

## AUDIT COMMITTEE

27 JUNE 2011

### REPORT OF HEAD OF FINANCIAL SERVICES

#### A.5 **BRIBERY ACT 2010** (Report prepared by Karen Neath)

#### PART 1 – KEY INFORMATION

##### **PURPOSE OF THE REPORT**

To advise members of the contents and implications for the Council of the Bribery Act 2010 which comes into force on 1 July 2011.

##### **EXECUTIVE SUMMARY**

The Bribery Act will come into force on the 1 July 2011. It is intended to provide a more effective legal framework to combat bribery in the public or private sectors and replaces previous fragmented and complex offences at common law and in the Prevention of Corruption Acts 1889-1916.

The act will make it an offence for anyone to offer a bribe or to request a bribe to perform a function improperly. It will also mean that commercial organisations could be liable if they do not prevent bribery in relation to services provided to or for their business. However, it will be a defence if an organisation can prove that it has adequate procedures to prevent bribery in place. Under the act senior officers could be found personally liable if it can be proved that they had knowledge or connivance of bribery.

Whilst local authorities do not fall within the definition of commercial organisations it is appropriate that procedures and policies are in place to prevent bribery. The Ministry of Justice has set out six principles which it believes should inform procedures put in place by commercial organisations to prevent bribery.

##### **RECOMMENDATIONS**

- a) That the contents of the Bribery Act 2010 are noted.
- b) That officers ensure that relevant policies and procedures are kept under review so that the risk of bribery is mitigated.

#### PART 2 – IMPLICATIONS OF THE DECISION

##### **DELIVERING PRIORITIES**

Delivery against priorities, service improvement and governance arrangements are improved through ensuring that appropriate policies and procedures are in place to mitigate the risk of bribery.

##### **FINANCE, OTHER RESOURCES AND RISK**

###### **Finance and other resources**

There are no direct implications for the Council for the implementation of the act.

**Risk**

The Council engages with many external suppliers and contractors in delivery of its services and there is a risk that bribery could occur within the overall operating environment. However, there are a number of policies and procedures in place to mitigate this and the work of both internal and external audit provides assurance that these policies and procedures act to make it very difficult for bribery to take place.

**LEGAL**

The Bribery Act 2010 will come into force on 1 July 2011.

**OTHER IMPLICATIONS**

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

**Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.**

There are no direct implications.

**PART 3 – SUPPORTING INFORMATION****BACKGROUND**

The Bribery Act received Royal Assent on 8 April 2010 and will come into force on the 1 July 2011.

The Act is only concerned with bribery and not other forms of crime such as fraud or money laundering. It is intended to provide a more effective legal framework to combat bribery in the public or private sectors and replaces previous fragmented and complex offences at common law and in the Prevention of Corruption Acts 1889-1916. Hospitality is not prohibited under the act.

**THE BRIBERY ACT 2010**

The Act will:

1. Make it an offence for anyone to offer, promise or give a financial or other advantage to induce or reward another party for the improper performance of a relevant function (*section 1*);
2. Make it an offence for anyone to request, agree to receive or accept a financial or other advantage for the improper performance of a relevant function or where the requesting, agreeing to receive or accepting of a financial or other advantage is in itself an improper act (*section 2*);

For the purposes of the Act a relevant function which could be improperly performed is one which is of a public nature, connected with a business, performed in the course of a person's employment or performed by or on behalf of a body of persons.

3. Create a discrete offence of bribery of a foreign public official (*section 6*);
4. Create a new offence of failure by a commercial organisation to prevent a bribe being paid for or on its behalf A relevant commercial organisation will be guilty of an offence if any person associated with it bribes another person intending to obtain or retain

business or obtain or retain an advantage in business. A commercial organisation means all organisations incorporated under UK law and carrying on business activities. It will be a defence if the organisation can demonstrate that it has adequate procedures in place to prevent bribery (*section 7*). Also, if offences committed under sections 1, 2 and 6 can be proved to have happened with the connivance or knowledge of a senior officer that officer can be individually prosecuted against (*section 14*);

5. Require the Secretary of State to publish guidance about procedures that relevant commercial organisations can put in place to prevent bribery on their behalf (*section 9*);
6. Impose severe penalties on those found guilty of bribery. Sentences of up to a year for a summary conviction or up to 10 years for a conviction on indictment could be handed out to individuals found guilty of an offence under sections 1, 2 or 6. Under section 7 a corporate body which fails to prevent bribery would be subject to an unlimited fine.

### **Implications for Local Authorities**

The most relevant parts of the act to local authorities and the areas where a crime could occur are under sections 1 and 2 and particularly in areas where the council is engaging with external suppliers and contractors to provide services to or on behalf of the Council. Local authorities are not directly affected by section 7 as they are not incorporated bodies carrying out a business but this section could have implications for local authority companies. In any case it would seem appropriate to assess the authority's risk exposure and procedures which can be put in place in line with the guidance issued by the Ministry of Justice.

### **Ministry of Justice Guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing**

The Government has set out six principles which it believes should inform procedures put in place by commercial organisations to prevent bribery. These are as follows:-

- **Principle 1 – Proportionate procedures** – an organisation's procedures to prevent bribery by persons associated with it are proportionate to the bribery risks it faces and to the nature, scales and complexity of the organisation's activities. They are also clear, practical, accessible, effectively implemented and enforced.
- **Principle 2 – Top level commitment** – The top level management are committed to preventing bribery by persons associated with it. They foster a culture within the organisation that bribery is never acceptable.
- **Principle 3 – Risk Assessment** – The organisation assesses the nature and extent of its exposure to potential external and internal risks of bribery on its behalf by persons associated with it. The assessment is periodic, documented and informed.
- **Principle 4 – Due diligence** – The organisation applies due diligence procedures taking a proportionate and risk based approach in respect of persons who perform or will perform services for or on behalf of the organisation in order to mitigate identified bribery risks.
- **Principle 5 – Communication** – The organisation seeks to ensure that its bribery prevention policies and procedures are embedded and understood throughout the organisation through internal and external communication including training that is proportionate to the risks it faces.
- **Principle 6 – Monitoring and Review** – The organisation monitors and reviews

procedures designed to prevent bribery by persons associated with it and makes improvements where necessary.

Although these principles are designed to inform commercial organisations they can also be used as a framework to test the Council's resilience to bribery. The Council has a number of policies and procedures in place to secure its operating environment including:

- Financial Procedure Rules;
- Procurement Procedure Rules which require all contracts to include a clause on prevention of corruption. An additional question has also been added to the Council's base PQQ which encourages officers to seek the relevant information into whether there has been any conviction under section 7 of the Act;
- Whistleblowing Policy;
- Fraud and Corruption Strategy;
- Anti Fraud and Corruption Newsletters;
- Internal and External Audit testing of the control environment including adequate division of duties, supervisions and approval processes;
- Codes of practice for both officers and members.

Although some of these are focussed more widely on the prevention of fraud and corruption generally the controls and checks and balances of these arrangements will also assist towards the prevention of bribery.

A full copy of the act can be found at the following site:

<http://www.legislation.gov.uk/ukpga/2010/23/contents>

<b>BACKGROUND PAPERS FOR THE DECISION</b>
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None
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<b>APPENDICES</b>
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None
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