

Report of:	Meeting	Date	Item no.
Head of Finance (Section 151 Officer)	Audit Committee	21 November 2017	6

Annual Review Of Council's Counter Fraud Policies – Anti-Fraud, Corruption and Bribery, Anti-Money Laundering, Whistleblowing and Gifts And Hospitality and Registering Interests
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1. Purpose of report

1.1 Approval of the Council's Counter Fraud Policies, namely:

- Anti-Fraud, Corruption and Bribery;
- Anti-Money Laundering
- Whistleblowing; and
- Gifts and Hospitality and Registering Interests.

2. Outcomes

2.1 The ability to demonstrate that the Council has arrangements in place that are designed to promote and ensure probity and propriety in the conduct of its business.

3. Recommendations

3.1 Members are asked to approve the policy documents detailed above.

4. Background

4.1 The Audit Committee work plan includes an annual review of the following polices:

Anti-Fraud, Corruption and Bribery - originally approved by the Standards Committee in 2006. The policy was amended in November 2011 to make reference to the Bribery Act 2010, which came into effect on the 1 July 2011.

Anti-Money Laundering - first introduced in 2007 to comply with the new 'Money Laundering Regulations (MLR) 2007 Act', which came into effect in December 2007. From the 26 June 2017 the MLR were superseded by the Money Laundering, Terrorist Financing and Transfer of Funds Regulations 2017.

Whistleblowing - originally agreed by the Standards Committee in 2004. The whistleblowing policy has been reviewed using the British Standards Institute (BSI) Whistleblowing Arrangements Code of Practice for 1998:2008 and the Enterprise and Regulatory Reform Act (ERRA) which received royal assent on 25 April 2013. The ERRA includes major changes to employment law which will impact considerably on whistle-blower protection. The policy has also been reviewed to ensure it is in line with the Public Concern At Work publication; The Whistleblowing Commission - Report on the effectiveness of existing arrangements for workplace whistleblowing in the UK, published in November 2013.

Gifts and Hospitality and Registering Interests – originally agreed by Audit Committee in February 2009.

5. Key Issues and proposals

- 5.1 The general aim of all the Council’s counter fraud policies is to reduce the occurrence and impact of fraud, corruption and bribery on the organisation and provide an effective channel of communication for anyone who has concerns or suspicions of malpractice.
- 5.2 No changes have been made to the Whistleblowing Policy.
- 5.3 The Anti-Fraud, Corruption and Bribery Policy has been amended to reflect the change made to the Council’s key contact at KPMG and to recognise the new Money Laundering, Terrorist Financing and Transfer of Fund Regulations 2017.
- 5.4 The gifts and hospitality and registering interest policy has been amended to formalise the approval process of gifts and hospitality received by the Chief Executive.
- 5.5 Taking into consideration the new Money Laundering, Terrorist Financing and Transfer of Fund Regulations 2017, the Council’s Anti-Money Laundering Policy and Procedure has been refreshed to ensure it complies with the new regulations. The revised policy and procedures is attached at Appendix 1.
- 5.6 All the remaining policies can be viewed by using the following link;

<http://intranet/services/Counter%20Fraud%20and%20Corruption/Pages/default.aspx>

Financial and legal implications	
Finance	There are no specific financial implications arising from the adoption of these counter-fraud policies.
Legal	The Council’s counter-fraud policies assist in good governance and probity of Council actions and decision-making.

Other risks / implications: checklist

If there are significant implications arising from this report on any issues marked with a ✓ below, the report author will have consulted with the appropriate specialist officers on those implications and addressed them in the body of the report. There are no significant implications arising directly from this report, for those issues marked with a x.

risks/implications	✓ / x
community safety	X
equality and diversity	X
sustainability	X
health and safety	X

risks/implications	✓ / x
asset management	x
climate change	x
data protection	x

report author	telephone no.	email	date
Joanne Billington	01253 887372	joanne.billington@wyre.gov.uk	10.11.2017

List of background papers:		
name of document	date	where available for inspection
None		

