the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003 are personal and therefore officers have a personal liability should they fail to report a suspicion of money laundering to the MLRO or they ‘tip off’ the suspect that they are under suspicion. The MLRO has a personal duty to inform the National Crime Intelligence Service should he think that the suspicion is well founded. These are criminal offences.
- 1.5 The legal requirement to take *active* steps to prevent money laundering applies to “regulated businesses” and “high value dealers”. This requirement only applies to specified “regulated activities” carried out by such organisations.
- 1.6 Regulated businesses are required to appoint a money laundering reporting officer and have procedures to prevent, detect and report money laundering. Failure to do this can lead to civil and criminal penalties.
- 1.7 Regulated businesses include professional advisers such as accountancy firms, legal practices, financial advisers, and banks. To fall within the regulations such professional services have to be provided by way of a business. The Council is a user of such services but does not provide these to others by way of a business; hence the Council is not a regulated business. A list of regulated businesses is shown at [Appendix A](#).

- 1.8 A high value dealer is any business which is prepared to accept payment in cash for the equivalent of €15,000 or more for any single transaction in goods. “Cash” refers to notes, coins and travellers cheques, but not to “normal” cheques. High value dealers have similar obligations to regulated businesses, but are also required to register with HM Customs and Excise.
- 1.9 It is considered that the Council should ensure that it does not become a high value dealer as this would require the establishment of systems to verify the identity of customers making payments of €15,000 or more, to ensure the retention of records, to train staff in these procedures, and to monitor that all new employees are trained. Furthermore the Council would have to be registered with Customs and Excise as a high value dealer, once registered this registration would have to be maintained and the Council might be subject to compliance inspections. It is considered that this would be onerous, and the total cost would be disproportionate to the low number of cash transactions in excess of €15,000.
- 1.10 The simplest way to do this is to put in place procedures whereby the Council is not prepared to accept cash payments for large sums, whether for goods, services or the payment of local taxes. It is suggested that cash payments should not be accepted in excess of £9,000; a threshold that equates to €15,000, plus a margin of error for exchange rate fluctuations.
- 1.11 Despite ensuring that it is not a regulated business, or high value dealer, the Council should still consider whether it is at risk of being involved in money laundering; the most likely consequence of this would be damage to its reputation, although it is possible to conceive of situations where individual officers could be subject to criminal sanctions.
- 1.12 Whilst not required to take active measures to prevent money laundering, non regulated businesses still have legal obligations. Principally these are not to undertake transactions that are known or suspected to involve money laundering, to report suspicions of money laundering in respect of terrorism, and not to do anything that would “tip off” the suspect counterparty, or impede any investigation. In addition, if a money laundering reporting officer is appointed as a matter of good practice, (i.e. not as a result of the regulations), it is a criminal offence for that officer not to report suspect transactions.
- 1.13 The risk of the Council’s involvement in money laundering is real, and criminals actively seek out organisations with weak controls in order to create new opportunities for money laundering. It is considered, however, this risk will be low, provided the Council takes appropriate steps.
- 1.14 It is recommended that staff who handle cash, should receive a basic briefing on how to avoid unwitting involvement in money laundering. This would emphasise Council-wide and departmental procedures. It is considered that this could be delivered through team briefings. A guidance note for staff handling cash payments is attached at [Appendix B](#).

