

Counter Fraud & Investigation



See it.



Report it.



Stop it.

Anti-Money Laundering Policy



Version control sheet

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1. Introduction

- 1.1 It is the responsibility of public sector organisations like Local Authorities to deliver the provision of effective and efficient services to its residents in a manner that seeks to ensure the best possible protection of the public purse.
- 1.2 This policy sets out the action we will take to mitigate the risk that money could be laundered through our systems.
- 1.3 The legislative requirements concerning anti-money laundering procedures are lengthy and complex. Whilst the risk to the Council of contravening the legislation is relatively low, it is extremely important that all Council workers are familiar with their legal responsibilities.
- 1.4 Serious criminal sanctions may be imposed for breaches of the legislation, including imprisonment.
- 1.5 As a responsible public body, we expect all of our suppliers and contractors to follow to our strong stance and will not tolerate any criminality attempting to affect our services or staff.

2. What is Money Laundering?

- 2.1 Money laundering is the process where a person undertakes a particular act as relates to 'criminal property' (i.e. a person's benefit from criminal conduct).
- 2.2 Criminal conduct is anything that is a criminal offence in the United Kingdom. It could be fraud, theft, drug dealing, prostitution, terrorism and includes offences such as breaching building planning law and trade-mark offences.
- 2.3 Criminal property is defined as anything which is a person's benefit from their criminal conduct. That could be money, real and personal property (houses, buildings, boats, cars, horses, watches etc.), 'things in action' and other intangible or incorporeal property (i.e. debts, intellectual property such as copyright, designs and patents etc.)

3. The 5th Anti Money Laundering Directive (5MLD)

- 3.1 The '5MLD' was implemented into UK law by the UK Government on 10/01/2020 via The Money Laundering and Terrorist Financing (Amendment) Regulations 2019ⁱ.
- 3.2 The Fifth Directive is more of a series of amendments to the structure of the Fourth Directive, adding various additional provisions that weren't included in the text of 4MLD.

- 3.3 The main changes are focused on enhanced powers for direct access to information and increased transparency around beneficial ownership information and trusts, such as corporate property ownership, none of which plays a part in the day to day running of the council.
- 3.4 There are areas of the 5MLD that as a local authority we should be aware of, concentrate mainly around the use of 'prepaid cards' and the 'collecting of cash' on such cards as well as taking cash from, or doing business with, companies that are based within High-Risk countries.

Enhanced Due Diligence for High-Risk third countries

- 3.5 The UK currently maintains a list of High-Risk third countries which is sent out to appropriate organisations periodically with updates/removalsⁱⁱ. When doing business with clients within these countries, parties are required to undertake enhanced due diligence measures. One of the new updates that the 5MLD brings, is that any client that is based in a High-Risk country is now subject to compulsory enhanced due diligence measures which the 'relevant person' must undertake. These include obtaining information on the source of funds, enhanced background checks and beneficial ownership. Transactions with High-Risk third countries are extremely rare for the council. Any transactions proposed within this area will be initially referred to Castle Point Council's Counter Fraud & Investigation (CFI) team to lead on the required due diligence before any transactions take place.

Use of Prepaid or preloaded cards

- 3.6 Where the council are to issue 'prepaid' or 'preloaded' cards for service users the council only ever uses 'Non-Reloadable' prepaid cards. This will stop the use of these cards once the initial sums are used. By ensuring the council only use this type of prepaid card we ensure that our own issued cards cannot be used to further any criminal activity.

4. The 6th Anti Money Laundering Directive (6MLD)

- 4.1 It is important to note that this directive does not affect the UK and therefore Castle Point Council, as the UK government chose **not** to implement the most recent directive into national law after the UK left the EU. This was because the government considered that UK

legislation was already largely compliant with the 6MLD's measures through UK legislation.¹

4.2 Among the elements contained in the 6MLD that were already present in UK law to deal with money laundering were the predicate money laundering and associated offences contained within the Proceeds of Crime Act 2002, namely:

- Concealing, disguising, converting, transferring or removing criminal property from the UK
- Becoming involved in an arrangement which an individual knows or suspects facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person
- Acquiring, using or possessing criminal property
- Doing something that might prejudice an investigation e.g. falsifying a document
- Failure to disclose one of the offences listed in a) to c) above, where there are reasonable grounds for knowledge or suspicion.
- Tipping off a person(s) who is or is suspected of being involved in money laundering in such a way as to reduce the likelihood of or prejudice an investigationⁱⁱⁱ

5. Tackling Tax Evasion

5.1 The Criminal Finances Act 2017 introduced criminal offences which apply to Relevant Bodies². In summary, Relevant Bodies will be criminally liable where they fail to prevent those who act for, or on their behalf, from criminally facilitating tax evasion. A Relevant Body is “*a body corporate or partnership wherever incorporated or formed*”. Under s.2(3) Local Government Act 1972 a council is recognised as a “*body corporate.*”

5.2 These offences will be committed where a relevant body fails to prevent an associated person *criminally* facilitating the evasion of a tax, and this will be the case whether the tax evaded is owed in the UK or in a foreign country.

