Scottish Borders Council

ANTI-MONEY LAUNDERING POLICY

December 2024

Reviewed by: Treasury & Statutory Reporting Business Partner
Approved by: Integrity Group 28/01/2025
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1. POLICY STATEMENT

1.1 This statement sets out Scottish Border Council's (the Council's) policy in relation to money laundering. It has the full support of both the Council's senior management in the form of the Council Management Team (CMT) and Elected Members through the Audit Committee.

1.2 The Council takes its responsibilities to protect the public purse very seriously and is fully committed to the highest ethical standards, to ensure the proper use and protection of public funds and assets. The Council has an ongoing commitment to continue to improve its resilience to fraud, corruption (including bribery and money laundering) and other forms of financial irregularity.

1.3 The Council advocates strict adherence to its anti-fraud framework and associated policies. Whilst individual circumstances of each case will be carefully considered, in all cases there will be a zero-tolerance approach to fraud and corruption (including bribery and money laundering) in all its forms. The Council will not tolerate fraud or corruption by its councillors, employees, suppliers, contractors, partners or service users and will take all necessary steps to investigate all allegations of fraud or corruption and pursue sanctions available in each case, including removal from office, disciplinary action, dismissal, loss recovery and referral to the police and other agencies. The Council's general belief and expectation is that those associated with it (employees, members, service users, contractors and voluntary bodies) will act with honesty and integrity.

1.4 This policy is supplementary to the Council's wider Counter Fraud Policy and Strategy (the strategy), which sets out what actions the Council proposes to take over the medium-term future to continue to develop its resilience to fraud and corruption.

1.5 The policy links into, and has a synergy with, the Council's Corporate Counter Fraud Strategy 2025-2027 and the following:

- Counter Fraud Policy Statement
- Corporate Fraud Strategy 2025-2027
- Whistleblowing Procedure (contained in the Code of Conduct)

2. INTRODUCTION

2.1 The Proceeds of Crime Act (POCA) 2002 (amended by the Criminal Finances Act 2017), Money Laundering, Terrorist Financing and Transfer of Funds (Information of the Payer) Regulations 2017 (MLR 2017) and the Terrorism Act 2000 place obligations on the Council and its employees with respect to suspected money laundering.

2.2 These obligations 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. This Policy sets out how any concerns should be raised.

2.3 CIPFA (Chartered Institute of Public Finance & Accountancy) produced guidance for public sector organisations in their publication 'Proceeds of Crime (Anti-Money Laundering) Practical Guidance for Public Service Organisations' (2005).

2.4 In this guidance CIPFA recognise that the regulations related to 'relevant business' do not necessarily apply to public service organisations because their treasury management activities are largely service based. However, as the main money laundering offences and obligations apply in law to all organisations and persons in the UK, all public service organisations should "embrace the underlying principles behind the money laundering legislation". The Council is therefore required to establish internal procedures and policies to prevent and detect the use of their services for money laundering activities.

3. SCOPE

3.1 This Policy applies to all employees, including agency staff and locums, of the Council and Elected Members and aims to maintain the high standards of conduct which currently exist within the Council by preventing criminal activity through money laundering. The Policy sets out the procedures which must be followed (for example the reporting of suspicions of money laundering activity) to enable the Council to comply with its legal obligations, and the guidance provided by CIPFA.

3.2 The policy sits alongside the council's suite of documents governing counter fraud, including the Employee Code of Conduct, Members' Code of Conduct and the Anti-fraud and Corruption Strategy.

3.3 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 council's Disciplinary Policy.

4. DEFINITION OF MONEY LAUNDERING

4.1 Money laundering is the generic term used to describe the process by which criminals disguise the original ownership and control of the proceeds of criminal conduct by making such proceeds appear to have derived from a legitimate source. In other words, the process of changing 'bad' money into 'good' money to hide the fact that the money originated from criminal activity.

