
Elmbridge Borough Council

Anti Money Laundering Policy

Procedures and Reporting
Arrangements



Elmbridge
Borough Council
... bridging the communities ...

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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 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.
- 1.2 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 MLR 2017.
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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 that must be followed to enable the Council to comply with legal obligations.
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3. What is money laundering?

- 3.1 Under the legislation there are two main types of offences which may be committed:
- Money laundering offences.
 - Failure to report money laundering offences.

Money laundering activity includes:

- 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 into 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 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
- 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.

3.2 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.

3.3 Money laundering regulations apply to cash transactions in excess of 10,000 Euros (approximately £9,000). 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.

3.4 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.

4. 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 risk sensitive policies and procedures relating to customer due diligence, reporting, record keeping, internal control, risk assessment and management, the monitoring and management of compliance and the internal communication of such policies and 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 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 regulations 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. The regulations end "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.
- 4.4 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 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 officer nominated to receive disclosures about money laundering activity within the Council is the Strategic Director & Deputy Chief Executive and can be contacted as follows:

Strategic Director & Deputy Chief Executive
Elmbridge Borough Council
Civic Centre
High Street
Esher
Surrey
KT10 9SD

Telephone: 01372 474100

- 5.2 In the absence of the MLRO, the Head of Finance is authorised to deputise and can be contacted as follows:

Head of Finance
Elmbridge Borough Council
Civic Centre
High Street
Esher
Surrey
KT10 9SD

Telephone: 01372 474123

6. Identification of potential money laundering situations

- 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 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,
- Individuals and companies that are insolvent yet have funds.

6.2 It is not possible to give a definitive list of ways in which to identify money laundering or how to decide whether to make a report to the MLRO. The following are types of risk factors which may, either alone or cumulatively with other factors, suggest the possibility of money laundering activity:

- Payment of a substantial sum in cash (over £5,000),
- A new customer,
- A secretive customer, e.g. refuses to provide requested information without a reasonable explanation,
- Concerns about the honesty, integrity, identity or location of a customer,
- Illogical third party transaction such as unnecessary routing or receipt of funds from third parties or through third party accounts,
- Involvement of an unconnected third party without logical reason or explanation,
- Overpayments by a customer,
- Absence of an obvious legitimate source of funds,
- Movement of funds overseas, particularly to a higher risk country or tax haven,
- Transactions which are out of the line of normal expectations, without reasonable explanation,
- A transaction without obvious legitimate purpose or which appears uneconomic, inefficient or irrational,
- The cancellation or reversal of an earlier transaction,
- Requests for release of customer account details other than in the normal course of business,
- Transactions at substantially above or below fair market values,
- Poor business records or internal accounting controls,
- A previous transaction for the same customer which has been, or should have been, reported to the MLRO.

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 (maximum of 14 years), 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 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 (maximum five years), a fine or both.
- 7.5 A new criminal offence was created in 2017: 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 2 years’ imprisonment.
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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. 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 ML 1, Money Laundering Suspicion Report Form, which is attached at Appendix A. 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, etc,
 - 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 they took place,
 - How they were undertaken,
 - The (likely) amount of money/assets involved,
 - 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 ML 1 form the reasons why you contend the information is privileged. The MLRO, in consultation with the Head of Legal Services, will then decide whether the information is exempt from the requirement to report suspected money laundering to the Serious Organised Crime Agency (NCA).
- 8.5 Once you have reported the matter to the MLRO you must follow any directions they 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.
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9. Consideration of disclosure report by the MLRO

- 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 they expect to respond.
- 9.2 The MLRO will consider the report and any other available internal information they think 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,
 - Any identification evidence.
- 9.3 The MLRO will undertake any other inquiries 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 will investigate on behalf of the MLRO.

