

**Audit Committee – 20 June 2011**

**Bribery Act 2010**

**Summary of report:**

This report outlines the main provisions of the Bribery Act 2010 and steps officers have identified as necessary to prepare for its implementation.

**Background papers:**

Bribery Act 2010, anti fraud and anti corruption policy and strategy, code of conduct for employees, members' code of conduct, confidential reporting policy (whistle blowing) and financial and contract rules.

**Recommendation:**

1. To note the contents of the report.



**James Walsh – Chief Finance Officer**  
**8 June 2011**

**Background:**

**Bribery Act 2010**

The Bribery Act 2010 modernises the law on bribery and comes into force on 1 July 2011. The key points of the new Act are:

- It deals only with bribery, not other forms of white collar crime.
- The organisation may be liable for failing to prevent a person from bribing on its behalf. There is, however, a full defence if the organisation can show that it has adequate procedures in place to prevent bribery;
- Hospitality is not prohibited by the Act; and
- Facilitation payments ('grease payments') are considered to be bribes under the Act, just as they were under the old law.

**Four New Offences**

The Act creates four new offences:

1. Offences of bribing another person (Section 1)

It will be an offence to offer, promise or give a financial or other advantage with the intention of inducing that person to perform improperly a 'relevant function or activity' or to reward that person for doing so.

It will also be an offence to offer, promise or give a financial or other advantage where the person doing so 'know or believes' that the acceptance of the advantage would itself constitute the improper performance or a 'relevant function or activity'.

In both cases it does not matter whether the advantage is offered, promised or given directly or through a third party.

The offence applies to bribery relating to any function of a public nature, connected with a business, performed in the course of a person's employment or performed on behalf of a company or another body or persons.

For the purpose of deciding whether a function or activity has been performed improperly the test of what is expected is a test of what a reasonable person in the UK would expect in relation to the function or activity.

## 2. Offences relating to being bribed (Section 2)

This offence is relevant to a number of prescribed cases but in essence it will be an offence to agree to request, receive or accept a financial or other advantage with the intention that a 'relevant function or activity' should be performed improperly and it does not matter whether the advantage is received directly or through a third party.

## 3. Bribery of a foreign official (Section 6)

This is a stand-alone offence applicable in situations where the intention is bribery of a foreign public official.

## 4. Failure of commercial organisation to prevent bribery (Section 7)

The Act creates a new offence of failure by a commercial organisation to prevent a bribe being paid for or on its behalf. For the purposes of the Act a relevant commercial organisation means a body corporate or partnership which carries on a business or part of a business. Business is defined as a trade or profession.

In general, a public body would not be classed as a 'commercial organisation', however, local authorities may have subsidiaries which would come under the scope of the Act or carry out activities which are akin to running a private business. Current legal indications suggest that local authorities are included in the definition as being a body formed in the UK.

In any event it would be prudent for the Council to review its policies and procedures in light of the Act to ensure that they would be adequate in relation to those offences that could affect the Council, and to minimise risk.

A 'commercial organisation' is liable under the Act if a 'person associated' with it, bribes another person intending to obtain or retain business or a business advantage for the organisation. 'Persons associated' with an organisation is a broad scope as to embrace the whole range of persons connected to an organisation who might be capable of

committing bribery. This will include employees, agency staff, agents, suppliers and contractors.

While organisations may be liable for failing to prevent a person from bribing on its behalf, there is, however, a full defence if the organisation can show that it has adequate procedures in place to prevent bribery.

On 30 March, the Ministry of Justice published the final version of guidance about anti-bribery procedures in respect of the offence under Section 7. The guidance explains the policy behind Section 7 and sets out six principles that are intended to help commercial organisations of all sizes and sectors understand what sorts of procedures they can put in place to prevent bribery.

These principles are flexible and outcome focussed, to allow each organisation to tailor its policies and procedures so that they are proportionate to the nature, scale and complexity of its activities.

## **Six Principles**

### **1. Proportionality**

The action organisations should take should be proportionate to the risks it faces and to the size of the business. For example, large organisations operating in an overseas market where bribery is known to be common place, will need to do more than prevent bribery.

### **2. Top Level Commitment**

Those at the top of the organisation are in the best position to ensure that the organisation conducts its business without bribery. A culture should be established in which bribery is never acceptable. Steps should be taken to ensure that the organisations policy and procedures are clearly communicated to all levels of management and staff; and any relevant external parties.

