

	<p><b>Standards Committee</b> 21<sup>st</sup> February 2006</p> <p><b>Report from the Director of Finance and Corporate Resources</b></p>
For Note	Wards Affected: ALL
<p><b>Money Laundering</b></p>	

## 1 Summary

- 1.1 This report details the response of Brent Council to the Proceeds of Crime Act (POCA) 2002 and the Money Laundering Regulations 2003.

## 2 Recommendations

- 2.1 Members are asked to note the response.

## 3.0 Detail

- 3.1 Money laundering is the term used for offences involving the proceeds of crime or terrorist funds. This may cover concealing, converting, transferring or removing criminal property. It may also cover a situation where an individual becomes involved in an arrangement which they know or suspect facilitates the acquisition, retention, use or control of criminal property by or on behalf of another individual or group of individuals.
- 3.2 The Proceeds of Crime Act (POCA) consolidated, updated and reformed criminal law in the UK with regard to money laundering. The Act defined money laundering and the offences relating to it, created mechanisms for investigating and recovering the proceeds of crime, and set out reporting obligations on individuals and organisations. The Money Laundering Regulations are concerned with measures to restrict the opportunities for money laundering in relevant businesses by ensuring that there are appropriate systems of recording, reporting and training.

### **How does this apply to Brent?**

- 3.3 CIPFA, the public services accountancy body, has issued advice as follows:-
- a) The Money Laundering Regulations do not apply to public authorities as they are intended for businesses operation in the financial services industry regulated by the Financial Services Authority or HM Revenue and Customs. The

exceptions might be where the authority is undertaking an arms length business or doing substantial quantities of work on a commercial basis.

- b) There should be procedures in place that enable the reporting of suspicions to a named individual.
- c) Although public authorities are not required to register with HM Revenue and Customs as high value dealers because councils are not in existence to sell services, some controls are required to limit cash payments to less than £10,000 so that there is less opportunity to launder money.

3.4 Brent has responded to the advice in three ways. First, the Borough Solicitor has established procedures within Legal and Democratic Services for the reporting of suspected money laundering or fraudulent activities (see Appendix 1 for Legal and Democratic Services Policy). The Borough Solicitor is nominated as the Money Laundering Reporting Officer for Legal and Democratic Services.

3.5 Second, the Director of Finance and Corporate Resources has issued Financial Regulations as follows:-

- a) The Director of Finance and Corporate Resources is the nominated officer to whom should be reported information about potential crimes or instances / suspicions of money laundering.
- b) Staff should not accept cash payments in excess of £10,000.

3.6 Finally, the area of treasury management could be particularly vulnerable to money laundering, as the saga of BCCI (Bank of Credit and Commerce International) makes clear. Brent will only borrow from, and lend to, properly regulated authorities who are either authorised by the Bank of England, or are public authorities or building societies that are regulated by other bodies. This is reflected in the Council's Treasury Management Strategy. The Council also uses stringent credit ratings issued by appropriate bodies to ascertain the credit worthiness of other financial institutions.

#### **4.0 Financial Implications**

4.1 These are in the body of the report.

#### **5.0 Staffing Implications**

5.1 There are no staffing implications

#### **6.0 Legal Implications**

6.1 None arising.

#### **7.0 Diversity Implications**

7.1 The proposals in this report have been subject to screening and officers believe that there are no diversity implications.

## **8.0 Background Information**

CIPFA - Proceeds of Crime (Anti-Money Laundering) – Practical Guidance for  
Public Service Organisations  
Brent – Treasury Management Practices

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**BRENT LEGAL AND DEMOCRATIC SERVICES**

**ANTI-MONEY LAUNDERING & MORTGAGE FRAUD POLICY**

**1.0 INTRODUCTION**

1.1 There have recently been significant changes to the legislation concerning money laundering (the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003), which have broadened the definition of money laundering and increased the range of activities caught by the statutory framework. The new 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.

**2.0 SCOPE OF THE POLICY**

2.1 This Policy applies to all members of Legal and Democratic Services. The Policy sets out the procedures which must be followed (for example the reporting of suspicions of money laundering activity) to enable Legal and Democratic Services to comply with its legal obligations.

2.2 Further, this Policy has been produced in order to comply with the requirements of revised Lexcel 2004 in respect of both the need for a money laundering policy and a mortgage fraud policy.

