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**Report of Paul Darby, Corporate Director of Resources**

**Electoral division(s) affected:**

All

**Purpose of the Report**

- 1 This report presents the Audit Committee with a revised Anti Money Laundering Policy and seeks to remind members and employees of the council of the internal procedures that must be followed to prevent the use of council services for money laundering.

**Background**

- 2 Durham County Council recognises that it has a responsibility to protect the public purse. To meet these responsibilities, the Council has adopted a Counter Fraud and Corruption Strategy, which promotes a zero-tolerance culture towards fraud.
- 3 The Anti-Money laundering Policy is a live annex of the strategy and explains what money laundering is and the legal and regulative framework that is in place to govern it and prevent the use of council services for money laundering.
- 4 It also specifies the processes the council needs to put in place to ensure that it does all it can to prevent money laundering and ensure it complies with all legal and regulatory requirements.

**Recommendations**

- 5 Audit Committee are asked to note and agree the Anti-Money Laundering Policy attached at Appendix 2.

## Content

- 6 Anti-money laundering rules in the UK are primarily governed by the Money Laundering, Terrorist Financing and Transfer of Funds (information on the Payer) Regulations 2017, commonly referred to as the Money Laundering Regulations (MLR 2017)
- 7 These regulations impact on certain areas of local authority business and require local authorities to maintain internal procedures to prevent the use of their services for money laundering.
- 8 The risks to the Council of contravening the legislation are relatively low and some requirements of the legal and regulatory requirements do not apply to public authorities. However, the Council cannot be immune from the risks surrounding money laundering and therefore it is appropriate that the Council embraces the underlying principles of the money laundering legislation by taking all reasonable steps to minimise the likelihood of money laundering, including putting in place proper policies and procedures.
- 9 Some changes to the Money Laundering Regulations came into force in 2019, 2020 and 2022 however the amendments do not apply any specific new requirement upon local authority.
- 10 Not all the Council's business is 'relevant' for the purposes of the legislation. It is mainly the accountancy and audit services together with certain financial, company and property transactions carried out 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 employees are required to comply with the Council's Anti Money Laundering policy in terms of reporting concerns regarding money laundering.
- 11 It is a requirement of the MLR 2017 that appropriate systems of internal control are in place to prevent activities relating to money laundering and terrorist financing. There must be management controls in place to identify the possibility that criminals may be attempting to launder money or fund terrorism, and to report it.
- 12 The policy gives examples of the signs of money laundering where suspicions should arise and explains the importance of reporting this at the earliest opportunity to the Council's nominated Money Laundering Reporting Officer (MLRO)
- 13 The procedure for making a confidential disclosure to the MLRO is explained in detail and a revised 'Money Laundering Reporting' form is included at Appendix A of the Policy document.

- 14 For reference, the Councils Money Laundering Reporting Officer is Tracy Henderson, Chief Internal Auditor & Corporate Fraud Manager.
- 15 Targeted awareness training will be provided for those employees in high-risk roles, where they are more likely to experience possible signs of money laundering. This will be coordinated by the Corporate Fraud Team and delivered in early 2022.
- 16 All staff will be made aware of the requirements and obligations placed on the Council and on themselves as individuals by the anti-money laundering legislation through the publicising and availability of this policy on the intranet and via the website.

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## **Appendix 1: Implications**

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### **Legal Implications**

The Council must comply with The Money Laundering, Terrorist Financing and Transfer of Funds (information on the Payer) regulations 2017 (as amended). It is therefore important that proper governance procedures are in place (particularly the Anti money laundering policy, the Counter fraud and Corruption Strategy, Contract Procedure Rules, Financial Procedure Rules, Codes of Conduct and the Confidential Reporting Code), supported by a robust audit programme of counter fraud awareness measures and assurance reviews will assist the Council in complying with anti-corruption law, in particular the Bribery Act, and also serves to reduce the risk of reputation damage and financial loss by litigation

### **Finance**

There are no direct financial implications as a result of this report.