4.2 The following constitute the act of money laundering:

- Concealing, disguising, converting, or transferring criminal property, or removing it from the UK (section 327 of the Proceeds of Crime Act 2002); 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 (section 329).
- 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 Terrorism Act 2000).

4.3 These are the primary money laundering offences and thus prohibited acts under the legislation. A person guilty of one of the above offences will be subject to a fine or up to 14 years imprisonment, or both.

4.4 There are also secondary offences: failure to disclose any of the primary offences and tipping off.

4.5 Failure to disclose, s330 of the 2002 Act, is when you have knowledge or suspicion of money laundering and fail to inform the Money Laundering Reporting Officer ('MLRO') of your concerns.

A person commits an offence if **each of the following three conditions are satisfied**;

- they know or have reasonable grounds to suspect that another person is engaged in money laundering;
- the information or knowledge in which they have grounds for suspicion is received in the course of business in the regulated sector; and
- the required disclosure is not made as soon as is practicable after the information comes to them.

A person does **not** commit an offence under this section if:

- there is a reasonable excuse for not disclosing this information or other matter;
- they provide professional legal advice and the information came to them in privileged circumstances; and
- they do not know or suspect money laundering, or have not been provided with such training as specified by the Secretary of State.

The offence applies not only to serious proceedings, but to dealings with proceeds of all crimes. There is a separate offence if the MLRO fails to disclose an offence they have been made aware of, s331 of the 2002 Act. A person guilty of either of these offences will be subject to a fine or up to 5 years imprisonment or both.

4.6 Tipping off, s333 of the 2002 Act, is where someone informs a person or people who are, or are suspected of being involved in money laundering, in such a way as to reduce the likelihood of their being investigated or prejudicing an investigation. A person guilty of this offence is subject to a fine or up to 5 years imprisonment or both.

4.7 Duty to report Regulation 30A (3) Money Laundering and Terrorist Financing (Amendment) Regulations 2019 state if you have knowledge of a discrepancy between information held and that held by the Registrar of Companies, particularly around a person with significant interest which is factually incorrect, the discrepancy must be reported to Companies House.

4.8 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 or do nothing about it. This policy sets out how any concerns should be raised.

4.9 Money laundering is the process of channelling 'bad' money into 'good 'money to hide the fact the money originated from criminal activity. Money laundering often occurs in 3 steps: first, cash is introduced into the financial system by some means ('placement'), the second involves a financial transaction to camouflage the illegal source ('layering'), and the final step entails acquiring wealth generated from the transactions of the illicit funds ('integration'). An example is where illicit cash is used (placed) to pay for the annual non-domestic rates on a commercial premises (possibly also a large overpayment), and then within a very short time the property is vacated (layering). A refund is made to the individual from the council, 'integrating' the source of the money.

4.10 Most money-laundering offences concern far greater sums of money since the greater the sum of money obtained from a criminal activity, the more difficult it is to make it appear to have originated from a legitimate source or transaction.

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

4.12 A key requirement is for employees to promptly report any suspected money laundering activity to the MLRO.

The Terrorism Act 2000 as amended

4.13 The offences under the Terrorism Act 2000 largely mirrors the money laundering offences under the Proceeds of Crime Act 2002 (the 2002 Act).

4.14 The terrorism finance offences are each punishable by up to 14 years imprisonment or fine or both. The offences are:

- fundraising, receiving or providing money or other property knowing or having reasonable cause to suspect that it will or may be used for the purpose of terrorism
- using or possessing money or other property knowing or having reasonable cause to suspect that it will or may be used for the purpose of terrorism
- entering into or becoming concerned in an arrangement as a result of which money or other property is made available to another while having reasonable cause to suspect it will or may be used for the purposes of terrorism
- a separate terrorist money laundering offence is committed by a person who enters into or becomes concerned in an arrangement which facilitates the retention or control of terrorist property by concealment, removal form the jurisdiction, transfer to nominees or in any other way

4.15 The Money Laundering Regulations (MLR) 2017 imposes new regulatory steps that must be taken into account by the council when entering into money transactions to prevent the money laundering and terrorism financing.

