Report to: Governance Committee

Date: 29 January 2008

By: Deputy Chief Executive and Director of Corporate Resources and Director of Law and Personnel

Title of report: Proceeds of Crime and Money Laundering

Purpose of report: To ensure the Council complies with the Money Laundering Regulations 2007 (SI No. 2157)

RECOMMENDATION – the Governance Committee is recommended to:

1. approve the revised Anti Money Laundering Policy;
2. approve the amendment of Financial Regulations to prohibit the receipt of cash income in excess of £2,000; and
3. approve the measures set out for training and the raising of awareness

1. Financial Appraisal
1.1 There will be some costs associated with the provision of training and briefings for staff on the new policy and the risks of money laundering, but these will be managed within existing budgets.

1.2 Money laundering offences can attract fines of up to £5,000 and / or up to six months in prison if tried in a Magistrates Court or unlimited fines and a sentence of two to 14 years if tried in a Crown Court.

2. Supporting Information
2.1 The Council has had in place an Anti Money Laundering Policy and supporting measures for identification and reporting since October 2005. These measures met the requirements of the Proceeds of Crime Act 2002 (the POCA), the Money Laundering Regulations 2003 (the Regulations 2003), the Terrorism Act 2000 (the TA 2000) and professional guidance issued at the time by the Chartered Institute of Public Finance and Accountancy (CIPFA).

3. Proposed revisions to the Council’s existing Anti Money Laundering Policy
3.1 The Money Laundering Regulations 2007 (the Regulations 2007) came into force on 15 December 2007 and the Council’s Anti Money Laundering Policy and procedures have been updated to take account of the Regulations 2007 and the outcomes of a seminar run by the Society of County Treasurers. The main changes in the Policy (Appendix A) are as follows:

3.2 Customer Due Diligence – these requirements relate to situations where the Council provides services in the regulated sector “by way of business” i.e. services that there is no statutory obligation on the Council to provide and for which a charge is made, and have changed from the client identification procedures set out in the old Regulations. Customer due diligence must now be carried out “at appropriate times” for all relevant business relationships, rather than just at the start of new business relationships, but can be risk sensitive depending on the type of business relationship and the likelihood of money laundering or terrorist financing. There is no longer a de minimus threshold for customer due diligence. Enhanced customer due diligence must be carried in a number of specified circumstances and those deemed relevant to the Council are set out in the Policy.

3.3 Retention of records – there is now an increased likelihood of monitoring and inspection of our compliance with the Regulations 2007 by the relevant supervisory authority, Her Majesty’s Revenue and Customs, so a requirement is now included for copies of customer due
diligence records to be sent to the Money Laundering Reporting Officer (MLRO) so that a central record can be maintained for regulatory purposes.

3.4 Receipt of cash income – whilst there are no changes in the Regulation 2007, following consultation with other authorities, it is felt prudent to reduce the maximum limit for accepting cash income to £2,000, on the basis that cash payments above this level should give grounds for suspicion and ought to be reported to the Serious and Organised Crime Agency (SOCA).

3.5 Serious and Organised Crime Agency (SOCA) – SOCA has replaced the National Criminal Intelligence Service (NCIS) as the body to whom suspicions of money laundering must be reported and the policy and supporting documents now reflect this.

4. Risk assessment
4.1 A risk assessment of the Council’s activities against the Regulations 2007 continues to indicate that the risk of money laundering occurring is low. This is because:
- the Council has placed a maximum limit of £5,000 on the amount of cash income it will accept, so it does not qualify as a High Value Dealer under the Regulations, and it does not receive large individual amounts as cash income;
- the Council does not accept cash payments for the sale of land and property;
- the Council’s Treasury Management arrangements are carried out in line with the CIPFA Treasury Management Code and include controls to minimise the risk of money laundering e.g. limiting the range of organisations with whom the Council will transact business;
- the Council does not carry out significant trading activity which would generate cash income
- the majority of the Council’s income is received from other public service organisations or government bodies; and
- any relevant services provided “by way of business” are primarily for customers who are UK public authorities.

