

AUDIT AND GOVERNANCE COMMITTEE

30 September 2011

BRIBERY ACT 2010

Report of the Executive Director of Commercial and Corporate Services

1. Purpose of Report

- 1.1 To describe the key provisions of the Bribery Act 2010 (“the Act”) and to provide an update as to the work carried out to assess and respond to the implications of the Act.

2. Background

- 2.1 The provisions of the Act became effective on July 1st 2011. The Act reforms UK criminal law in respect of bribery and corruption. The aims of the Act are to:
- a) provide a new, modern and more effective legal framework to combat bribery in the public and private sector; and
 - b) replace the fragmented and complex offences relating to bribery and corruption which have accumulated over the past 120 years.

3. Key Provisions

- 3.1 The Act creates 4 new offences. These are:
- a) Bribing another person. A person is guilty of this offence where they offer, promise or give a financial or other advantage to another and they intend the advantage to induce a person to perform improperly a relevant activity or to reward a person for the improper performance of such an activity.
 - b) Being bribed. A person is guilty of this offence where they request, agree to receive or accept a financial or other advantage intending that a relevant activity should be performed improperly whether by them or another person.
 - c) Bribing a foreign public official. A person is guilty of this offence if they intend to influence a foreign public official in their capacity as a foreign public official and the person intends to obtain or retain business or a business advantage.

- d) Failing to prevent bribery. An organisation is guilty of this offence if a person associated with the organisation bribes another person intending to obtain or retain business for the organisation or to obtain or retain an advantage in the conduct of the business for the organisation, unless the organisation can prove that it had in place 'adequate procedures' to prevent such bribery. However, it should be noted that an organisation is not guilty where a person associated with the organisation receives a bribe.

3.2 The offence of 'failing to prevent bribery' is a new and wide ranging offence. The Act differs from most forms of legislation because it can render an organisation liable to prosecution as a consequence of the behaviour of its employees or other persons associated with it even if the organisation had no knowledge of such behaviour. It should also be noted that persons associated with an organisation could be an agent or supplier or other body or individual who represents or acts on behalf of the organisation, not just an employee.

3.3 During Spring 2011 the government issued guidance as to what constitutes 'adequate procedures'. By complying with this guidance it is considered that an organisation would be deemed to have in place 'adequate procedures.' Rather than give specific procedures, the guidance makes reference to 6 principles which any organisation could apply to its own situation to ensure it has adequate procedures to prevent bribery and to manage the risk of bribery. These principles are:

- a) Proportionality. The action taken by an organisation to prevent bribery should be proportionate to the risks it faces and to the size of the organisation.
- b) Top level commitment – the culture within all levels of an organisation, including senior officers, should ensure that bribery is unacceptable.
- c) Risk assessment – an organisation should know and be aware of the bribery risks it faces and the level to which it may be susceptible.
- d) Due diligence – an organisation should know about those organisations and individuals it does business with.
- e) Communication – The organisation should have clear processes and procedures which should be understandable, accessible and communicated to employees, to organisations acting on behalf of the organisations, and the organisations and individuals it does business with. They should be comprehensive covering all relevant bribery risks, e.g. gifts and hospitality, overseas expenses etc. The anti-bribery arrangements should be embedded within the organisations processes. Responsibility for anti-corruption compliance within the organisation should be placed in the hands of a senior manager with appropriate expertise and resource.
- f) Monitoring and review – the organisation should monitor the effectiveness of its anti-corruption arrangements to ensure it continues to appropriately manage the risk of bribery faced.

- 3.4 As well as individuals involved directly and organisations failing to prevent bribery being liable to prosecution, under the provisions of the Act a senior person within an organisation may also be deemed guilty if the offence is committed by a person associated with the organisation with the senior person's consent or connivance (i.e. they knew about it but 'turned a blind eye').
- 3.5 The penalty for an individual person convicted of an offence under the provisions of the Act could be a prison sentence up to 10 years in length. The maximum sentence for an organisation for an offence committed under the Act is an unlimited fine. The organisation would also suffer reputational damage.
- 3.6 A court can also impose Confiscation and Civil Recovery orders under the Proceeds of Crime Act 2002 to recover gains made by an individual or an organisation because of bribery, including where organisations were not aware of bribery was going on.
- 3.7 Individuals and organisations can be prosecuted under the provisions of the Act for bribery committed both in the UK and abroad.

4 Implications for the Council.

- 4.1 The Council has historically been mindful of the risk of fraud and bribery it faces. This is reflected in the arrangements currently in place to manage these risks. These include, for example, the Codes of Conduct for councillors and officers, the Council's Anti Fraud and Corruption Policy and associated arrangements, and the Council's Whistle Blowing Policy.
- 4.2 Over recent months an exercise has been carried out by the Internal Audit and Counter Fraud team to review whether the Council has 'adequate procedures'. A summary of the planned work and progress made is attached at Appendix 1.
- 4.3 While work is still progressing work to date has established that:
 - a) the arrangements the Council have had in place previously compare favourably in light of the Act,
 - b) the provisions of the Act have been communicated to the majority of key stakeholders, including EMT and Cabinet,
 - c) an initial assessment of the level of bribery risk faced by the Council has been assessed as low.
 - d) any improvements made will be considered proportionate to the risk.

5. Recommendations

- 5.1 Members are asked to note the report.

Bribery Act 2010
Review of Council Arrangements to Manage the Risk of Bribery and Corruption

Principle	Activity Undertaken
Top Level Commitment	The Council's Executive Management Team have: a) formally reaffirmed their commitment to the Council's Anti Fraud and Corruption Policy Statement. b) acknowledged the Council's responsibility under the Bribery Act 2010 and likewise their own individual responsibilities as senior managers under the Act c) re-affirmed that the Executive Director of Commercial and Corporate Services is the lead officer in relation to bribery.
Risk Assessment	An initial corporate bribery risk assessment has been carried out. This is currently being 'quality assured' by the relevant directorate management teams for completeness and accuracy. Overall, the authority is considered low risk.
Due Diligence	A review of the Council's procurement arrangements has shown that there are appropriate arrangements in place to ensure it is aware of the history and nature of the body it is dealing with. A review of relevant Council policy and procedures (e.g. codes of conduct, foreign travel, gifts and hospitality, anti fraud and corruption arrangements, grants, partnerships etc.) in light of the Bribery Act 2010 is currently ongoing.
Communication	An exercise to communicate key provisions of the Act was carried out in June/July 2011. Cabinet Members, Councillors, management and employees have been informed through various methods. The reviews mentioned under due diligence will also consider communication
Monitoring and Review	Arrangements are being developed to ensure that the bribery risks faced by the Council are a) monitored on a regular basis, and b) the risk of bribery is regularly evaluated by the Council.
Proportionality	As part of the review of arrangements, measures previously put in place to manage the risk of bribery are being evaluated to ensure they remain proportionate to the risk.