List of appendices

Appendix 1 – Revised Anti-Money Laundering Policy and Procedures



Anti-Money Laundering Policy and Procedures

Wyre Council
Civic Centre
Breck Road
Poulton-le-Fylde
Lancashire
FY6 7PU

Draft Updated November 2017

1 Introduction

- 1.1 Historically, legislation seeking to prevent the laundering of the proceeds of criminal activity was aimed at professionals in the financial and investment sector. However, more recently it has been recognised that those involved in criminal and terrorist conduct were able to 'clean' the proceeds of crime through a wider range of businesses and professional activities, including Local Authorities.
- 1.2 The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017), which transposed the Fourth EU Money Laundering Directive into UK Law, were laid before Parliament on 22 June 2017 and commenced on 26 June 2017. These obligations impact on certain areas of local authority business and, as under the previous regulations of 2007, require local authorities to maintain internal procedures to prevent the use of their services for money laundering. A key difference of the 2017 Regulations is to require relevant persons to adopt a more risk-based approach towards anti-money laundering, particularly in the conduct of due diligence. Determining the appropriate level of due diligence requires analysis of risk factors based on the EU Directive and which are set out in the MLR 2017.
- 1.3 The council will ensure that it adheres to the relevant legislation and in particular:
- Ensure those staff most likely to be exposed to or suspicious of money laundering are aware of the requirements and obligations placed on the council and on them as individuals;
 - Provide targeted training for those staff considered to be most likely to encounter money laundering; and
 - Make arrangements to receive and manage the concerns of staff about money laundering reporting as necessary to the National Crime Agency (NCA) and potentially other bodies including Her Majesty's Revenue and Customs (HMRC).
- 1.4 This policy applies to all employees of the council, elected members, agency staff and consultants and should be read in conjunction with the Council's Anti-Fraud, Corruption and Bribery Policy.

2 Definitions

2.1 What is Money Laundering?

Money Laundering means:

- Concealing, disguising, converting, transferring or removing criminal or terrorist property;
- Entering into or becoming concerned in an arrangement that a person knows or suspects is facilitating the acquisition, retention, use or control of property purchased through the proceeds of crime or terrorism; or
- Acquiring, using or possessing criminal or terrorist property.

2.2 Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

The Money Laundering Regulations and the Proceeds of Crime Act require organisations in the “regulated sector” and those conducting what is referred to as “relevant business” to adopt certain procedures to help control the transfer of money and assets. Under legislation there are two main types of offences that may be committed by anyone:

- Money laundering offences
- Failure to report money laundering offences

2.3 Definition of a Relevant Business

“Relevant business” is defined with reference to the activities undertaken. Not all of the Council’s business is “relevant” and it will mainly be those officers conducting accountancy, audit, legal and property transactions who will be carrying out relevant business. Examples at Wyre Council could include the following:

- Accepting deposits in advance of a service being provided;
- Arranging / managing investments and loans;
- Legal services involvement with financial or property transactions;
- Collection or refund of money from debtors or rate payers including both Council Tax and Non-Domestic rates;
- Business services in relation to the formation and management of Companies or Trusts and;
- Dealing in goods of any description by way of business wherever a transaction involves accepting a total cash payment in excess of £5,000.

3 The Obligations of The Council

3.1 The following elements represent the main requirements of an Anti-Money Laundering Policy:

- Appoint a Money Laundering Reporting Officer (MLRO) to receive disclosures from staff of suspected money laundering activity;
- Implement a procedure that requires staff to report suspicions of money laundering;
- Have procedures for staff in checking and verifying the identity of clients and others dealing with the Council; (i.e we must ‘*know our customers*’;)
- Maintain adequate records; and
- Train relevant staff.

3.2 Not all of the Council’s business is ‘relevant’ for the purposes of the legislation. 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.

- 3.3 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. 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. Guidance is available on the HMRC website (refer to table at the end of this policy).
- 3.4 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 4.1 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.

4 The Council’s Procedures

- 4.1 The Council’s MLRO is the Head of Finance (Section 151 Officer), and can be contacted as follows;

Clare James
Head of Finance (Section 151 Officer)
Civic Centre, Breck Road
Poulton le Fylde
FY6 7PU

Telephone 01253 887308
Email clare.james@wyre.gov.uk

- 4.2 In the absence of the MLRO, contact the Deputy MLRO

Mary Grimshaw
Senior Solicitor
Address as above

Telephone 01253 887610
Email mary.grimshaw@wyre.gov.uk

4.3 Reporting Procedure

Where a member of staff knows or suspects that money is being laundered or is concerned about their involvement in such activity, this must be disclosed to the MLRO or Deputy. This disclosure should be within hours of it coming to the attention of the member of staff as opposed to days or weeks later. A member of staff who fails to make such a disclosure **MAY BE LIABLE TO PROSECUTION**.

The report to the MLRO should be made using the pro-formas which are located on the Councils Intranet.

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 (maximum five years), a fine or both.

4.4 Procedure following the Report

Once a report has been made to the MLRO the member of staff must comply with the following:

- The member of staff will need to follow any directions given by the MLRO or by the NCA. This may include continuing with the transaction in order to avoid raising suspicion that the laundering has been detected;
- The member of staff will cooperate with the MLRO and NCA during any subsequent investigation;
- The Member of staff must not make any further enquiries or investigate the matter themselves, as there may be a danger that the investigation by NCA could be compromised by alerting those engaged in the money laundering;
- The member of staff should not voice any suspicions to persons suspected of money laundering, as this may constitute the criminal offence of "Tipping Off"; and
- The member of staff shall not make any reference on a client file to a report having been made to the MLRO. Under Data Protection legislation a client may exercise their right to see their file and therefore would see any note of the report thereby 'tipping them off'.

