

Audit and Governance Committee

4 October 2006

Report of the Assistant Director (Audit and Risk Management)

Money Laundering

Summary

- 1 The purpose of the report is to;
 - a) summarise the legislative requirements necessary to prevent and detect possible money laundering;
 - b) provide details of the interim guidance issued by the Chartered Institute for Public Finance and Accountancy (CIPFA) regarding the application of the legislation within local authorities;
 - c) propose appropriate arrangements to ensure that the risk to the Council of money laundering is minimised.

Background

- 2 The Proceeds of Crime Act 2002 (POCA) consolidated and reformed criminal law in the UK in respect of money laundering. Specific requirements on individuals and organisations are detailed in the Money Laundering Regulations 2003 (the Regulations). Money laundering is also an offence under section 18 of the Terrorism Act 2000.
- 3 POCA defines money laundering as;
 - a) concealing, disguising, converting, transferring or removing criminal property;
 - b) undertaking activities which a person knows or suspects facilitates the acquisition, retention, use or control of criminal property.
- 4 Money laundering is interpreted very widely and includes possessing, or in any way dealing with, or concealing the proceeds of any crime. For a transaction to be suspicious, the exact nature of the criminal offence need not be certain.
- 5 POCA details other possible criminal offences, as follows;
 - a) failing to disclose money laundering offences;
 - b) tipping off a suspect;

- c) doing something that might prejudice an investigation.
- 6 POCA also sets out the obligations on organisations and individuals to report known or suspected money laundering activities. Schedule 9 of the Act defines regulated activities (the regulated sector) which are specifically covered by the legislation. It is a criminal offence not to report actual or suspected money laundering within the regulated sector.
 - 7 The Terrorism Act also sets out similar obligations on organisations and individuals to report suspected money laundering activities associated with actual or planned acts of terrorism.
 - 8 The Regulations cover the measures which need to be put in place to restrict the opportunities for money laundering in organisations which conduct 'relevant business'. These measures include money laundering reporting systems, record keeping, internal reporting arrangements and staff training. The Regulations further define 'relevant business' as being activity undertaken 'by way of business' (for example, the provision of professional accountancy services to third parties).
 - 9 Taken together, regulated activities and relevant business include the following;
 - a) banking, investment business and other financial activities covered by the Financial Services and Markets Act 2000 (including deposit taking and dealing in investments);
 - b) the provision of accountancy and audit services;
 - c) money service operators;
 - d) estate agency work;
 - e) operating a casino;
 - f) the provision of legal services involving financial or real property transactions;
 - g) the provision of advice about tax affairs;
 - h) the activities of insolvency practitioners;
 - i) services in relation to the formation, operation or management of a company;
 - j) dealing in goods of any description that involves accepting cash payments of €15,000 or more.
 - 10 Organisations conducting any form of relevant business need to;
 - a) appoint a nominated officer and implement internal reporting procedures;
 - b) train relevant staff in the subject;
 - c) establish internal procedures in respect to money laundering;

- d) obtain, verify and maintain evidence and records of the identity of new clients and transactions undertaken and report suspicions to the Serious Organised Crime Agency (SOCA).

CIPFA Guidance

- 11 Many public service organisations have been unclear about their specific obligations and responsibilities under the money laundering legislation and regulations. CIPFA issued interim guidance, in 2005, which was intended to clarify the extent of any such obligations and responsibilities.
- 12 The guidance confirmed that the general provisions and offences detailed in POCA (as summarised in paragraphs 3 to 5 above) apply to all public service organisations and their staff. The guidance also concludes that the only regulated activities undertaken by local authorities are likely to be associated with treasury management. However, although there may be occasions when local authorities undertake investment activities on behalf of others, for example, investing trust and charitable funds and placing cash deposits for other public bodies, such activities are normally pursued solely for the purposes of improved investment performance and not 'by way of business'. The activities are therefore likely to be outside the scope of POCA. CIPFA however advises local authorities to be aware of the requirements of the Financial Services and Markets Act when undertaking investment activities on behalf of third parties. Where a third party is deemed to have invested on the basis of advice from a local authority then such activities might be interpreted as being a regulated activity, and therefore within the scope of the Regulations.
- 13 The CIPFA guidance also confirms that most local authorities will not undertake relevant business activities, although it also advises caution when entering into agreements relating to these activities if they involve the provision of services to third parties.
- 14 This means that most local authorities are unlikely to be subject to the 'failure to disclose' offences under POCA and are not obliged by law to comply with the Regulations (for example by putting reporting arrangements, systems and training etc in place).
- 15 However, the size and scope of the activities undertaken by councils are such that few, if any, are likely to be immune from the risks surrounding money laundering. CIPFA therefore recommends that all public bodies should adopt the underlying principles behind the legislation and regulations and put in place anti-money laundering policies, procedures and reporting arrangements, appropriate and proportionate to their activities.