4.2 However, it must be remembered that there is no de minimus limit under the legislation and that the POCA may apply to a very wide range of everyday activities within the Council. For example, falsification of a travel claim, benefiting from non compliance with the conditions attached to a grant or suspecting that a client may be fraudulently claiming benefit. The latter may be an unlikely occurrence but it does technically fall within the legal definition.

5. Training
5.1 The Regulations 2007 require the MLRO to take appropriate measures to ensure that all relevant employees are made aware of the law in this area and understand how to recognise and deal with potential instances of money laundering or terrorist financing. In order to continue to meet this requirement the Council will:
- discuss the policy and its implications at both Corporate Governance Group and Finance Management Team;
- raise the awareness of all relevant staff of money laundering by circulating a note to reminding them of the Council’s and their responsibilities;
- provide briefings for those staff most likely to be exposed to or suspicious of money laundering; and
- remind staff who are members of professional accountancy or legal bodies of their responsibilities under the guidance given by the Consultative Committee of Accountancy Bodies (CCAB) and the Law Society.

SEAN NOLAN ANDREW OGDEN
Deputy Chief Executive and Director of Law and Personnel
Director of Corporate Resources

Contact Officer: Duncan Savage Tel No. 01273 482330
Local Members: All
BACKGROUND DOCUMENTS None
Anti-Money Laundering Policy

East Sussex County Council (the Council) will do all it can to prevent the Council and its staff being exposed to money laundering, to identify the potential areas where it may occur, and to comply with all legal and regulatory requirements, especially with regard to the reporting of actual or suspected cases.

Key points

- The Council is committed to the prevention, detection and reporting of money laundering
- All employees must be vigilant for the signs of money laundering
- Any employee who suspects money laundering activity must report this promptly to the Money Laundering Reporting Officer (MLRO)
- No payment to the Council will be accepted in cash if it exceeds £2,000
- Where the Council is carrying out certain regulated activities by way of business then the customer due diligence procedure must be followed
- The Money Laundering Regulations are detailed and complex – if you are in any doubt about the application of this Policy please contact the MLRO

1 Introduction


2 Scope of the Policy

2.1 This Policy applies to all employees of the Council 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.

2.2 This Policy sits alongside the Council’s Anti-Fraud and Corruption Strategy including Whistle-blowing.

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 Council’s Disciplinary Policy and Procedure.
3 **What is money laundering?**

3.1 Money laundering is the term used for a number of offences involving the proceeds of crime or terrorism funds. The following acts constitute the act of money laundering:

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

- 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

- acquiring, using or possessing criminal property (section 329).

These are the primary money laundering offences, and are thus prohibited acts under the legislation. There are also two secondary offences: failure to disclose any of the three primary offences and tipping off. Tipping off is where someone informs a person or people who are, or who 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.

3.2 Any member of staff could potentially 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. This Policy sets out how any concerns should be raised.

3.3 While the risk to the Council of contravening the legislation is low, it is important that all employees are familiar with their responsibilities: serious criminal sanctions may be imposed for breaches of the legislation. The key requirement on employees is to promptly report any suspected money laundering activity to the Money Laundering Reporting Officer.

4 **Policy Statement**

4.1 Our Policy is to do all we can to prevent, wherever possible, the Council and its staff being exposed to money laundering, to identify the potential areas where it may occur, and to comply with all legal and regulatory requirements, especially with regard to the reporting of actual or suspected cases. We cannot stress too strongly, however, that it is every member of staff’s responsibility to be vigilant.

5 **The Money Laundering Reporting Officer (MLRO)**

5.1 The officer nominated to receive disclosures about money laundering activity within the council is the Assistant Director – Audit and Performance, Duncan Savage. He can be contacted as follows:
5.2 In the absence of the MLRO, the Principal Audit Manager, Russell Banks (russell.banks@eastsussex.gov.uk or 01273 481447 at the same address), is authorised to deputise for him.