### **Consultation**

None.

### **Equality and Diversity / Public Sector Equality Duty**

None

### **Climate Change**

None

### **Human Rights**

None

### **Crime and Disorder**

Fraud and Money Laundering are criminal offences.

### **Staffing**

There is a potential for disciplinary action to be taken against known employees where fraud has been proven.

### **Accommodation**

None

**Risk**

The risk of fraud and corruption is recognised as a corporate strategic risk. An effective counter fraud strategy is a key control in helping to mitigate the risk.

**Procurement**

None.



# **Durham County Council**

## **Anti-money Laundering Policy**

**October 2022**

## **1. INTRODUCTION**

- 1.1. This policy explains what money laundering is and the legal and regulative framework that is in place to govern it. It also specifies the processes the Council needs to put in place to ensure that it does all it can to prevent the Council and its employees being exposed to money laundering and to ensure that the Council complies with all legal and regulatory requirements.
- 1.2. 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.
- 1.3. Although local authorities are not directly covered by the requirements of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 as amended (MLR 2017), guidance from the Chartered Institute of Public Finance and Accountancy (CIPFA) indicates that they should comply with the underlying spirit of the legislation and regulations
- 1.4. Durham County Council is committed to establishing and maintaining effective arrangements to prevent and detect attempts to launder money using council services and have introduced appropriate anti-money laundering safeguards and reporting arrangements.

## **2. SCOPE OF THE POLICY**

- 2.1. This policy forms part of the Council's approach to dealing with the risk of fraud and corruption and should be read in conjunction with the Council's Counter Fraud & Corruption Strategy and Confidential Reporting (whistleblowing) policy.
- 2.2. This policy applies to all members and 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 that must be followed to enable the Council to comply with any legal obligations.
- 2.3. The risks to the Council of contravening the legislation are relatively low and some requirements of the legal and regulatory requirements do not apply to public authorities. However, the Council cannot be immune from the risks surrounding money laundering and therefore it is appropriate that the Council embraces the underlying principles of the money laundering legislation by taking all reasonable steps to minimise the likelihood of money laundering, including putting in place proper policies and procedures.
- 2.4. The key requirement on employees is to promptly report any suspected money laundering activity to the Council's Money Laundering Reporting Officer (MLRO). It is important that all employees and elected members are familiar with their responsibilities.

- 2.5 Failure by any employee 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.
- 2.6 Failure by any elected member to comply with the procedures may lead to action being taken by the Standards Committee

### **3. WHAT IS MONEY LAUNDERING?**

- 3.1. Money laundering is the process by which the proceeds of crime or terrorism funds are changed so that they appear to come from a legitimate source.
- 3.2. Under the legislation there are two main types of offences which may be committed:
- Money laundering offences;
  - Failure to report money laundering offences.
- 3.3. Money laundering offences include:
- Acquiring, using, or possessing criminal property
  - Handling the proceeds of crimes such as theft, fraud, and tax evasion
  - Being knowingly involved in any way with criminal or terrorist property
  - Entering arrangements to facilitate laundering criminal or terrorist property
  - Investing the proceeds of crime in other financial products
  - Concealing, disguising, converting, transferring criminal property, or removing it from the UK
  - Entering 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.
  - Investing the proceeds of crimes through the acquisition of property/assets.
  - Transferring criminal property.

These are the primary money laundering offences and thus prohibited acts under the obligations.

- 3.4. There are further associated offences regarding due diligence and disclosures:

#### **Due diligence:**

- Failure to apply customer due diligence;
- Failure to apply on-going monitoring of business relationship and customer due diligence;
- Failure to comply with timing on verification of clients and any beneficial owner;
- Failure to apply enhanced customer due diligence and monitoring where required;

- Failure to keep required records;
- Continuing with a business relationship where unable to apply customer due diligence.