**3.0 WHAT IS MONEY LAUNDERING?**

3.1 Money laundering means:

- concealing, disguising, converting, transferring criminal property or removing it from the UK (section 327 of the Act);
- 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);
- acquiring, using or possessing criminal property (section 329);

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.

3.3 The following are just some random examples of situations that might give cause for concern and possible application of this anti-money laundering and mortgage fraud policy :

- Apparently destitute purchasers in a right to buy sale produce cash funds to purchase, with no deposit;

- You are asked to send completion money on a purchase to an overseas bank account;
- Letters are received informing that a tenant is getting funds from his drug dealer son;
- You are informed that a family claiming benefit clearly have substantial sums.

3.3 Whilst the risk of contravening the legislation in practice will be low, ***it is extremely important that all employees of Legal and Democratic Services are familiar with their legal responsibilities: serious criminal sanctions may be imposed for breaches of the legislation.***

#### **4.0 WHAT ARE THE OBLIGATIONS ?**

4.1 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.

4.2 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 Financial Services and the financial, company and property transactions undertaken by Legal Services.

#### **5.0 THE MONEY LAUNDERING REPORTING OFFICER**

5.1 The officer nominated to receive disclosures about money laundering activity within the Legal and Democratic Services is the Borough Solicitor and Monitoring Officer of the Council, Terry Osborne (hereafter to be referred to as the MLRO)

5.2 In the absence of the MLRO, the Deputy Borough Solicitor, Debra Norman, is authorised to deputise for her.

#### **6.0 DISCLOSURE PROCEDURE**

##### **Reporting to the Money Laundering Reporting Officer**

6.1 Where you know or suspect that money laundering activity is taking or has taken place, or become concerned that your involvement in a matter may amount to a prohibited act under sections 327 – 329 of the Act, 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.**

6.2 The report must include as much detail as possible, for example:

- Full details of the people involved (including yourself, if relevant), eg name, date of birth, address, company names, directorships, phone numbers, etc;
- Full details of the nature of their or your involvement;
  - If you are concerned that your involvement in the transaction would amount to a prohibited act under sections 327 – 329 of the Act, then your report must include all relevant details, as you will need consent from the National Criminal Intelligence Service (“NCIS”), 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.
  - 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 eg a completion date or court deadline;
- The types of money laundering activity involved:
  - if possible, cite the section number(s) under which the report is being made eg a principal money laundering offence under section 327 – 329 of the Act, or general reporting requirement under section 330 of the Act, or both;
- 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;
  - Why, exactly, you are suspicious – the NCIS 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 the NCIS, where appropriate. You should also enclose copies of any relevant supporting documentation

6.3 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 the NCIS. Simply report your suspicions to the MLRO who will refer the matter on to the NCIS if appropriate. All members of staff will be required to co-operate with the MLRO and the authorities during any subsequent money laundering investigation.

6.4 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 the NCIS 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”.

6.5 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.

## **Consideration of the disclosure by the Money Laundering Reporting Officer**

- 6.6 Upon receipt of a disclosure report, the MLRO must note the date of receipt on her section of the report and acknowledge receipt of it. She should also advise you of the timescale within which she expects to respond to you.
- 6.7 The MLRO will consider the report and any other available internal information she thinks relevant eg:
- reviewing other transaction patterns and volumes;
  - the length of any business relationship involved;
  - the number of any one-off transactions and linked one-off transactions;
  - any identification evidence held;
- and undertake such other reasonable inquiries she thinks appropriate in order to ensure that all available information is taken into account in deciding whether a report to the NCIS 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.
- 6.8 Once the MLRO has evaluated the disclosure report and any other relevant information, she must make a timely determination as to whether:
- there is actual or suspected money laundering taking place; or
  - there are reasonable grounds to know or suspect that is the case; and
  - whether she needs to seek consent from the NCIS for a particular transaction to proceed.
- 6.9 Where the MLRO does so conclude, then she must disclose the matter as soon as practicable to the NCIS on their standard report form and in the prescribed manner, unless she has a reasonable excuse for non-disclosure to the NCIS (for example, if you are a lawyer and you wish to claim legal professional privilege for not disclosing the information).
- 6.9.1 Where the MLRO suspects money laundering but has a reasonable excuse for non-disclosure, then she must note the report accordingly; she can then immediately give her consent for any ongoing or imminent transactions to proceed.
- 6.9.2 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 the NCIS.
- 6.9.3 Where consent is required from the NCIS for a transaction to proceed, then the transaction(s) in question must not be undertaken or completed until the NCIS has specifically given consent, or there is deemed consent through the expiration of the relevant time limits without objection from the NCIS.
- 6.10 Where the MLRO concludes that there are no reasonable grounds to suspect money laundering then she shall mark the report accordingly and give her consent for any ongoing or imminent transaction(s) to proceed.
- 6.11 All disclosure reports referred to the MLRO and reports made by her to the NCIS must be retained by the MLRO in a confidential file kept for that purpose, for a minimum of five years.
- 6.12 ***The MLRO commits a criminal offence if she knows or suspects, or has reasonable grounds to do so, through a disclosure being made to her, that another person is***