6 Procedures

Cash payments

6.1 No payment to the Council will be accepted in cash if it exceeds £2,000.

Reporting

6.2 Any employee who suspects money laundering activity must report their suspicion promptly to the MLRO, or to the MLRO’s deputy if appropriate, using the attached form (Appendix A). If you would prefer, you can discuss your suspicions with the MLRO or their deputy first.

6.3 The employee must follow any subsequent directions of the MLRO or deputy, and must not themselves make any further enquiries into the matter. They must not take any further steps in any related transaction without authorisation from the MLRO.

6.4 The employee must not disclose or otherwise indicate their suspicions to the person suspected of the money laundering. They must not discuss the matter with others or note on the file that a report has been made to the MLRO in case this results in the suspect becoming aware of the situation.

6.5 The MLRO or deputy must promptly evaluate any Disclosure Report, to determine whether it should be reported to the Serious and Organised Crime Agency (SOCA).

6.6 The MLRO or deputy must, if they so determine, promptly report the matter to SOCA on their standard report form and in the prescribed manner. Up to date forms can be downloaded from the SOCA website at www.soca.gov.uk.

6.7 The MLRO or deputy will commit a criminal offence if they know or suspect, or have reasonable grounds to do so, through a disclosure being made to them, that another person is engaged in money laundering and they do not disclose this as soon as practicable to SOCA.

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1 Cash is defined as including notes, coins or travellers’ cheques in any currency.
Customer Due Diligence

6.8 Where the Council is carrying out certain ‘regulated activities’\(^2\) then extra care needs to be taken to check the identity of the customer or client – this is known as carrying out Customer Due Diligence.

6.9 The Regulations regarding customer due diligence are detailed and complex, but there are some simple questions that will help you decide if it is necessary:

- Is the service a regulated activity (see the list at the foot of the page)?
- Is the Council charging for the service i.e. is it ‘by way of business’?\(^2\)
- Is the service being provided to a customer other than a UK public authority?

If the answer to any of these questions is **no** then you do not need to carry out customer due diligence.

If the answer to all these questions is **yes** then you must carry out customer due diligence **before** any business is undertaken for that client. If you are unsure whether you need to carry out customer due diligence then you should contact the MLRO.

6.10 Where you need to carry out customer due diligence then you must seek evidence of identity, for example:

- checking with the customer’s website to confirm their business address;
- conducting an on-line search via Companies House to confirm the nature and business of the customer and confirm the identities of any directors;
- seeking evidence from the key contact of their personal identity, for example their passport, and position within the organisation.

6.11 The requirement for customer due diligence applies immediately for new customers and should be applied on a risk sensitive basis for existing customers. Ongoing customer due diligence must also be carried out during the life of a business relationship but should be proportionate to the risk of money laundering and terrorist funding, based on the officer’s knowledge of the customer and a regular scrutiny of the transactions involved.

6.12 If, at any time, you suspect that a client or customer for whom you are currently, or are planning to carry out a regulated activity is carrying out money laundering or terrorist financing, or has lied about their identity then you must report this to the MLRO.

6.13 In certain circumstances enhanced customer due diligence must be carried out for example where:

- The customer has not been physically present for identification
- The customer is a politically exposed person\(^3\)

\(^2\)“Regulated activity is defined as the provision ‘by way of business’ of: advice about tax affairs; accounting services; treasury management, investment or other financial services; audit services; legal services; estate agency; services involving the formation, operation or arrangement of a company or trust or; dealing in goods wherever a transaction involves a cash payment of €15,000 or more.”

\(^3\) A politically exposed person is 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.
• There is a beneficial owner who is not the customer – a beneficial owner is any individual who: holds more than 25% of the shares, voting rights or interest in a company, partnership or trust.

6.12 Enhanced customer due diligence could include any additional documentation, data or information that will confirm the customer’s identity and / or the source of the funds to be used in the business relationship / transaction. If you believe that enhanced customer due diligence is required then you must consult the MLRO prior to carrying it out.

Record Keeping

6.11 Where ‘relevant business’ is carried out then the customer due diligence records and details of the relevant transaction(s) for that client must be retained for at least five years after the end of the business relationship.

