

AUDIT COMMITTEE

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BRIBERY ACT 2010

Report from: Deborah Upton, Monitoring Officer

Author: Deborah Upton, Monitoring Officer

Summary

The Bribery Act 2010 came into force on the 1 July 2011. Members are asked to note the contents of this report and consider whether the council's existing policies should be revised.

1. Budget and Policy Framework

- 1.1 The Council's Constitution currently has in place an Anti-Fraud and Corruption Policy and Whistleblowing Policy.
- 1.2 In light of the Bribery Act 2010 (the "Act") the Council's policies concerning Fraud and Corruption require revision.

2. Background

- 2.1 The Act received Royal Assent on 8 April 2010 and came into force on 1 July 2011. The Act made significant changes to the law on bribery, bringing in a comprehensive scheme of bribery offences.
- 2.2 This report summarises the offences included in the Act and the main implications for local authorities.

3 Summary of the Act's Offences

- 3.1 The Act introduces four key offences:
 - 3.1.1 **Section 1: Offences of bribing another person:** If a person offers, promises or gives a financial or other advantage to another person, intending the advantage to induce or reward with the improper performance of a function or activity or knows or believes that the acceptance of the advantage would itself constitutes the improper performance of a function or activity.

- 3.1.2 **Section 2: Offences relating to being bribed:** If a person requests, agrees to receive or accepts a financial or other advantage from another, intending the advantage to be rewarded by the improper performance of a function or activity.
- 3.1.3 **Section 6: Bribery of foreign public officials:** A specific offence of directly or indirectly offering, promising or giving a bribe to a foreign public official. To commit this offence a person must intend the bribe to influence the actions of the foreign public official.
- 3.1.4 **Section 7: Failure of commercial organisations to prevent bribery:** This offence is based on the failure by a relevant commercial organisation to prevent bribery by people acting on its behalf (the corporate offence). A relevant commercial organisation is guilty of an offence if any person associated with it bribes another person, intending to obtain or retain business or an advantage in the conduct of business for the commercial organisation. A 'relevant commercial organisation' is defined in Section 7(5) of the Act as a body or partnership incorporated or formed in the UK irrespective of where it carries on a business, or an incorporated body or partnership which carries on a business or part of a business in the UK irrespective of the place of incorporation or formation.
- 3.2 The Act refers to the intention behind the offences being to bring about the improper performance of a relevant function or activity. "Relevant function or activity" applies to both the public and private sector, with the expectation that the function or activity should be carried out in either good faith, impartially or that the person performing it is in a position of trust.
- 3.3 The test is set out in Section 5 (1) of the Act and is that of the reasonable person in the UK. Therefore if a reasonable person in the UK would consider an individual or an organisation's actions to be corrupt in obtaining an advantage, then the act is likely to be an offence under the Act and at risk of prosecution.

4 Legal Implications

- 4.1 The Act has a very broad reach and will have implications for public sector organisations, including local authorities. There are implications for the Council's Anti-Fraud and Corruption Policy and Whistleblowing Policy.
- 4.2 The whole of the Act would apply to public sector organisations including the section 7 corporate offence, which sets out that a relevant organisation is guilty of an offence if a person associated with the organisation undertakes bribery. This is a strict liability offence. Therefore there is no need to prove negligence or management complicity. However an organisation will have a defence to this corporate offence if it can show that it had in place adequate procedures designed to prevent persons associated with them undertaking such conduct: Section 7(2) of the Act.

- 4.3 There are severe penalties for the offences. The offences carry a maximum penalty of an unlimited fine for an organisation and 10 years imprisonment and an unlimited fine for individuals.
- 4.4 The Secretary of State has published the **Bribery Act 2010 Guidance (the “Guidance”)** which sets out guidance on procedures that organisations can put in place to prevent persons associated with them from undertaking bribery offences and also assists in setting up adequate procedures to enable a defence to the section 7 offence.
- 4.5 The Guidance sets out that organisations wishing to instil adequate procedures to prevent bribery being committed on their behalf should be governed by the following six principles:
- 4.5.1 **Proportionate procedures:**
An organisation’s procedures to prevent bribery by persons associated with it should be proportionate to the bribery risks it faces and to the nature, scale and complexity of the organisation’s activities. They should also be clear, practical, accessible, effectively implemented and enforced.
- 4.5.2 **Top Level Commitment:**
The top-level management should be committed to preventing bribery by persons associated with it. They should foster a culture within the Council in which bribery is never acceptable.
- 4.5.3 **Risk Assessment:**
The Council should assess 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 should be periodic, informed and documented. It should include financial risks and also other risks such as reputational damage.
- 4.5.4 **Due diligence:**
The Council should apply 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.
- 4.5.5 **Communication (including training):**
The Council should seek 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.
- 4.5.6 **Monitoring and review:**
The Council should monitor and reviews procedures designed to prevent bribery by persons associated with it and make improvements where necessary.

- 4.6 The Guidance sets out that adequate procedures need to be applied proportionately, based on the level of risk of bribery in the organisation. It is for the Council to determine proportionate procedures in the recommended areas of six principles.
- 4.7 Implementing procedures in line with the Guidance will assist in preventing bribery and corruption taking place within the Council, as well as having a defence to the section 7 Corporate Offence.

5. Financial and Legal implications

- 5.1 There are no financial implications; and
- 5.2 The legal implications are set out within the body of this report.

6. Risk management

- 6.1 The Anti-Fraud and Corruption Policy and the Whistleblowing Policy, both of which are part of the Council's Constitution, set out the basis for protecting public funds by ensuring the opportunity for fraud and corruption is reduced to the lowest risk.
- 6.2 The Anti-Fraud and Corruption Policy and the Whistleblowing Policy may require revision in order to further reduce risk for bribery and it is proposed they are reviewed and reported back to the Audit Committee in due course.

8. Recommendations

- 8.1 Members are asked to:
- 8.1.1 Note the contents of this report;
- 8.1.2 Note the implications of the Act on the Council; and
- 8.1.3 Agree that the relevant Council policies are reviewed to address the implications of the Act.

Lead officer contact

Name Deborah Upton
Job Title Monitoring Officer
Telephone 01634 332133
Email deborah.upton@medway.gov.uk

Background papers

Anti-Fraud and Corruption Policy
Whistleblowing Policy
Medway Council's Constitution