### **3. Risk Assessment**

Organisations are asked to think about the bribery risks that they face. It may be that if the risk is deemed small, and therefore little risk of bribery being committed on behalf of the organisation, then procedures adopted should be proportionate to that risk.

### **4. Due Diligence**

Knowing exactly who the organisation is dealing with can help to protect the organisation from taking on people who might be less than trustworthy. The organisation may therefore wish to ask questions and do a few checks before engaging others to represent it in business dealings. Due diligence covers all parties to a business relationship, including the organisation, supply chain, agents and intermediaries, all forms of joint venture and similar relationships.

### **5. Communication**

Communicating policies and procedures to staff and to others who will perform services for the organisation will enhance awareness and help deter bribery by making clear the

basis on which the organisation does business. Training and general raising awareness should be considered.

## 6. Monitoring and Review.

The risks that the organisation faces and the effectiveness of procedures may change over time. Monitoring and review mechanisms should be in place to ensure compliance with relevant policies, procedures and identify any issues as they arise, and to subsequently implement improvements as appropriate.

### **Council Policies**

In accordance with the Bribery Act, a review of relevant Council policies and procedures has been undertaken to ensure that adequate procedures are in place to prevent bribery, namely:

- anti fraud & anti corruption policy & strategy
- code of conduct for employees
- members' code of conduct
- confidential reporting policy (whistle blowing)
- financial and contract rules

It is considered that these policies and procedures are sufficiently robust and currently afford adequate protection against bribery. The anti fraud and anti corruption policy and strategy will, however, be reviewed as part of internal audit's anti fraud and corruption work this year.

It is further considered that the council's due diligence controls are sufficiently robust to prevent against bribery offences. Internal audits work is intended to ensure that effective systems of internal control are in place and for the prompt and vigorous investigation of potential irregularities reported to and identified by the service. This demonstrates the serious manner in which the council takes its responsibilities in ensuring effective control arrangements are in place and in dealing with reported allegations of fraud and corruption, including offences under the Bribery Act. This also offers protection to the council and its officers and provides an assurance to stakeholders and citizens regarding the security of our operations.

In applying the 6 principles, the following additional measures are also being undertaken:

- A risk assessment is being completed which will follow the council's risk management framework and action taken as appropriate.
- Awareness raising of the Act has been completed via the June edition of 'Core Brief' which was disseminated to all staff. This included a reminder to all staff of the relevant policies, namely anti fraud and anti corruption policy and strategy, code of conduct for employees, members' code of conduct, confidential reporting policy (whistle blowing) and financial and contract rules.
- A report will shortly be taken to standards committee.
- The Bribery Act will be included in internal audit's anti fraud and corruption work in 2011/12.

### **Resource and legal considerations:**

It is important that effective systems of internal control are in place for the prevention of fraud and corruption, including offences under the Bribery Act. Where fraud or corruption is detected, robust action is always taken against the perpetrators. There is provision within the approved internal audit plan to undertake irregularity work reported to and identified by the internal audit service.

### **Governance Issues / Citizen impact:**

Internal audits work is intended to ensure that effective systems of internal control are in place, including those in relation to the introduction of new, or revisions to existing, systems/processes and for the prompt and vigorous investigation of potential irregularities reported to the service. This demonstrates the serious manner in which the council takes its responsibilities in ensuring effective control arrangements are in place and in dealing with reported allegations of fraud and corruption, including offences under the Bribery Act. This also offers protection to the council and its officers and provides an assurance to stakeholders and citizens regarding the security of our operations.

### **Performance and risk management issues:**

Many audit committee activities are an important and integral part of the council's performance management and corporate governance frameworks. The internal audit strategic plan is risk assessed to ensure that areas most at risk are examined as a priority and includes an allocation of time to undertake unplanned irregularity and consultancy work.

Irregularities may be noted during regularity audit reviews or be reported from a number of sources, including council managers, employees, occasionally via the Confidential Reporting Policy (whistle blowing), and externally. Irrespective of how the allegations are reported, however, each will be subject to investigation. Some result in little investigatory time having to be spent, others can take much longer. Relevant action, where found to be appropriate, will always be taken, i.e. disciplinary, court proceedings, police referral and recovery of losses.

### **Equality Implications:**

None arising from this report.

### **Consultation:**

This report has been consulted with officers from legal and democratic services, risk and insurance; and procurement.

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