### Disclosures

- Making a disclosure to a person which is likely to prejudice a money laundering investigation (“tipping off”);
  - Failing to disclose;
  - Prejudicing an investigation.
- 3.5 Money laundering regulations apply to cash transactions in excess of 15,000 Euros (approximately £13,000). However, Proceeds of Crime Act (POCA) applies to all transactions and can include dealings with agents, third parties, property or equipment, cheques, cash or bank transfers.
- 3.6 As a control no payment to the Council will be accepted in cash if it exceeds £5,000. Cash is defined as including notes, coins or travellers cheques in any currency.
- 3.7 Although instances of suspected money laundering are likely to be rare, given the nature of services provided by the Council, failure to comply with legal requirements could have significant implications for both the Council and the individuals concerned.
- 3.8 So long as the Council does not undertake activities which might be interpreted, under POCA, as falling within the regulated sector, the offences of failure to disclose and tipping off do not apply. The regulated sector refers to activities which should be regulated under the Financial Services and Markets Act 2000.

## **4. WHAT ARE THE OBLIGATIONS OF THE COUNCIL?**

- 4.1 The law requires those organisations in the regulated sector and conducting relevant business to:
- 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 into potential exposure to money laundering or terrorist financing and produce a written risk assessment addressing its customers, countries of operation, products and services, transactions, delivery channels and the size and nature of the business;
  - Implement written policies and controls that are proportionate to the risks identified. They must include internal controls, customer due diligence procedures, as well as reporting, record keeping, and the monitoring and management of compliance of such policies and procedures;
  - Implement a risk based approach for the level of due diligence that is carried out.

- 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 together with certain financial, company and property transactions carried out 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 employees are required to comply with the Council's Anti Money Laundering policy in terms of reporting concerns regarding money laundering.
- 4.3 It is a requirement of the MLR 2017 that appropriate systems of internal control are in place to prevent activities relating to money laundering and terrorist financing. There must be management controls in place to identify the possibility that criminals may be attempting to launder money or fund terrorism, so as to enable appropriate action to prevent or report it to be taken.
- 4.4 MLR 2017 ends "automatic" due diligence. Instead, a relevant person needs to consider both customer and geographical risk factors in deciding whether simplified due diligence is appropriate. Another change is the creation of a "black list" of high risk jurisdictions which, if involved in a transaction, makes enhanced due diligence and additional risk assessment compulsory.
- 4.5 It is management's responsibility to implement systems of internal control capable of identifying unusual or suspicious transactions or customer activity and quickly report the details to the MLRO indicated in paragraph 5.1 below. Systems of internal control should include the following:
- Identification of senior management responsibilities;
  - Provision of information to senior management on money laundering and terrorist financing risks;
  - Training of relevant employees on the legal and regulatory responsibilities for money laundering and terrorist financing controls and measures;
  - Documentation of the Council's risk management policies and procedures;
  - Measures to ensure that money laundering and terrorist financing risks are taken into account in the day to day operations of the organisation.

## **5. THE MONEY LAUNDERING REPORTING OFFICER (MLRO)**

- 5.1. The Council has nominated an officer to receive disclosures about money laundering activity within the Council. This is the Chief Internal Auditor & Corporate Fraud Manager, Tracy Henderson. She can be contacted as follows:

Tracy Henderson, Chief Internal Auditor & Corporate Fraud Manager  
Durham County Council  
County Hall  
Durham  
DH1 5UL  
Telephone: 03000 269668  
E-mail: [Tracy.Henderson@durham.gov.uk](mailto:Tracy.Henderson@durham.gov.uk)

- 5.2. In the absence of the MLRO, Paul Gibbon, Corporate Fraud Manager, ([Paul.Gibbon@Durham.gov.uk](mailto:Paul.Gibbon@Durham.gov.uk) or 03000 260776 at the same address), is authorised to deputise for her.
- 5.3. All suspicions should be reported directly to the MLRO or the deputy. All suspicions should be reported on the relevant Money Laundering Reporting Form, appendix A.

