

# The Football Association Money Laundering and The Proceeds of Crime Act:



Guidance for Football Clubs

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## Foreword

I am pleased to introduce The FA's publication *"Money Laundering and The Proceeds of Crime Act: Guidance for Football Clubs"*.

This document has been prepared in response to requests from clubs for guidance in this area and results from consultation with The FA's Football Regulatory Authority (which includes representatives from the Premier League, the Football League and the National Game as well as independent members).

Professional and semi-professional clubs need to be aware of the various aspects of the money laundering legislation and its implications, and, importantly, of the responsibilities of clubs and their officers in that regard. This legislation is part of the law of the land, and applies to all areas of industry, including football clubs. This document therefore sets out to raise awareness of the legislation by reminding those clubs that may already be familiar with it and by bringing it to the attention of those clubs that may not. A summary of the main areas of the legislation is included (with illustrative examples) together with practical measures that clubs may be able to implement to assist in meeting their legal obligations in this area. Links to sources of further information are also included.

I hope that clubs will find this document helpful in understanding a complicated but important area of legislation.

**Jonathan Hall**  
Director of Governance

March 2008

## Introduction

Legitimate trading businesses may unsuspectingly become involved in money laundering or handling the proceeds of crime.

Whilst recognising that some clubs will have appropriate systems and procedures in place, this document seeks: (i) to provide professional and semi-professional football clubs with an overview of the main UK legislation concerning money laundering and the proceeds of crime; (ii) to set out steps a club might take in the event of a suspicious transaction; and (iii) summarises some preventative measures that clubs might take to protect themselves. This is important to all clubs because even if the Money Laundering Regulations do not apply, the offences contained within the Proceeds of Crime Act can still be committed by all persons and businesses.

Accordingly, all clubs should consider what measures they can introduce to reduce the risk of exposure. Some examples are set out in Section 5.

There are links to further information in Section 6, should a club consider that it needs further guidance.

## 1. What is money laundering?

Money laundering is the process by which proceeds of crime ("dirty money") are changed so that the proceeds appear to come from a legitimate source. Dirty money is money or other assets that have been acquired or generated through criminal activities in the UK or abroad.

## 2. How are football clubs affected?

The Government has introduced wide sweeping legislation which makes money laundering a criminal offence with sanctions which include fines and/or imprisonment.

Football clubs should be vigilant and look out for suspicious transactions while carrying out their activities and should deal with such transactions proactively in accordance with the legislation.

There are many transactions that take place within football clubs which have the potential to involve money laundering, no matter how reputable the other party may be in the transaction. Examples include:

- Transactions involving player transfers;
- Sponsorship or advertising arrangements;
- Sub-letting land or facilities;
- Licensing traders to sell goods from club property for a fee;
- Investments from third parties; and
- Acquiring land or buildings from third parties.

Clubs should ask themselves the following questions when carrying out transactions:

- Do you know exactly who you are dealing with?
- Have you properly identified and verified the persons that you are doing business with?
- Do you know how the property/land you are purchasing was acquired by the seller? and
- Do you know how the purchaser/investor/trader/agent has found the funds to pay you?

It is important that all clubs know:

- What the risks are;
- What you should be looking out for;
- How you should deal with any suspicions; and
- What happens if the club or its employees get it wrong.

## 3. The Law

The two main pieces of legislation are The Proceeds of Crime Act 2002 and The Money Laundering Regulations 2007. The new 2007 Regulations came into force on 15th December 2007 and replace the 2003 Regulations. Other legislation includes The Drug Trafficking Act 1994, The Terrorism Act 2000 and The Anti-Terrorism, Crime and Security Act 2001 but these fall outside the scope of this document.

Suspicious transactions of any value are covered by the legislation – there are no de minimis limits.

### 3.1 The Proceeds of Crime Act ("POCA")

#### 3.1.1 Application of POCA

- Broad in scope and applies to all UK businesses (including football clubs) and citizens (including football club employees);
- Sets out requirements in the event of contact with criminal property;
- Breach of POCA is a criminal offence and can be punishable by fines and/or up to 14 years imprisonment.

#### 3.1.2 What is criminal property?

- The benefit or gain from criminal conduct in the UK or overseas;
- Includes all types of property such as money, land, personal property and intangible property (eg trademarks or other rights).

#### 3.1.3 Principal offences under POCA

The principal offences under POCA include:

- Acquiring or using or possessing criminal property;
- Concealing, disguising, converting, transferring or removing criminal property;
- Entering into or becoming concerned in an arrangement which facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person.