4.16 It is an offence under Regulation 86 of the MLR 2017 to make a reckless statement in the context of money laundering or terrorism financing which is false or misleading in relation to the due diligence requirements of the MLR 2017. On conviction a person is liable to a fine or 2 years imprisonment or both.

5. WHAT ARE THE OBLIGATIONS ON THE COUNCIL?

5.1 Organisations conducting "relevant business" must:

- appoint a Money Laundering Reporting Officer ("MLRO") to receive disclosures from employees of money laundering activity (their own or anyone else's);
- implement a procedure to enable the reporting of suspicions of money laundering;
- maintain client identification procedures in certain circumstances; and
- maintain record keeping procedures.

5.2 Not all of the council's business is "relevant" for the purposes of the legislation. It is mainly the accountancy and audit services carried out by the financial service functions within the council and the financial, company and property transactions undertaken by Legal Services. However, the safest way to ensure compliance with the law is to apply it to all areas of work undertaken by the Council; therefore, all staff are required to comply with the reporting procedure set out in the Disclosure Procedure section below.

5.3 The Council’s Code of Conduct is designed to protect individuals when making a disclosure from any fear of victimisation or harassment.

5.4 The Council has appointed a nominated officer – **the Money Laundering Reporting Officer (MLRO).** The purpose of this role is to act as a point of contact to receive and investigate reports about suspected and known instances of money laundering activity involving the Council’s services. The officer nominated to receive disclosures about money laundering activity within **the Council is the Chief Officer – Finance and Procurement**. In the absence of the MLRO, please contact the Director of Finance.

5.5 Reports can be made by staff, members of the Council, contractors, the public, the Police, or any other related party or partner. Once a report is received, it is then for the MLRO to investigate where necessary and decide whether there are reasonable grounds for suspicion. Should the MLRO feel it is warranted, a report will be made to the National Crime Agency (NCA) by way of a Suspicious Activity Report (SAR) form, which can be submitted using the secure SAR online system on the NCA website.

5.6 Submitting a SAR to NCA is a statutory requirement if there are grounds to do so. If there is no actual knowledge that money laundering is taking place however, or there are no reasonable grounds for suspicion, then the nominated officer (MLRO) does not commit an offence by not making a report to NCA.

5.7 Whilst the risk to the Council of contravening the legislation is low, it is very important that all members of staff are familiar with their legal responsibilities. For those staff affiliated to a professional body (e.g. accountants and lawyers) there is also the risk of disciplinary action being taken by the respective body’s Disciplinary Committee.

6. REPORTING YOUR SUSPICIONS TO THE MLRO

6.1 It is not possible to give a definitive list of ways in which to spot money laundering, but facts which tend to suggest that something odd is happening may be sufficient for a reasonable suspicion of money laundering to arise.

6.2 However, in providing guidance the National Crime Agency has produced a list of possible 'indicators of suspicion' for money laundering activity:

- Is the person's behaviour unusual in the circumstances?
- Has the person refused to supply any form of identification and if so, why?
- Is the activity unusual in itself?
- Is the activity unusual for the customer?
- Do I have other knowledge which leads me to believe the customer or activity is criminal?
- Do I think the property may be criminal?

6.3 In developing this guide the list below provides examples relevant to the Scottish Borders Council activity, in which money laundering could be taking place:

- Payment of a substantial sum in cash (over £5,000) by a single client in a single transaction or over a short period of time. Generally, staff in the Council who collect cash payments are asked to provide the details of any cash transaction over £5,000 to the MLRO so that precautionary checks can be performed.
- Overpayments or duplicate payments made by a client followed by a refund, or a request for a refund.
- Purchase of land and buildings re-sold within 3-12 months.
- Purchase of council assets re-sold within 3 months.

7. THE MONEY LAUNDERING REPORTING PROCEDURE

7.1 All cases where there are genuine reasons for suspicion will be investigated, and staff should contact the MLRO as soon as there is any suspicion that the Council's services may be being used to launder money.