## **6. HOW DO I RECOGNISE SUSPICIOUS ACTIVITY THAT MAY BE LINKED TO MONEY LAUNDERING?**

- 6.1. Criminals have various ways of concealing, moving and legitimising the proceeds of crime. Examples of signs of money laundering where suspicions should arise include:
- Use of cash or crypto currency where other means of payment are normal.
  - Unusual transactions or ways of conducting business
  - Unwillingness to answer questions/general secretiveness
  - Use of new/shell companies
  - Payment of deposits which are subsequently requested back
  - Lack of 'traceability' of persons involved and
  - Individuals and companies that are insolvent, yet have funds.
- 6.2 It is impossible to give a definitive list of ways to spot money laundering, but the following suggested risk areas which taken alone, or with other factors, may suggest the possibility of money laundering and areas to be vigilant:
- A new client/customer;
  - A secretive client, e.g. refuses to provide requested information without a reasonable explanation;
  - Concerns about the honesty, integrity, alleged association with criminality, or location of a client;
  - Illogical third party transactions: unnecessary routing or receipting of funds from third parties or through third party accounts;
  - Involvement of an unconnected third party without logical reason or explanation;
  - Payment of substantial sums in cash or a large cash deposit (The Council policy is not to except a cash payment of over £5,000);
  - Absence of obvious legitimate source of funds;
  - Payment of monies then cancellation of transactions and request for return of funds;
  - Over payment with requests for refunds;
  - Movement of funds overseas, particularly to a higher risk country or tax haven;
  - Where, without reasonable explanation, the size, nature, and frequency of transaction or instructions (or the size, location of type of client) is out of line with normal expectations;
  - Cancellation or reversal of an earlier transaction;
  - Requests for release of client account details other than on 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;
- Over complicated financial systems;
- 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;
- Unusual property investment transactions if there is no linked substantive property transaction involved (surrogate banking);
- Property related transactions where funds are received for deposits or prior completion from an unexpected source or where instructions are given for the settlement of funds to be paid to an unexpected destination;
- More than one solicitor used in a sale or purchase or there is an unexplained or unusual geographical use of the solicitor in relation to property transactions.

Facts which tend to suggest that something odd is happening may be sufficient for a reasonable suspicion of money laundering to arise.

- 6.3 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 relevant business in the regulated sector, you know or suspect, or have reasonable grounds to do so (even if you did not know or suspect), that another person is engaged in money laundering and you do not disclose this as soon as is practicable to the MLRO.

## **7. FAILURE TO REPORT MONEY LAUNDERING OFFENCES OR SUSPICIONS**

- 7.1 Failure to report money laundering offences means that, potentially, any employee 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.
- 7.2 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. Any person found guilty of a money laundering offence is liable for imprisonment, 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.
- 7.3 If you report a suspicion of money laundering to the MLRO or the deputy in his absence, you should not discuss it with anyone else: you may commit a further offence of 'tipping off' if, knowing a disclosure has been made, you make a disclosure which is likely to prejudice any investigation which might be conducted.
- 7.4 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. Any person found guilty of tipping off or prejudicing an investigation offence is liable to imprisonment, a fine or both.

- 7.5 The MLR 2017 created a new criminal offence: any individual who recklessly makes a statement in the context of money laundering which is false or misleading commits an offence punishable by a fine and/or up to two years' imprisonment.