4.5 Duties of the MLRO

The MLRO will follow the procedures below upon receiving a report from a member of staff:

- Enter the date of receipt of the report in the relevant section of the report;

- Acknowledge receipt of the report and advise the member of staff of the timescale in which a response will be made as well as giving any immediate instruction as deemed appropriate;
- Consider the report and undertake any other reasonable enquiries in order to decide whether a report to NCA is required. Guidance from the NCA was produced in October 2010 relating to the information required (<http://www.nationalcrimeagency.gov.uk/publications/732-guidance-on-submitting-better-quality-sars/file>);
- If the MLRO concludes there are reasonable grounds to suspect money-laundering activity may be taking place but has a good reason for non-disclosure then a note must be made. Consent may then be given for an on-going or imminent transaction to proceed. A reasonable excuse could include matters such as legal professional privilege (the MLRO must liaise with the Council's Legal Services to decide if legal professional privilege applies in any particular case);
- If the MLRO concludes there are reasonable grounds to suspect money laundering activity may be taking place or that consent from NCA is required before a transaction can proceed, the standard NCA report form will be completed. Note: the transaction in question cannot proceed until either NCA has given specific consent or else consent is deemed through the expiry of a relevant time limit without objection from NCA;
- If the MLRO concludes there are no reasonable grounds for suspecting or knowing money-laundering activity may be taking place this will be noted on the report and approval will be given for the transaction to proceed accordingly; and
- The MLRO must ensure that all reports received from members of staff and all reports subsequently made to NCA are retained for a minimum of six years in a confidential file kept specifically for that purpose.

4.6 Client Identification Process

This procedure must be followed by members of staff under the following circumstances.

Where the council is carrying out relevant business

AND....An on-going business relationship is formed with a client/third party

OR....Is engaged in a one-off transaction involving payment by, or to the client/third party of £5,000 or more

OR....Is engaged in a series of linked transactions involving total payment by, or to the client/third party of £5,000 or more

OR....It is known or suspected that a one-off transaction (or a series of them) involves money laundering.

Before any business is undertaken the client identification procedure set out below must be adhered to.

Identification Procedure

Satisfactory evidence of identity of the client/third party must be obtained upon taking instructions or as soon as practicable thereafter.

For inter departmental transactions, documentation must be retained that constitutes evidence that the client identification procedure has been followed. For dealings with external clients, evidence will be in the form of written instructions on the organisations letterhead at the outset of the matter. If it is a new client then further evidence may be necessary such as a company search via Companies House. In either case the documentation that constitutes evidence of compliance with the client identification procedure should be clearly marked on the client's records.

Suitable documentary evidence in the case of transactions with individuals would be a copy of a passport or driving licence with a photograph together with correspondence showing the individual's name and address.

In every case evidence of compliance with the client identification procedure shall be retained on file for at least five years from the end of the business relationship.

If satisfactory evidence of identity is not obtained at the outset of the matter then the business relationship or transaction **CANNOT PROCEED**.

4.7 Record Keeping Procedure

Each section of the Council conducting relevant business must maintain for five years records of:

- client identification evidence obtained; and
- details of all relevant business transactions carried out for clients.

This is so that they may be used as evidence in any subsequent investigation by the authorities into money laundering.

The precise nature of the records is not prescribed by law however they must be capable of providing an audit trail during any subsequent investigation. An example may be distinguishing the client and the relevant transaction and recording in what form any funds were received or paid. In reality, staff will be routinely making records of work carried out for clients in the course of normal business and these should suffice in this regard.

There are various levels of 'due diligence', the regulations require due diligence to be carried out on a risk sensitive basis (taking account of customer and geographical risk factors), so that:

- Under MLR 2017 simplified due diligence is only permitted where it is determined that the business relationship or transaction presents a low risk of money laundering or terrorist funding, taking into account the risk assessment
- ‘Enhanced due diligence’ (Regulation 33) 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’, 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.

The council may rely on due diligence undertaken by those regulated by the FSA 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.

4.8 Measuring the Effectiveness of the Policy

The Council will carry out regular training / refresher training to provide assurance that the policy is known and understood by the Council’s employees, elected members, agency staff and consultants.

4.9 Additional Guidance

The Proceeds of Crime Act 2002	http://www.legislation.gov.uk/ukpga/2002/29/contents
The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 2017	http://www.legislation.gov.uk/uksi/2017/692/contents/made
The Terrorism Act 2000	http://www.legislation.gov.uk/ukpga/2000/11/contents
National Crime Agency (NCA)	http://www.nationalcrimeagency.co.uk
HMRC Guidance	https://www.gov.uk/guidance/money-laundering-regulations-your-responsibilities