### 3.2 The Money Laundering Regulations ("the Regulations")

#### 3.2.1 Application of the Regulations

- Applies to "relevant businesses" defined in the Regulations such as accountants, banks and solicitors;
- Also applies to general activities that clubs may be involved in such as accepting deposits, dealing in investments and dealing in goods of any description (including for example player transactions) by way of business whenever a transaction involves accepting total payments of 15,000 Euro or more;
- The Regulations set out requirements and procedures designed to prevent money laundering that relevant businesses must follow. These include identification of clients, keeping records, training staff, internal reporting and having a Nominated Officer (sometimes called a Money Laundering Officer) to deal with potential suspicious transactions; and
- Failure to comply with the Regulations is a criminal offence punishable by a maximum two years imprisonment or a fine or both.

This document is not intended to provide detailed guidance on the application of the Regulations. If a club requires further details then it should seek professional legal advice.

### 3.3 The Serious Organised Crime Agency ("SOCA")

SOCA is an intelligence led agency with law enforcement powers. It receives and analyses suspicious activity reports (known as "SARs") which is generally how someone would disclose any suspicions regarding money laundering and the proceeds of crime.

Further information about SOCA is available from their website [www.soca.gov.uk](http://www.soca.gov.uk)

## 4. What a club should do if it considers a transaction to be suspicious

The following steps will help a club and its employees avoid liability under POCA in the event that the club/employee believes that a transaction may involve criminal property. Also included are examples that have been provided to help give some practical guidance. The examples are for guidance only and are not exhaustive of situations where the legislation may apply.

### 4.1 Knowledge or suspicion

In the event that a club has knowledge or suspicion that it has, may have been or may (if it takes further steps) be about to become involved in a transaction involving criminal property then, to provide it with a defence to such involvement, it is required by POCA to make a disclosure to SOCA. The club should also take professional legal advice. You should be aware that your legal advisors may also have a similar duty which overrides those of client confidentiality. Upon notification to SOCA, SOCA will indicate what steps should be taken.

If after a transaction has been completed the club or its officers subsequently believe or suspect that criminal property was involved, then the club would not be liable under POCA if it can demonstrate that it did not have knowledge or suspicion at the time the transaction was completed. The club would still have to make a disclosure to SOCA at the time the suspicion arose.

### Example 1

Q) A club contracts out its matchday catering facilities to a catering company for an annual fee payable monthly during the season. The Police contacted the club about the catering company. The club had been dealing with the owner of the catering company for several years without any problems. The owner had a good reputation and paid on time consistently from the same bank account. The Police had evidence that indicated that the owner of the catering company was using money derived from criminal activity. The Police suggested that the owner was using and applying this money through the cash flow of the catering company and this money could have been used to pay the club, buying the food resources and even as change for customers' purchases. Has the club committed an offence under the Proceeds of Crime Act?

A) While the money used to pay the club may be derived from criminal activity, the club did not know or suspect that the money was or represented criminal property. The club would not be liable. Depending on the merits and strength of the evidence against the caterer, the business may or may not be shut down immediately and the owner arrested by the Police.

If the evidence is not strong and the club continues to allow the caterer to provide services the club would now have a suspicion that the money is criminal property and to avoid any liability the club should make an authorised disclosure to SOCA before conducting any further business with the caterer.

### 4.2 Disclosure

POCA requires a person or business who knows or suspects that property constitutes or represents criminal property to disclose and report that knowledge or suspicion to SOCA.

There are two types of disclosure.

**"Authorised" disclosure** – This is a disclosure by the alleged (potential) offender that property is criminal property (see example 2 below). If a club has a Nominated Officer any disclosure should be made to him or her in the first instance. The Nominated Officer should in turn report to and liaise with SOCA. If there is no Nominated Officer the disclosure should be made direct to SOCA by the person who has the information or by a member of the club's senior management (assuming that the information is passed onto them). The club can request the Appropriate Consent of SOCA to proceed with the transaction (see 4.3 below).

**"Protected" disclosure** – Where information causes a person to know or suspect or give him or her reasonable grounds for knowing or suspecting that another party is engaged in money laundering he or she is able to disclose directly to SOCA even if he or she is under a duty of confidentiality such as a contract of employment. An employee would not be required to inform his employer that he or she was making a disclosure.