## **8. REPORTING PROCEDURE**

- 8.1 If you know or suspect that money laundering activity is taking place, has taken place, or that your involvement in a matter may amount to a prohibited act under the legislation, this must be disclosed immediately to the MLRO, or to the MLRO's deputy if appropriate. This disclosure should be within hours of the information coming to your attention, not weeks or months later. **If you do not disclose information immediately, then you may be liable to criminal prosecution.**
- 8.2 Your disclosure should be made using the form Suspected Money Laundering Report (MLR), which is attached at Appendix 1. The disclosure report must contain as much detail as possible, for example:
- Full details of the people involved (including yourself if relevant), e.g. name, date of birth, address, company names, directorships, phone numbers;
  - Full details of the nature of your and their involvement;
  - The types of money laundering activity suspected;
  - The dates of such activities, including whether the transactions have happened, are ongoing or are imminent;
  - Where the activity took place;
  - How the activity was undertaken;
  - The (likely) amount of money/assets involved; and
  - Why, exactly, you are suspicious.
- 8.3 You should also supply any other available information to enable the MLRO to make a sound judgement as to the next steps to be taken and you should enclose copies of any relevant supporting documentation.
- 8.4 If you are a legal adviser and consider that legal professional privilege may apply to the information, you should explain fully in the MLR form the reasons why you contend the information is privileged. The MLRO, in consultation with the Director of Resources, will then decide whether the information is exempt from the requirement to report suspected money laundering to the National Crime Agency (NCA).
- 8.5 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 NCA. All employees will be required to co-operate with the MLRO and the authorities during any subsequent money laundering investigation.

- 8.6 At no time and under no circumstances should you voice any suspicions to the person(s) whom you suspect of money laundering or to any other individual without the specific consent of the MLRO. If you do so, you may commit the offence of 'tipping off'.
- 8.7 Do not make any reference on records held to the fact that you have made a report to the MLRO. If a customer exercises their right to see their record, any such note would 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 confidential manner.
- 8.8 In all cases no further action must be taken in relation to the transaction(s) in question until either the MLRO or NCA (if applicable) has specifically given their written consent to proceed.

9. **CONSIDERATION OF DISCLOSURE REPORT BY THE MONEY LAUNDERING REPORTING OFFICER**

- 9.1 Upon receipt of a disclosure report, the MLRO will record the date of receipt on the report. The MLRO will acknowledge receipt of the report and will give an indication of the timescale within which he expects to respond.
- 9.2 The MLRO will consider the report and any other available internal information he thinks is relevant. This may include:
- Reviewing other transactions patterns and volumes;
  - The length of any business relationship involved;
  - The number of any one-off transactions and linked one-off transactions; and
  - Any identification evidence.
- 9.3 The MLRO will undertake any other enquiries deemed appropriate and will ensure that all available information has been obtained. In undertaking any such enquiries the MLRO will avoid any actions which could tip off those involved, or which could give the appearance of tipping them off. Where appropriate, Internal Audit or Corporate Fraud will investigate on behalf of the MLRO.
- 9.4 The MLRO, or a designated person, may also need to discuss the report with the employee who reported the case.
- 9.5 The MLRO will then consider all aspects of the case and will decide whether a report to NCA is required. He must make a timely determination as to:
- Whether there is actual or suspected money laundering taking place;
  - Whether there are reasonable grounds to know or suspect that money laundering is taking place; and
  - Whether he needs to seek consent from the NCA for a particular transaction to proceed.

- 9.6 Where the MLRO concludes one or more of the above he will record his conclusion and disclose the matter as soon as possible to NCA on their standard report form in the prescribed manner or he can report the matter online. Up to date forms and the online reporting can be downloaded and found from the NCA website at [www.nationalcrimeagency.gov.uk](http://www.nationalcrimeagency.gov.uk).
- 9.7 Once the MLRO has made a disclosure, NCA's consent will be needed before you can take any further part in the transaction. Consent will be received in the following way:
- Specific consent;
  - No refusal of consent during the notice period (seven working days starting with the first working day after the MLRO makes the disclosure); and
  - 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).
- 9.8 The MLRO 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. completion date or court deadline.
- 9.9 Where the MLRO concludes that there are no reasonable grounds to suspect money laundering, this will be recorded appropriately and he will give his consent for any ongoing or imminent transaction(s) to proceed.
- 9.10 All disclosure reports referred to the MLRO and reports made by him to NCA must be retained by the MLRO in a confidential file kept for that purpose, for a minimum of five years.
- 9.11 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 and he does not disclose this as soon as possible to the NCA.
- 9.12 In cases where legal professional privilege may apply, the MRLO must liaise with the Director of Resources in deciding whether or not the matter should be reported to NCA.
- 9.13 All employees are required to co-operate with the MLRO and the authorities during any subsequent money laundering investigation and at no time and under no circumstances should employees voice any suspicions to the person(s) suspected of money laundering, even if the NCA has given consent to a particular transaction proceeding, without the specific consent of the MLRO; otherwise they may commit a criminal offence of "tipping off".