Other Relevant Guidance

- 16 In addition to the guidance issued by CIPFA, the Consultative Committee of Accountancy Bodies (CCAB) published general guidance in March 2004 for all accountants. The guidance provides specific

advice to accountants employed in relevant business or undertaking regulated activities but also recommends that accountants working outside these areas should make themselves aware of the money laundering legislation and in particular the offences contained within POCA (including the offences of tipping off and prejudicing an investigation). Where an organisation has nominated a Money Laundering Reporting Officer (MLRO) then accountants employed by the organisation should report any suspicions to that person.

- 17 CIPFA also made recommendations in respect of treasury management. Local authorities and other public service organisations were advised to put in place and formally approve policies and practices for the recognition and reporting of possible money laundering offences arising from treasury management activities. The Council's Treasury Management Policy and procedures have been revised to reflect the risk of money laundering.

Conclusion

- 18 On the basis of the interim guidance from CIPFA it appears reasonable to conclude that the Council is unlikely to have to comply with the full requirements of POCA and the Regulations. However, there is a need to ensure that the current treasury management activities undertaken by the Council do not fall within the definitions of relevant business and/or regulated activities.
- 19 In addition, the Council is still under a duty to protect public funds and to adopt policies and procedures for the prevention and detection of fraud. The Council needs to recognise that it may be exposed to the risk of money laundering, either directly or indirectly. In the absence of adequate and proper policies and procedures the consequences should this happen could be serious, including the possibility of staff being prosecuted for failing to comply with the law. It is therefore considered necessary to develop and implement further specific measures to combat the risk of money laundering.

Proposed Action Plan

- 20 It is proposed that a detailed action plan is developed to strengthen the Council's existing counter fraud arrangements particularly those in respect of money laundering. The plan should incorporate the following actions and outcomes;
 - a) the Council's existing counter fraud policies and strategies to be updated to reflect the risks of money laundering. Responsibility for the implementation and operation of specific anti money laundering measures will also need to be assigned;
 - b) an exercise should be undertaken to identify those staff most likely to be exposed to money laundering activities, and to make them aware of the obligations placed on the Council

and them as individuals by POCA and the Regulations (through training and guidance);

- c) systems and procedures should be implemented to allow staff to report suspicions;
- d) a senior officer should be nominated as the Money Laundering Reporting Officer (MLRO) to take responsibility for reporting concerns to SOCA (the Serious Organised Crime Agency) (this is a serious undertaking since the reporting officer can commit a criminal offence by failing to report suspected money laundering);
- e) existing arrangements, procedures and controls should be reviewed with a specific emphasis on reducing the risk of possible exposure to money laundering (this could best be achieved by an extension of ongoing audit work but this would have resource implications)
- f) the existing treasury management policy and procedures are further updated to reflect these changes.

It is proposed that the detailed Action Plan with appropriate timescales is presented to this Committee at the 31 January 2007 meeting.

Consultation

21 Not relevant for the purpose of the report.

Options

22 Not relevant for the purpose of the report.

Analysis

23 Not relevant for the purpose of the report.

Corporate Priorities

24 This report contributes to the overall effectiveness of the Council's internal management & assurance arrangements by helping to ensure probity, integrity and honesty in everything we do (Corporate Objective 8.3).

Implications

25 The implications are;

- **Financial** – there are no financial implications other than the time required to develop and implement a reporting process, and provide training/guidance to relevant staff.
- **Human Resources (HR)** – there are no HR implications to this report other than the need to nominate a Money Laundering Reporting Officer (MLRO).

- **Equalities** - there are no equalities implications to this report.
- **Legal** - there are no legal implications to this report.
- **Crime and Disorder** – adoption of the action plan would help to reduce the risk of crime.
- **Information Technology (IT)** - there are no IT implications to this report.
- **Property** - there are no property implications to this report.

Risk Management Assessment

26 Failure to implement effective controls increases the risk that the Council and its staff are exposed to money laundering activities. There is also a risk that the Council and individual members of staff may commit one or more of the offences specified in POCA.

Recommendation

27 Members are asked to;

- Note the legislative requirements necessary to prevent and detect money laundering and the associated guidance issued by CIPFA;

Reason

To ensure the Council complies with relevant legislation.

- Agree that an anti money laundering action plan be brought to the January meeting of this committee.

Reason

To ensure that the Council has in place adequate arrangements to prevent, detect and, where necessary, report on suspected money laundering activities.

Contact Details

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Report Approved



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Specialist Implications Officers

Not applicable

Wards Affected: Not applicable

All



For further information please contact the author of the report

Background Papers

- CIPFA guidance 'proceeds of crime (anti-money laundering) - practical guidance for public service organisations'
- CCAB guidance 'anti-money laundering (proceeds of crime and terrorism)'

Annexes

None