5.3 Previously, attributing criminal liability to a relevant body required prosecutors to show that the senior members of the relevant body were involved in and aware of the illegal activity, typically those at the Board of Directors level.

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/684374/eighth-annual-report-to-parliament-eu-justice-home-affairs-matters.PDF

² <https://www.legislation.gov.uk/ukpga/2017/22/section/44/enacted>

5.4 **Criminal Offences:**

- **Stage one:** the criminal tax evasion by a taxpayer (either an individual or a legal entity) under existing law
- **Stage two:** the criminal facilitation of the tax evasion by an “associated person” of the relevant body acting in that capacity
- **Stage three:** the relevant body failed to prevent its representative from committing the criminal facilitation act

5.5 **Defence:** where the relevant body has put in place ‘reasonable prevention procedures’ to prevent its associated persons from committing tax evasion facilitation offences (stage two), or where it is unreasonable to expect such procedures, it shall have a defence

5.6 **Application of new criminal offences in a local government environment:**

5.7 The council has a top-level commitment to prevent all forms of financial crime affecting the authority. As guardians of public finance, the council has invested in both proactive counter fraud and internal audit teams to examine, monitor and recommend changes to the system of internal control where improvements could be required.

5.8 The council’s contact with the tax regimes are mainly focused on the employment arena. The council has mature procedures on the appointment of staff which include active measures to prevent criminals abusing that area.

5.9 The council uses proprietary systems to capture, monitor and report regularly on the payment of monies to staff and third-parties which is supported by strict policies, procedures and contract clauses.

5.10 Any council worker who suspects that a person may be evading tax has a duty to report their concerns to the CFI.

6. **Preventing Fraud**

6.1 Economic Crime and Corporate Transparency Act 2023 has introduced a new offence of failure to prevent fraud. The new offence will make a ‘large’ organisation liable if it fails to prevent a fraud offence where:

- i. it is committed by its employees, subsidiaries or service providers (each an associated person); and

- ii. where the fraud is intended for the benefit of the company or a person to whom the associated person is providing services on behalf of the company.

6.2 An organisation is a 'large' organisation if it two or more of the following conditions in the financial year preceding the year of the offence apply:

- i. it has more than 250 employees
- ii. it has more than GBP 36 million turnover; and/or
- iii. it has assets of more than GBP 18 million.

6.3 Smaller and other organisations will still have to consider putting in place, or reinforcing, anti-fraud procedures, given that they may be the 'associated person' of a large organisation, meaning the large organisation will require them, for instance, to have in place reasonable procedures to prevent fraud.

6.4 The defence to the failure to prevent fraud offence is for the organisation to have in place reasonable fraud prevention procedures. The offence applies to the fraud and false accounting offences which are most likely to be relevant to large organisations. These are:

- fraud by false representation (section 2, Fraud Act 2006)
- fraud by failing to disclose information (section 3, Fraud Act 2006)
- fraud by abuse of position (section 4, Fraud Act 2006)
- obtaining services dishonestly (section 11, Fraud Act 2006)
- participation in a fraudulent business (section 9, Fraud Act 2006)
- false statements by company directors (Section 19, Theft Act 1968)
- false accounting (section 17, Theft Act 1968)
- fraudulent trading (section 993, Companies Act 2006)
- cheating the public revenue (common law)

7. What are the money laundering criminal offences?

Proceeds of crime offences

7.1 The criminal offences of money laundering are contained in the Proceeds of Crime Act 2002. They are committed when 'criminal property' is transferred, concealed, disguised, converted or removed by a person from England, Wales, Scotland and Northern Ireland.

- 7.2 A person also commits the offence of 'money laundering' if they enter into or becomes concerned in an arrangement which they know or suspect facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person
- 7.3 A person commits a criminal offence when they do something that might prejudice 'a money laundering investigation', for example, falsifying or concealing a document or 'tipping off' ("telling") a person who is suspected of being involved in money laundering.

Terrorist financing offences

- 7.4 The Terrorism Act 2000 also creates money laundering offences where a person enters in to or becomes concerned in an arrangement which facilitates the retention or control by or on behalf of another person of terrorist property ("money"):
- by concealment
 - by removal from the United Kingdom
 - by transfer to nominees, or
 - in any other way
- 7.5 It should be understood that 'terrorist property' covers not only the money stolen in, say, a terrorist robbery, but also any money paid in connection with the commission of terrorist acts. Any resources of a proscribed organisation are also covered: not only the resources they use for bomb-making, arms purchase etc but also money they have set aside for non-violent purposes such as paying their rent.
- 7.6 A proscribed organisation is defined under Schedule 2 of the Terrorism Act 2000. The CFI are responsible for monitoring these organisations and responding appropriately.
- 7.7 A person also commits a criminal offence if they fail to disclose to a constable that they believe a person has committed a terrorism money laundering offence.