## **10. ADDITIONAL REQUIREMENTS FOR FINANCE AND LEGAL EMPLOYEES**

- 10.1 In addition to the disclosure procedure set out above, those employees providing financial and legal services must also comply with the customer identification procedure, 'due diligence' and the record keeping procedures. Determining the appropriate level of due diligence requires a risk based approach.
- 10.2 The circumstances in which simplified customer due diligence is permissible is more restricted under MLR 2017. In a significant departure from MLR 2007, and as part of the risk based approach, there ceases to be "automatic" simplified due diligence requirements for any transactions. Instead, a relevant person needs to consider both customer and geographical risk factors in deciding whether simplified due diligence is appropriate.
- 10.3 There are various levels of 'due diligence', the regulations require due diligence to be carried out on a risk based approach, so that:
- 'Simplified due diligence' is only required where there is a low risk of money laundering. For example, if a company is listed on the stock exchange a company search and evidence of the listing would suffice;
  - 'Enhanced due diligence' for those with a high-risk status, for example remote transactions where the customer is not physically present to be identified, would require additional appropriate documents to be requested;
  - The 'beneficial owner', i.e. the individual that ultimately owns or controls the customer or on whose behalf a transaction or activity is being conducted, should be identified;
  - The business relationship should be scrutinised throughout its existence and not just at the beginning.
- 10.4 You may rely on due diligence undertaken by those regulated by the Financial Conduct Authority (FCA) or supervised by a listed professional regulator, e.g. the Solicitors Regulation Authority. Any information obtained may be used as evidence in any subsequent investigation by the relevant enforcement authorities into money laundering. The third party must effectively provide the information it has obtained and enter under a written agreement under which it agrees to immediately provide copies of all the documentation in respect of the customer and/or its beneficial owner.
- 10.5 In all cases, the evidence of the customer identification and record of the relationship/transaction should be retained for at least five years from the end of the business relationship of transaction(s). The records that must be kept are:
- A copy of, or references to, the evidence of the identity obtained under the customer due diligence requirements in the Regulations;
  - The supporting evidence and records in respect of the business relationships and occasional transactions which are the subject of customer due diligence measures or ongoing monitoring;

- A copy of the identification documents accepted and verification evidence obtained;
- References to the evidence of identity; and
- Records for transaction and business relationships should be maintained in a form from which a satisfactory audit trail may be compiled, and which may establish a financial profile of any suspect account or customer.

10.6 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.

10.7 The customer identification procedure must be carried out when the Council is carrying out 'relevant business' and:

- Forms a business partnership with a customer;
- Undertakes a one-off transaction (including a property transaction or payment of a debt) involving a cash payment by or to a customer of £5,000 or more;
- Undertakes a series of linked one-off transactions involving a total cash payment by or to the customer(s) of £5,000 or more; and
- It is known or suspected that a one-off transaction, or a series of them, involves money laundering.

This must be completed before any business is undertaken for that customer in relation to accountancy, procurement, audit and legal services with a financial or real estate transaction.

10.8 In the above circumstances, employees must:

- Identify the person seeking to form the business relationship or conduct the transaction (an individual or company);
- Verify their identity using reliable, independent sources of information;
- Identify who benefits from the transaction;
- Monitor transactions to make sure they are consistent with what you understand about that person or country;
- Understand the source of their funds; and
- Ensure there is a logical reason why they would want to do business with the Council.

10.9 This applies to existing customers, as well as new ones, but identification evidence is not required for matters entered into prior to 1 March 2004.

10.10 In relation to Council business appropriate evidence would be signed written instructions such as agreements. Such correspondence should then be placed on file along with a prominent note explaining which correspondence constitutes the evidence and where it is located.