- 1.15 This briefing would emphasise the need to take reasonable steps to establish the identity of persons with whom we transact high value business, and to understand what would be the nature and amount of transactions that one might reasonably expect them to undertake with the Council; transactions that do not comply with these expectations should be regarded as suspicious. [Appendix C](#) lists some indications of money laundering, or other suspicious transactions.
- 1.16 Although not actually required (if we do remain outside the Regulations) it is recommended that a Money Laundering Reporting Officer (MLRO) be appointed. The role of this officer should be to offer advice and guidance to staff, to maintain a general oversight of money laundering matters, and to progress any matters of concern with the appropriate authorities.
- 1.17 Professional guidance issued by accountancy bodies, and others charged with professional oversight recommends that the MLRO should be a senior officer, with the authority to examine all records within the organisation.
- 1.18 Whilst the MLRO may work through others, the responsibilities cannot be delegated. In a similar vein, the MLRO should be the person who determines the action to be taken when suspicions arise. Being MLRO would fit well with the Head of Finance's role.
- 1.19 So long as the Council undertakes no regulated activities the duty of the MLRO is only to report instances when the possibility of money laundering is actually known or suspected cases of money laundering; i.e. there is no legal liability for oversights due to honest misjudgement.
- 1.20 In the absence of regulated activities, there is no legal requirement for the Council to establish a formal framework to prevent and detect money laundering.
- 1.21 Measures to prevent money laundering will also diminish the Council's exposure to irregularity and fraud, by ensuring that the transactions that it enters into are bona fide. This will, for example, protect against such risks as credit card fraud and identity theft.
- 1.22 The Council is required to amend its Code of Financial Practice and Treasury Management Policy to reflect the new regulations.
- 1.23 Whilst at present the public sector provision of services, in-house, are not caught by the Regulations, there may be a number of areas in the future where local authority activities may be caught by the provisions. Examples could be the provision of accountancy services to charities or other small community groups, audit services and conveyancing. The new charging and trading provisions of the Local Government Act 2003 may well give more weight to the argument that a Council is acting 'in business'. It is therefore prudent for the Council to comply with the Regulations and implement measures to prevent money laundering.

**Businesses Governed by the Money Laundering Regulations 2003**

The main activities covered by the regulations are

1. Accepting deposits;
2. Dealing in investments as principal or as agent;
3. Arranging deals in investments;
4. Advising on investments;
5. Operating a bureau de change;
6. Transmitting money (or any representation of monetary value) by any means;
7. Cashing cheques which are made payable to customers;
8. Lending;
9. Financial leasing;
10. Money transmission services;
11. Guarantees and commitments;
12. Trading for own account or for account of customers in - money market instruments (cheques, bills, certificates of deposit, etc.);
13. Participation in securities issues and the provision of services related to such issues;
14. Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings.
15. Safekeeping and administration of securities;
16. Estate agency work;
17. The provision about the tax affairs of another person;
18. The provision of accountancy services;
19. The provision of audit services to a company auditor (section 25 of the Companies Act; 1989[19]);
20. The provision of business of legal services by a body corporate or unincorporate or, in the case of a sole practitioner, by an individual and 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);
21. The provision by way of services in relation to the formation, operation or management of a company or a trust

**Dealers in High Value Goods**

Dealing in goods of any description by way of business (including dealing as an auctioneer) is also regulated whenever a transaction involves accepting a total cash payment of 15,000 euros or more.

"Cash" means notes, coins or travellers' cheques in any currency;

**PREVENTING MONEY LAUNDERING – INSTRUCTIONS FOR STAFF  
RESPONSIBLE FOR ACCEPTING CASH PAYMENTS FROM THE PUBLIC**

**Background**

The Council has reviewed its procedures in the light of the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003. To be able to continue to accept cash payments in excess of €15,000 the Council would have to introduce onerous systems and procedures, and be licensed by Customs & Excise as a “high value dealer”. The cost of these systems and obtaining a licence would not represent good value for money as the Council receives few high value payments, let alone payments of this amount.

**Council Not To Accept Cash Payments In Excess of £9,000**

Accordingly this Council will not accept payments in cash in excess of £9,000. Currently the €15,000 limit referred to above is approximately equivalent to £10,000. However, this lower limit allows for any future changes to the sterling/euro exchange rate.

Also, the Council will not accept a series of payments in cash that total £9,000 in respect of a single transaction (for example a sundry debtor bill). In practise this means that when a cash payment is received that the bill being paid should be examined to check whether the payment is a part payment of a bill of £9,000 or more.

You might explain to the customer that this is a policy adopted by the Council to prevent it unknowingly being involved in money laundering. Furthermore having looked at its cash receipts over recent years it has not received any payments of this amount, and so such payments have be treated as unusual.

**What Is Cash?**

Cash is defined as notes, coins and travellers cheques in any currency

Normal cheques payable to the Council are not “cash”, nor are payments by debit or credit card.