Criminal law defences

- 7.8 A person does not commit an offence of fail to disclose to a constable where they can demonstrate that "**his employer has established a procedure for the making of disclosures of the matters specified**" and the person *follows* that procedure.

8. Requirements of the Money Laundering Legislation

8.1 The main requirements of the legislation are:

- To appoint a money laundering reporting officer
- Maintain client identification procedures in certain circumstances
- Implement a procedure to enable the reporting of suspicions of money laundering
- Maintain record keeping procedures.

9. How to identify suspected money laundering

9.1 All council workers should be alert to the possibility of someone trying to launder criminal proceeds through the Council. Some indications of suspicious activity are:

- △ Large cash payments (e.g. paying business rates in cash)
- △ Regular overpayments by a person/ company in any way
- △ Duplicate payments by a person/ company in any way
- △ Regular requests for refunds of payments
- △ Regular 'chargebacks' for card payments
- △ Someone paying regularly on behalf of third parties
- △ Cash buyers purchasing land or property (e.g. Right to Buy properties)

9.2 Any council workers with concerns about money laundering should contact a member of the Counter Fraud & Investigation team on reportfraud@castlepoint.gov.uk

9.3 The CFI regularly provides training to council services on identifying and reporting suspected money laundering.

10. How to report suspected money laundering?

10.1 The CFI team are responsible for managing any cases of suspected money laundering.

10.3 It is the responsibility of every council worker to look for and report any possible money laundering taking place. You **do not** have to speak to a manager before reporting your suspicions.

- 10.4 If you see any of the suspicious activity linked to money laundering you should:
- 10.5 NOT tell the person that you have any suspicions about them
- △ Take all the records (and any cash) from the person to a secure location
 - △ Contact the CFI team on reportfraud@castlepoint.gov.uk
 - △ Follow the instructions given by the CFI
- 10.6 **Remember:** Failure to report your suspicions to the CFI could expose *you* to criminal prosecution.

11. The Money Laundering Reporting Officer (MLRO)

- 11.1 The Council has designated 'Michael Dineen – Assistant Director for Counter Fraud, Enforcement and Community Protection, as the Money Laundering Reporting Officer (MLRO). He has specific duties and actions he must consider as relates to information received concerning suspected money laundering. He can give advice where necessary and can be contacted at mdineen@thurrock.gov.uk.

12. What does the council do about money laundering?

- 12.1 Castle Point Council has a large number of Financial Investigators (AFIs) who are accredited by the National Crime Agency, as well as investigators, intelligence officers and a digital forensic unit available to the Council. These officers can undertake money laundering investigations and when appropriate, can obtain search warrants and Production and/or Disclosure Orders to access bank account material. They can also seize cash and listed assets, freeze bank accounts and restrain assets.
- 12.2 In cases where money laundering is proven the council will prosecute those offenders and use the Proceeds of Crime Act 2002 to recover money from individuals or companies who profited from their offending. A percentage of the funds confiscated and / or forfeited by Castle Point is paid back to the Council to enable enforcement against criminals.
- 12.3 The CFI works with business areas and Internal Audit to ensure that the controls in place prevent and identify potential money laundering. The council's policy is that the CFI must be involved in the provision of new services, systems or contracts to ensure compliance with money laundering legislation.

13. Monitoring delivery

13.1 The CFI lead the council's fight against money laundering and economic crime, with reports on its performance being given to the council's SLT as well to the Authorities Audit Committee twice a year.

14. Relevant legislation

14.1 The Terrorism Act 2000 as amended by the Anti-Terrorist Crime and Security Act 2001

14.2 The Proceeds of Crime Act 2002

14.3 Serious Organised Crime and Police Act 2005

14.4 The Money Laundering Regulations 2007

14.5 Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (*known as the EU 4th Money Laundering Directive*)

14.6 5th Anti-Money Laundering Directive (5MLD) as amended to Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (*known as the EU 4th Money Laundering Directive*)

14.7 6th Anti-Money Laundering Directive (6MLD) on combatting money laundering by criminal law.

14.8 Criminal Finances Act 2017

14.9 Economic Crime and Corporate Transparency Act 2023

ⁱ [The Money Laundering and Terrorist Financing \(Amendment\) Regulations 2019 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

ⁱⁱ [EUR-Lex - 02016R1675-20231018 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu)

ⁱⁱⁱ The offence of failure to disclose and tipping off will apply if the Council undertakes activities regulated under the Financial Services and Markets Act 2000.