10.11 In relation to external bodies, the MLRO will maintain a central file of general client identification evidence regarding the external organisations to which Finance and Legal Services provide professional services.

10.12 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. If the organisation is not included in the central file, you should discuss this with the MLRO.

- 10.13 The Law does not prescribe the precise nature of the records to be retained. 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 in what form any funds were received or paid. In practice, the Council will be routinely making records of work carried out in the course of normal business and these should suffice in this regard.

## 11. CUSTOMER DUE DILIGENCE

- 11.1 The regulations regarding customer due diligence are detailed and complex, but there are some simple rules that will help you decide if it is necessary.

- Is the service a regulated activity?  
*(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; estate functions; 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 Euros, or more.)*
- Is the Council charging for the service, i.e. is it 'by way of business'?
- 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.

- 11.2 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 identification of any directors;
- Seeking evidence from the key contact of their personal identity, for example, their passport and position within the organisation.

- 11.3 The requirement for customer due diligence applies immediately for new customers and should be applied on a risk based approach 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.

- 11.4 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 had lied about their identify then you must report this to the MLRO.
- 11.5 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;  
*(A politically exposed person is an individual who at any time in the preceding year has held a prominent public function both in the UK and overseas and 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.
- 11.6 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.
- 11.7 Customer due diligence records and details of the relevant transactions(s) for that client must be retained for at least five years after the end of the business relationship.
- 11.8 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.
- 11.9 The regulations regarding 'regulated activities' are subject to strict requirements to establish procedures for the reporting, training, client identification and record keeping. It is unlikely that the Council will be undertaking 'regulated activities'.
- 11.10 POCA requires that, where an organisation is carrying out certain 'regulated activities', 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.
- 11.11 Regulated activity is defined as the provision 'by way of businesses of advice about tax affairs; accounting services; treasury management, investment or other financial services; audit services; estate functions; 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 Euros or more.

## **12. RECORD KEEPING**

- 12.1 Copies of documents and information used to fulfil customer due diligence obligations will be kept for a period of five years following the completion of a transaction or the end of a business relationship. At the end of the five-year period personal data will be deleted unless:
- It is required to be retained under an enactment or for the purposes of court proceedings or there are reasonable grounds for believing the records need to be maintained for legal proceedings;
  - The person whose data it is has consented.
- 12.2 Personal data obtained for the purposes of the regulations will not be processed for any other purpose unless it is permitted under an enactment or the consent of the person whose data it is has been obtained.

## **13. RISK REGISTER**

- 13.1 Whilst all employees must be aware of the existence of the Anti-Money Laundering policy, it is possible to identify those areas of Council business most at risk of potential involvement in money laundering, in order to target training at those relevant employees.
- 13.2 Under MLR 2017 risk mitigation policies must be in writing and be proportionate to the risks identified. They must include internal controls over money-laundering and terrorist financing risks. They must also include revised customer due diligence procedures as well as reporting, record keeping and monitoring requirements.
- 13.3 In order to identify such areas of Council business the MLRO has established and maintains a Money Laundering Risk Register. In order to do this, a number of steps have been taken to determine how to manage and mitigate the money laundering and terrorist financing risks faced by the Council. The steps followed were to:
- Identify the money laundering and terrorist financing risks that were relevant to the Council.
  - Assess the risks presented by the particular customers, products and services, delivery channels and geographical area.
  - Design and implement controls to manage and mitigate these assessed risks.
- 13.4 The steps that will be followed to continuously mitigate the risks associated with money laundering are:
- Applying customer due diligence measures to verify the identity of customers and any beneficial owners obtaining additional information on customers;
  - Conducting ongoing monitoring of the transactions and activity of customers with whom there is a business relationship; and

- Having systems to identify and scrutinise unusual transactions and activity to determine whether there are reasonable grounds for knowing or suspecting that money laundering or terrorist financing may be taking place.