6.12 An electronic copy of every customer due diligence record must be sent to the MLRO to meet the requirements of the Regulations and in case of inspection by the relevant supervising body.

7 Guidance and Training

7.1 In support of the policy and procedure, the Council will:

• make all staff aware of the requirements and obligations placed on the Council and on themselves as individuals by the anti-money laundering legislation; and

• give targeted training to those most likely to encounter money laundering.

8 Further Information

8.1 Further information can be obtained from the MLRO and the following sources:

• www.soca.gov.uk – website of the Serious and Organised Crime Agency
• “Proceeds of Crime (Anti-Money Laundering) – Practical Guidance for Public Service Organisations” – CIPFA
• Money Laundering Guidance at www.lawsociety.org.uk
To: Duncan Savage, ESCC Money Laundering Reporting Officer

From: __________________________
[insert name of employee]

Directorate: __________________________
[insert post title and Business Unit]

Ext/Tel No: __________________________

URGENT YES/NO

Date by which response needed: ______

Details of suspected offence:

Name(s) and address(es) of person(s) involved:
[if a company/public body please include details of nature of business]

Nature, value and timing of activity involved:
[Please include full details eg what, when, where, how. Continue on a separate sheet if necessary]
Nature of suspicions regarding such activity: 
[Please continue on a separate sheet if necessary]

Has any investigation been undertaken (as far as you are aware)?  [Please tick the relevant box]  

☐ Yes  ☐ No

If yes, please include details below:
Have you discussed your suspicions with anyone else?

[Please tick the relevant box]

☐ Yes  ☐ No

If yes, please specify below, explaining why such discussion was necessary:


Have you consulted any supervisory body guidance re money laundering? (e.g. the Law Society) [Please tick the relevant box]

☐ Yes  ☐ No

If yes, please specify below:


Do you feel you have a reasonable excuse for not disclosing the matter to the SOCA? (e.g. are you a lawyer and wish to claim legal professional privilege?) [Please tick the relevant box]

☐ Yes  ☐ No

If yes, please set out full details below:


Are you involved in a transaction which might be a prohibited act under sections 327 – 329 of the Act and which requires appropriate consent from the SOCA? [Please tick the relevant box]

Yes ☐ No ☐

If yes, please enclose details in the box below:

Please set out below any other information you feel is relevant:

Signed: __________________________ Dated: ______________________

Please do not discuss the content of this report with anyone you believe to be involved in the suspected money laundering activity described. To do so may constitute a tipping off offence, which carries a maximum penalty of 5 years’ imprisonment.
THE FOLLOWING PART OF THIS FORM IS FOR COMPLETION BY THE MLRO

Date report received: ______________________________

Date receipt of report acknowledged: ______________________________

CONSIDERATION OF DISCLOSURE:

Action plan:

OUTCOME OF CONSIDERATION OF DISCLOSURE:

Are there reasonable grounds for suspecting money laundering activity?
If there are reasonable grounds for suspicion, will a report be made to the SOCA? [Please tick the relevant box] □ Yes □ No

If yes, please confirm date of report to SOCA: ____________ and complete the box below:

Details of liaison with the SOCA regarding the report:

Notice Period: __________ to __________

Moratorium Period: __________ to __________

Is consent required from the SOCA to any ongoing or imminent transactions which would otherwise be prohibited acts? [Please tick the relevant box] □ Yes □ No

If yes, please confirm full details in the box below:
Date consent received from SOCA: ________________________________

Date consent given by you to employee: ________________________________

If there are reasonable grounds to suspect money laundering, but you do not intend to report the matter to the SOCA, please set out below the reason(s) for non-disclosure:

[Please set out any reasonable excuse for non-disclosure]

Date consent given by you to employee for any prohibited act transactions to proceed: ________________________________

Other relevant information:

Signed: ________________________________  Dated: ________________________________

THIS REPORT TO BE RETAINED FOR AT LEAST FIVE YEARS