7.2 In the first instance (and where possible) you should contact the MLRO at a time you will be free to discuss your concerns in confidence. Where it is deemed necessary, and is requested by the MLRO, this discussion should be followed by your submission of a Money Laundering Reporting Form (MLRF) provided in appendix 2. Where practical this must be submitted the same day as the initial telephone call.

7.3 The MLRO will communicate with your line manager/Chief Officer/ Service Director if, and when, necessary. Having raised concerns, you must not take any further action without the expressed permission of the MLRO, as this may hamper the investigation process. You should also be aware of the need for confidentiality in relation to the suspected and/or known instances of money laundering. You should not do anything that may "tip off" individuals suspected of being involved.

7.4 The MLRO has a duty to consider your submission promptly and undertake any investigation as necessary prior to deciding whether to contact National Crime Agency or another relevant Law Enforcement Agency (LEA). If a disclosure is made in the form of a request for consent (prior to a prohibited act occurring) the MLRO may need to ask National Crime Agency or Law Enforcement Agency for consent. The MLRO cannot then grant consent until receiving this back from National Crime Agency unless the 7 working day notice period for receiving a reply to a request for consent has expired.

7.5 The MLRO must maintain records of reports received and disclosures made, so that they may be used as evidence in any subsequent investigation by appropriate agencies. The records must be capable of providing an audit trail that identifies the client and the relevant transaction. All such information will be held in a confidential file for a minimum of 5 years. The MLRO will also maintain a confidential log of activities, including details of the checks made on cash transactions over £5,000 – as notified to the MLRO by cashiers and other teams receiving large cash payments.

8. ENSURING THE POLICY IS FOLLOWED

8.1 The Integrity Group (Corporate Fraud Steering Group) provides guidance and directs counter fraud activity across the Council. The activity of this group includes raising fraud awareness to prevent rather than detect fraudulent activity, including money laundering.

8.2 Service Directors are responsible for ensuring that their services remain free from fraudulent activity, including the regular completion of fraud risk assessments.

8.3 All Service Directors must ensure that these procedures are brought to the attention of all staff.

8.4 Awareness training will be provided for those staff in high risk roles, where they are more likely to experience possible signs of money laundering. This will be coordinated by the MLRO and will mainly be done using E Learning modules.

8.5 Staff who fail to follow the rules and procedures laid out will be in breach of the Council's rules and could as such be subject to disciplinary procedures, as well as potentially being criminally liable and face prosecution. Please see additional information in the following appendices.

- Appendix 1: Responsibilities Regarding Making a Disclosure
- Appendix 2: Money Laundering Reporting Form (MLRF)

9. RISK MANAGEMENT AND INTERNAL CONTROL

The risk to the council of contravening the anti-money laundering legislation will be assessed on a periodic basis and the adequacy and effectiveness the policy will be reviewed considering such assessments.

Client identification

You must follow the client identification procedure below before undertaking any business where the council is carrying out business that could be deemed to be 'relevant' or business to which any of the following apply:

- forms an ongoing business relationship with a client
- undertakes a one-off transaction involving payment by or to the client of £5,000 or more
- undertakes a series of linked one-off transactions involving total payment by or to the clients of £5,000 or more
- it is known or suspected that a one-off transaction (or a series of them) involves money laundering
- Satisfactory evidence of identity establishes that the client is who they claim to be. This applies to existing clients if evidence is not already on file, as well as new ones. In all cases, you must retain the evidence for at least 5 years from the end of the business relationship or transactions.
- Where satisfactory evidence of identity is not available the business arrangement or one off transaction should not proceed.

Where the client is acting or appears to be acting for someone else, you must also take reasonable steps to establish the identity of that other person.

The law states that particular care must be taken when the client is not physically present when being identified.