**How to make a disclosure** – SOCA prefer reports to be submitted electronically in the "SOCA Suspicious Activity Report Format". Further information about disclosures to SOCA is available on their website [www.soca.gov.uk](http://www.soca.gov.uk).

**Reasonable excuse** – Liability can be avoided if it can be shown that disclosure was intended but there was a reasonable excuse for it not being made. The Courts have not defined what constitutes a reasonable excuse. If the club believes that there is a reasonable excuse for not reporting suspected money laundering or the handling of the proceeds of crime it is advised to document the reasons for not disclosing and seek professional legal advice on the matter.

### 4.3 Appropriate consent

"Appropriate Consent" is the consent of SOCA to do an act which would otherwise be prohibited (see offences listed in Section 3.1.3).

Following an authorised disclosure in which "appropriate consent" to proceed with an act is requested, the club should not proceed with the act:

- until the club or person making the disclosure receives from SOCA appropriate consent or hears nothing for 7 working days ("the notice period") starting the first working day after the day disclosure is made; or
- if SOCA expressly withholds its consent within the initial 7 working day notice period, SOCA has a further period of 31 calendar days starting on the day refusal is notified to take further action to prevent the relevant act being progressed by the club. If this further period elapses without SOCA taking any further action the club is entitled to proceed without committing an offence.

### Example 2

Q) A football club is desperate for an indoor training facility. The club has heard a rumour that the owner of a warehouse which is situated adjacent to the club's training ground is considering selling it and the club feels that the local authority would be receptive to the conversion to sports and leisure use. It is well known through the local business community that the current owner of the warehouse has a questionable reputation. It is alleged that the owner bought the warehouse for cash the origin of which may be from criminal activities. If the club did not need the training facility so much it would probably avoid any dealings with the current owner. The MD of the club feels fairly relaxed that he will not break any laws since, as he has said 'hopefully, as we are acquiring a building we won't be dealing with or receiving any dodgy money.'

A) The club and the MD could be in danger of committing an offence under the POCA. While the MD is correct in stating that the club would not be receiving criminal property in the form of money, if the current owner used money which was criminal property or 'dirty money' to purchase the warehouse, the warehouse in turn would also be criminal property in a secondary form. Since the club is aware of the seller's questionable reputation and the possible source of the original purchase money of the warehouse, there is a strong probability that the club knows or at least suspects that the warehouse is or represents criminal property and accordingly would be liable under POCA. If the club wishes to proceed with the purchase it should make an authorised disclosure to SOCA and obtain an appropriate consent to proceed. If the club made an authorised disclosure with a request for consent on 1 October then it may only proceed with the purchase if:

- (i) SOCA provide an appropriate consent; or
- (ii) the club hears nothing from SOCA by 11 October (ie 1 October + 7 working days).

If SOCA provided a notice of refusal of consent on 6 October (ie within 7 working days), then the club may only proceed with the purchase if:

- (i) SOCA provide subsequent consent to proceed; or
- (ii) the 31 day period elapses with SOCA taking no further action (ie. until 6 November, being 31 calendar days from the refusal on 6 October).

### 4.4 Tipping off/prejudicing an investigation

Tipping off only applies where an authorised or protected disclosure has been made and a person makes a reference to that disclosure which is likely to prejudice an investigation. For example, if a person who is named in a disclosure report is told that the disclosure has been made.

Prejudicing an investigation is different from tipping off because it can take place without an authorised or protected disclosure having been made. All that is required is that there is knowledge that a money laundering investigation is or is about to be undertaken and a reference or further disclosure is made that will prejudice such investigation.

A person who is found guilty of tipping off or prejudicing an investigation is liable on conviction to possible imprisonment of a term not exceeding five years or a fine or both.

A person or club will not be committing an offence if they make a disclosure to their legal advisors for the purpose of seeking legal advice as solicitors are subject to legal privilege.

### Example 3

Q) A football club entered into an agreement with a distribution company based in the Far East. Under the agreement the distribution company was granted the right to distribute the club's merchandise in certain countries in South East Asia. The distribution company agreed to pay an advance payment of £100,000 recoupable against receipts from a fixed ongoing royalty. The advance was payable on completion of the agreement. Two weeks before the scheduled completion date the club was warned by a relevant authority for the territory that the distribution company was suspected of generating revenue through illegal copying and reproduction of merchandise. As a result of receiving this information the football club made an authorised disclosure to SOCA on the basis of suspicion that the advance payment and any ongoing royalty payments may be criminal property.