13.5 MLR 2017 requires a written risk assessment to identify and assess the risk of money laundering and terrorist financing that the Council faces. This will:

- Assist in developing policies, procedures and controls to mitigate the risk of money laundering and terrorist financing;
- Help in applying a risk-based approach to detecting and preventing money laundering terrorist financing;
- Inform an assessment of the level of risk associated with particular business relationships and transactions and enable appropriate risk-based decisions about clients and retainers.

13.6 In carrying out risk assessments the Council will take into account information on money- laundering and terrorist financing risk factors relating to:

- Customers;
- Geographic areas where the Council operates;
- Products and services;
- Transactions;
- Delivery channels; and
- The size and nature of the business.

The relevant person must then translate the findings of this process into written policies.

13.7 Risks will be reviewed continuously as part of the annual review of the Council Risk Register.

#### **14. GUIDANCE AND TRAINING**

14.1 All employees working in those areas defined as being at risk of exposure to money laundering in the Council Risk Register have been provided with training on the Anti Money Laundering policy.

14.2 All new employees in those areas will be given appropriate training at induction or soon after. Further update training will be provided as and when such training needs are identified.

14.3 The risks to the Council of contravening the legislation are relatively low. On this basis mandatory training for all teams is not required. MLR 2017 now, however, includes an obligation to make staff aware of the law on data protection or similar legislation, in so far as is relevant to the implementation of the regulations. This will need to be reviewed with the mandatory training in this area.

14.4 In support of this policy and procedures the Council will:

- Make all employees and members aware of the requirements and obligations placed on the Council and on themselves as individuals by the Anti-Money Laundering legislation.
- Provide advice and guidance through targeted training to those employees most likely to be exposed to, or suspicious of, money laundering situations.
- Ensure the MLRO and deputy receive adequate training as necessary.

## **15. CONCLUSION**

- 15.1 The legislative requirements concerning anti-money laundering procedures are lengthy and complex. This document has been written to enable the Council to meet the legal requirements in a way that is proportionate to the low risk to the Council of contravening the legislation. Should you have any concerns whatsoever regarding any transactions then you should contact the MLRO.
- 15.2 The effectiveness of this policy will be considered as part of the annual review of the effectiveness of the Corporate Governance arrangements.
- 15.3 This policy will be reviewed either on an annual basis or when new legislation/guidance is issued to ensure all information is accurate and up to date.

## **16. APPENDICES**

Appendix A – Money Laundering Reporting Form

**CONFIDENTIAL**

**MONEY LAUNDERING REPORTING FORM**

To: Tracy Henderson, DCC Money Laundering Reporting Officer  
Chief Internal Auditor & Corporate Fraud Manager  
Durham County Council  
County Hall  
Durham  
DH1 5UE

From: .....  
(Please insert the name of employee)

Service Grouping: .....  
Service: .....  
Position: ..... Ext / Tel No: .....

**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 (to the best of your knowledge)?

Yes

No

**If yes, please include details below:**

Have you discussed your suspicions with anyone else?

Yes

No

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

Have you consulted any supervisory body guidance with regard to money laundering (e.g. the Law Society)?

Yes

No

If yes, please specify below:

Do you feel you have good reason for not disclosing the matter to the National Crime Agency (e.g. are you a solicitor and wish to claim legal professional privilege?)

Yes

No

If yes, please set out full details below:

Are you involved in a transaction that may be a prohibited act under the Proceeds of Crime Act (POCA) and which requires appropriate consent from the National Crime Agency?

Yes

No

If yes, please enclose details in the box below:

Please set out below any other information you feel may be 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 Acknowledgement: .....

Consideration of Disclosure:

**Action plan:**

Outcome of Consideration of Disclosure:

**Are there reasonable grounds for suspecting money laundering activity?**



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

*[Please set out any reasoning for non-disclosure]*

Date consent given by MLRO to employee for any prohibited act transactions to proceed: .....

**Other relevant information:**

Signed: .....

Dated: .....

**THIS REPORT TO BE RETAINED FOR AT LEAST FIVE YEARS**