***engaged in money laundering and she does not disclose this as soon as practicable to the NCIS.***

## **7.0 CLIENT IDENTIFICATION PROCEDURE**

- 7.1 From 1 March 2004, where the Council is carrying out relevant business (accountancy, audit and certain legal services) and:
- a) forms an ongoing business relationship with a client; or
  - b) undertakes a one-off transaction involving payment by or to the client of 15,000 Euro (approximately £10,000) or more; or
  - c) undertakes a series of linked one-off transactions involving total payment by or to the client(s) of 15,000 Euro (approximately £10,000) or more; or
  - d) it is known or suspected that a one-off transaction (or a series of them) involves money laundering;

then this Client Identification Procedure must be followed before any business is undertaken for that client. **Please note that unlike the reporting procedure, the client identification procedure is restricted to those operating relevant business, ie Financial Services and Legal Services.**

- 7.2 In the above circumstances, staff of Legal and Democratic Services must obtain satisfactory evidence of the identity of the prospective client, as soon as practicable after instructions are received (unless evidence of the client has already been obtained). This applies to existing clients, as well as new ones, but identification evidence is not required for matters entered into prior to 1 March 2004.
- 7.3 Once instructions to provide relevant business have been received, and it has been established that any of paragraphs 7.1 (a) to (d) apply, evidence of identity should be obtained as follows.

### **Internal clients:**

- 7.3.1 It is difficult to envisage that there will be circumstances where there is doubt over the identity of an internal client. Appropriate evidence of identity for Council departments could constitute written instructions on Council headed notepaper or an email on the internal system at the outset of a particular matter. Such correspondence should then be placed on the Council's client file along with a prominent note explaining which correspondence constitutes the evidence and where it is located.

### **External Clients:**

- 7.3.2 For external clients of the Council, appropriate 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 lawyer's file along with a prominent note explaining which correspondence constitutes the evidence and where it is located.
- 7.3.3 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.



### **Third Parties**

- 7.3.4 Identification is not required of an external purchaser who is represented by a legal professional, such as a solicitor, legal executive or licensed conveyancer as it can be presumed that the professional has complied with legislation and checked the purchaser's identity ( as their own client). However, if the third party is not represented then property lawyers may need to obtain evidence of the identity of persons or bodies other than clients, for example private unrepresented purchasers of property, as they are "applicants for business" under the legislation.
- 7.3.5 In all cases, the evidence should be retained for at least five years from the end of the business relationship or one-off transaction(s).
- 7.3.6 ***If satisfactory evidence of identity is not obtained at the outset of the matter then the business relationship or one off transaction(s) cannot proceed any further***

### **8.00 MORTGAGE FRAUD**

- 8.1 This policy shall also apply in cases of suspected mortgage fraud. In relation to its advice to clients on property transactions officers of Legal and Democratic Services do not usually have dealings with building societies or banks who provide mortgages. However, in the event of such transactions where fraud is suspected it shall be reported to MLRO and appropriate action taken in line with this policy.

### **9.0 CONCLUSION**

- 9.1 The legislative requirements concerning anti-money laundering procedures are lengthy and complex. This Policy has been written so as to enable Legal and Democratic Services to meet the legal requirements in a way which is proportionate to the very low risk of contravening the legislation.
- 9.2 Should you have any concerns whatsoever regarding any transactions then you should contact the MLRO.

**Approved by the Legal and Democratic Services Senior Management Team on  
13<sup>th</sup> December 2004**