**Might I Commit A Criminal Offence By Mistake?**

No, so long as these guidelines are followed.

**What Should I Do If I Am Suspicious of A Customer?**

Any suspicions that a customer is involved with money laundering or the funding of terrorism should be discussed with the Council’s Money Laundering Reporting Officer ( MLRO ) , even when the payment is less than £9,000.

Some suspicion indicators are:

- If you are required to check the customers identify, is this proving difficult? Is the customer reluctant to provide details?
- Does the customer have a genuine reason for paying large sums of money in cash?
- Is the customer trying to protect the identity or the involvement of another person (especially if the cash payment is not made by the person liable to make the payment)
- Is the customer paying in used notes and/or small denominations?
- Is the source of cash known and reasonable?
- Is the transaction reasonable in the context of the normal business of the customer?
- Is the size and frequency of the transaction consistent with the normal activities of the customer?
- Has the pattern of transaction changed since the business relationship was established?

It is recognised that cashiers, and staff in similar roles, often will not have access to the information to enable them to make a judgement on these matters. Neither should they actively make enquiries, except where required to do so by this note. All that is required is to tell the Council's MLRO if suspicions are aroused on the basis of the known facts.

### **When Should I Report Suspicions?**

The cash till is not the best place to determine whether a transaction is suspicious. Often doubts may only arise after the transaction is complete. It will rarely be practical to refuse to accept small cash payments.

It will be acceptable to report suspicions after accepting payments less than £9,000. The exception would be if it was known, or actually suspected, that the transaction was connected with money laundering or the funding of terrorism. In such a case the transaction should not proceed as this could give rise to a criminal offence, and the money-laundering officer should be consulted. If this happened you would need to make an excuse. An appropriate response may be to say that large cash payments cannot be accepted because of insurance and security reasons. All such attempted payments should be reported to the MLRO at the earliest opportunity.

Where appropriate, the MLRO may submit a report to the National Criminal Intelligence Service, and this is stated in the display notice suggested later in this note. You will not normally be told whether such a report has been made but if you are then you should not disclose it to the customer (or indeed to anyone else) to avoid the risk that you commit the crime of "tipping off".

### **What If The Payee Is Very Insistent?**

You should discuss the matter with the Council's MLRO.

Where the payment is in respect of goods and services payment will not be accepted because the Council is not registered with HM Customs and Excise as a “High Value Dealer”, and it would be committing a criminal offence if it accepted the payment.

### **Display Notices**

To prevent misunderstandings it is recommended that a notice be displayed with the following words.

### **Large Cash Payments**

The Council will not accept payments of £9,000 or more in notes and coins, and neither will it accept a series of such payments totalling £9,000 or more for any one transaction.

This is to ensure that it complies with its legal obligations to prevent its unknowing involvement in money laundering.

Any transaction giving cause for suspicion will be reported to the National Criminal Intelligence Service as required by the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003.

### **Who Is The Council’s Money Laundering Reporting Officer?**

The Head of Finance is the Council’s Money Laundering Reporting Officer, but the day to day responsibility for money laundering issues lies with the Audit and Risk Manager.

**INDICATIONS OF MONEY LAUNDERING**

1. The risk factors associated with money laundering are often the same for any fraud. The list below summarises some of the key factors to be wary of in a business:
  - The presence of a dominant owner
  - Management appears to have little knowledge of the business
  - Anyone dealing in large amounts of cash
  - Poor record keeping
  - Trading with countries with weak legislation
  - Complex corporate structures with offshore jurisdictions with no apparent business reason
  - Large transactions between bank accounts
  - Reported turnover of an organisation that does not equate with its apparent size
  - Foreign travel which appears unnecessary or expensive
  - Odd patterns of trading with a customer
  - Transactions with companies whose identity is difficult to establish
  - Long delays in production of accounts, and
  - Unusual trading terms being offered
2. Dealing over the Internet where face-to-face contact is not always possible is a factor that is likely to increase the opportunities for money launderers to disguise the proceeds of crime.
3. Payments made and received by the Council should be supported by appropriate evidence that such payment is due, or should be made, for example, an invoice. Where such evidence does not exist, the transaction should be viewed with suspicion.