One of the club's employees who was involved in submitting the authorised disclosure to SOCA suggested that the club contact the distribution company to inform them that the date of completion could be delayed pending its receipt of appropriate consent and any input that SOCA might want to give about the situation. The same employee suggested that the club should assist SOCA by contacting other football clubs to see if they had been approached by the same distribution company and to advise them to involve SOCA as the club had done. The club also wanted to inform its solicitors as to the situation.

A) The club acted in accordance with the Act by making an authorised disclosure to SOCA that it had knowledge or suspicion that the advance and any other royalty payments that the distribution company may have made to the club may constitute or represent criminal property. The club should not contact the distribution company or any other football clubs about its disclosure as this would be likely to prejudice any investigation that SOCA might conduct. As those involved in the disclosure at the football club would know or suspect that these separate disclosures would be likely to be prejudicial to the investigation, they are in danger of committing the offence of tipping off. The club could inform their solicitors since this disclosure would be to professional legal advisers for the purposes of receiving legal advice.

## 5. Preventative measures

All clubs should guard against becoming involved in dealing with the proceeds of crime and, as highlighted by this document, there are many different ways in which this could happen.

Clubs should constantly review the transactions that they carry out and consider whether there are any suspicious transactions. If a club is engaged in relevant activities under the Money Laundering Regulations they must meet the requirements of the Regulations and should seek professional advice in so doing.

To guard against the risks associated with potential money laundering or the handling of the proceeds of crime, clubs should review their existing systems and procedures and, where appropriate, consider implementing the following:

- Appointing somebody within the club's senior management to be responsible for money laundering issues;
- Making staff aware of the money laundering legislation and training staff that may be involved in transactions that could involve money laundering;
- Ensuring that there are internal controls on your business transactions so that only employees with the appropriate authority can bind the club;
- Ensuring that up to date and accurate records are kept of all business transactions, especially those that may involve money laundering;
- Ensuring that you know the identity of those that the club is dealing with and carry out appropriate enquiries before entering into transactions with them;
- Monitoring customer activity so that if it changes you can evaluate why it may have changed (for example, a customer with a history of making payment through the electronic banking system suddenly starts paying in large sums of cash); and
- Reporting any suspicious activity.

Clearly, a club should devise safeguards to protect itself that are practical to implement given its individual circumstances and the size and complexity of its business.

### Example 4

Q) A Chairman of a football club is approached by a businessman who the Chairman has never met before with a proposal to invest in the club by providing loans on favourable terms and share capital. What measures can the Chairman of the club take to protect both the club and himself to minimise the risk of contravening POCA?

A) There is no definitive answer and each case would have to be assessed on the nature and complexity of the circumstances. Examples of the measures that the Chairman and the club should consider undertaking are (the list is not exhaustive):

- Ask the businessman for some form of identification (eg copy of passport);
- Ask for his Curriculum Vitae and where possible try to validate it;
- Consider the motives behind the businessman's proposal;
- Identify his business interests and where and how he has made his money;
- Consider undertaking searches on the businessman and his companies at Companies House;
- Consider running credit checks on the businessman and his companies;
- Ask for evidence of funding and from where and how (eg cash, bank transfer) the money will be paid to the club; and
- Obtain professional legal advice, especially in complex and high value transactions.

If after taking all reasonable measures in the circumstances the Chairman considers that there is no reason to believe that the transaction involves the proceeds of crime, then the club and the Chairman are unlikely to commit an offence under POCA. If the Chairman has knowledge or suspicion that is more than "merely fanciful" that the transaction may involve the proceeds of crime then that would constitute a criminal offence if it were not disclosed to SOCA before proceeding with the transaction. At the point of knowledge or suspicion then the club should seek professional advice and an authorised disclosure should be made to SOCA in order to protect the club and the Chairman from potential liability.

## 6. Further information

This document is an overview of the subject. Further information can be obtained from:

### **The Money Laundering Regulations 2007**

[http://www.hm-treasury.gov.uk/media/F/1/money\\_laundering\\_regulations2007.pdf](http://www.hm-treasury.gov.uk/media/F/1/money_laundering_regulations2007.pdf)

### **The Proceeds of Crime Act 2002**

<http://www.opsi.gov.uk/acts/acts2002/20020029.htm>

### **The Serious Organised Crime Agency**

<http://www.soca.gov.uk>

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# The Football Association

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