Procedure

For all clients there must be a signed, written instructions on their organisation's headed paper at the outset of the business relationship. Additional evidence must also be in place, for example:

- check the organisation's website to confirm the identity of personnel, its business address and any other details
- meet the client at their business address
- confirm that the organisation is included in the telephone directory
- ask the key contact officer to provide evidence of personal identity and position within the organisation (for example passport, photo ID card, driving licence)
- signed, written confirmation from an appropriate senior person in their organisation confirming that they work for the organisation and are empowered to conduct this type of transaction
- Further advice on documentation requirements can be sought from the council's Legal team.

Activities carried out by the council that could be deemed as relevant under the acts and regulations:

- provision 'by way of business' of legal services which involves participation in a financial or real property transaction
- provision 'by way of business' of services which involve the formation, operation or management of a company or trust
- dealing in goods of any description 'by way of business' whenever a transaction involves accepting a total cash payment of £5,000 or more
- dealing in and managing investments 'by way of business'

Please note that unlike the reporting procedure, the client identification procedure is restricted to those operating relevant business, i.e. Financial Services and Legal Services.

Further Information

Further information relating to the anti-money laundering policy can be found at the following links:

- National Crime Agency (NCA)
- Money Laundering, Terrorist Financing and Transfer of Funds (Information of the Payer) Regulations 2017
- Terrorism Act 2002
- CIPFA Guidance on Money Laundering
- Proceeds of Crime Act 2002
- Bribery Act 2010
- Criminal Finance Act 2017

10. REVIEWING THE ANTI-MONEY LAUNDERING STRATEGY

10.1 Internal Audit undertakes to look at all control frameworks in all planned audits including money laundering by substantive testing of transactions.

10.2 The Statutory Reporting and Treasury department will review this policy on an annual basis. Next Review due – January 2027.

Appendix 1

Responsibilities Regarding Making a Disclosure

Reporting by staff to the Money Laundering Reporting Officer

1. Staff members must:

(a) Report their suspicions or knowledge of money laundering activity;
(b) Retain full documentation about the transaction;
(c) Not arouse suspicion that they are concerned;
(d) Not tip off any persons involved or suspected to be involved.

Consideration of disclosure by the Money Laundering Reporting Officer

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

3. The MLRO will consider the report and any other available internal information they think is relevant and undertake any reasonable inquiries they think is appropriate in order to ensure that all available information is taken into account in deciding whether a report to the National Crime Agency (NCA) is required. The MLRO may also need to discuss the report with you.

4. Where the MLRO concludes that it is necessary to make a disclosure, they must disclose the matter as soon as practicable to the NCA on their standard report form (SAR) and in the prescribed manner. The only exception to this is where it is felt that there is good reason for non-disclosure to the NCA. An example of this would be if a lawyer wished to claim legal professional privilege for not disclosing the information. Consideration of disclosures by NCA and Law Enforcement Agencies (LEA).

5. Where an internal report is made to the MLRO before a prohibited act (an act of money laundering), and a SAR is made to NCA or another Law Enforcement Agency, the MLRO is not allowed to give consent to the act until they receive consent from NCA that this can go ahead. The exception to this is where the Notice Period for reply has expired. The Notice Period runs for 7 working days beginning the day after the report is received.

Appendix 2

This form should be returned to lizzie.turner@scotborders.gov.uk

REPORT TO MONEY LAUNDERING OFFICER	
Staff members' name	
Title/Department	
Phone	
Email	
Details of Suspected Offence	
Names and addresses of persons/company involved (if a company the nature of their business)	
Transaction details including: location, value, timing of activity	
Nature of suspicions	
Has any investigation been undertaken?	
Have you discussed your suspicions with someone else – please provide details.	
Signed and dated	
For Completion by the MLRO	
Date received	
Date acknowledged	
Unique reference number	
Are there reasonable grounds for suspecting money laundering?	
If yes, confirm date of report to National Crime Agency.	
Date consent given to employee for transaction to proceed	
Categories	1.Overpayment 2. Refund 3.Debt/charge 4. Cashier error 5.House or Asset resale within 3 months 6.Other
Signed and dated	
THIS REPORT TO BE RETAINED FOR AT LEAST FIVE YEARS	