- 9.4 The MLRO 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. The MLRO 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,
 - Whether they need to seek consent from the NCA for a particular transaction to proceed.
- 9.6 Where the MLRO concludes one or more of the above the MLRO will record the conclusion and disclose the matter as soon as possible to National Crime Agency (NCA) online or submit their standard report form which can be downloaded from the internet at <http://www.nationalcrimeagency.gov.uk/>.
- 9.7 Once the MLRO has made a disclosure, NCA 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),
 - 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 they know or suspect, or has reasonable grounds to do so, through a disclosure being made, that another person is engaged in money laundering and they do not disclose this as soon as possible to the NCA.

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.

10.2 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 the regulations 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.

You 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.

10.3 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,
- Transaction and business relationship records 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.

- 10.4 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.
- 10.5 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 payment by or to a customer of £5,000 or more,
 - Undertakes a series of linked one-off transactions involving total payment by or to the customer(s) of £5,000 or more,
 - 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, asset management, audit and legal services with a financial or real estate transaction.

- 10.6 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,
 - Ensure there is a logical reason why they would want to do business with the Council.
- 10.7 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.
- 10.8 In relation to Council business appropriate evidence would be signed written instructions on Council headed note paper or an e-mail at the outset of a particular matter. Such correspondence should then be placed on file along with a prominent note explaining which correspondence constitutes the evidence and where it is located.
- 10.9 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 (e.g. Rosebriars).
- 10.10 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.

10.11 Records 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. Risk register

11.1 Whilst all employees must be aware of the existence of the Anti Money Laundering Policy, Procedures and Reporting Arrangements, 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. Under the regulations 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.

11.2 In order to identify such areas of Council business the MLRO has established and will maintain 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.
- Assessed the risks presented by the particular customers, products and services, delivery channels and geographical area.
- Designed and implemented controls to manage and mitigate these assessed risks.

11.3 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,
- 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.

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

- 11.5 Regulations require 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
- 11.6 In carrying out risk assessments we will take into account information on money-laundering and terrorist financing risks made available by the Law Society and/or SRA, and risk factors relating to: -
- Customers
 - Geographic areas where the Council operates
 - Products and services
 - Transactions
 - Delivery channels

12. Training arrangements

- 12.1 The risk assessment shows the authority is low risk of being exposed to money laundering. On this basis mandatory training for all teams is not required. The risk assessment shows that the higher risk areas of the Finance Team and the Local Taxation Team should be made aware of the existence and possible use of the policy and reporting. The regulations include an obligation to make staff aware of the law on data protection, in so far as is relevant to the implementation of the regulations.

13. Record keeping

- 13.1 Under Regulation 40 copies of documents and information used to fulfil customer due diligence obligations will be kept for a period of 5 years following the completion of a transaction or the end of a business relationship. At the end of the 5-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 consent of the person whose data it is has consented

- 13.2 Under Regulation 41 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.
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14. Conclusion

- 14.1 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.
- 14.2 The policy will be reviewed on an annual basis and updated/amended when new legislation/guidance is issued to ensure all information is accurate and up to date.

Confidential

Report to the Money Laundering Reporting Officer

Report of Money Laundering Activity

To: **Money Laundering Reporting Officer** – Strategic Director & Deputy Chief Executive; or
Deputy Money Laundering Reporting Officer – Head of Finance

From: _____
 [insert name of employee]

Directorate: _____
 [insert post title and team]

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, please supply as many details as possible]

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)? [Delete as appropriate]	Yes / No
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If yes, please include details below:

Have you discussed your suspicions with anyone else? [Delete as appropriate]	Yes / No
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If yes, please specify below, explaining why such discussion was necessary:

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 carried a maximum penalty of 5 years' imprisonment.

The following part of this form to be completed by the MLRO

Date report received: _____

Date receipt of from 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 NCA ? [Delete as appropriate]	Yes / No
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If yes, please confirm date of report to NCA: and complete the box below:

Details of liaison with the NCA regarding the report:
Notice Period: from: to: Moratorium Period from: to:

Is consent required from the NCA to any ongoing or imminent transactions which would otherwise be prohibited act? [Delete as appropriate]	Yes / No
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If yes, please confirm full details in the box below:

Date consent received from NCA:

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 NCA, 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.