

EMPLOYMENT MATTERS COMMITTEE

10 JULY 2012

BRIBERY ACT POLICY

Report from/Author: Perry Holmes, Monitoring Officer

Summary

The Bribery Act 2010 modernises the law on bribery and has some limited application to the Council. This report presents a policy for consideration by the Employment Matters Committee.

1. Budget and Policy Framework

- 1.1 It is within the remit of the Employment Matters Committee, prior to final consideration at Council, to consider this new policy and whether it provides an adequate and proportionate response to the Council's responsibilities to prevent bribery.
- 1.2 It is proposed that that Bribery Act Policy is included within the Constitution and so approval of the policy is a matter for Council.

2. Background

- 2.1 The Bribery Act 2010 modernises the law on bribery. The key points are:
 - It deals exclusively with bribery.
 - The Council may have criminal liability for failing to prevent a person from giving or receiving a bribe on its behalf.
 - There is a full defence if the Council can show that it has adequate procedures in place to prevent bribery.
 - Hospitality is not prohibited
 - Facilitation payments are considered to be bribes

- 2.2 The Act creates four new offences:

1. Offences of bribing another person (section 1)

It will be an offence to offer, promise or give 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 financial or other advantage where the person doing so "knows or believes" that the acceptance of the

advantage would constitute the improper performance of 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 offences apply 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 the reasonable person test.

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 a 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 purpose 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.

2.3 In general a council would not be classed as a “commercial organisation”, however, councils may have subsidiaries which would come under the scope of the Act or carry out activities which are akin to running a private business.

2.4 In any event, it would be advisable for the Council to review its policies and procedures in light of the Act and ensure that are adequate in relation to those offences that could affect the Council and suitably minimise any risks.

2.5 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 or accepts a bribe. This would include employees, agency staff and could include contractors and suppliers.

2.6 It is a full defence to this offence to show that an organisation has adequate procedures in place to prevent bribery.

3. **Advice and analysis**

3.1 The Ministry of Justice produced guidance about anti-bribery procedures in respect of the offence under section 7. This included six principles intended to

help commercial organisations of all sizes and sectors to find adequate procedures.

3.2 The six principles are:

1. Proportionality
2. Top Level Commitment
3. Risk Assessment
4. Due Diligence
5. Communication
6. Monitoring and Review

3.3 The Council has a number of pre-existing policies and procedures which when read alongside the attached Bribery Policy give adequate protection against bribery. There are plans during this year to strengthen the current arrangements particularly around potential conflicts of interests. The adequacy of protection against bribery should be reviewed at least annually by the Audit Committee and other Committees where necessary to ensure they take account of any new risks. The pre-existing policies include:

1. The Anti Fraud and Corruption Policy
2. The Members' Code of Conduct
3. The Financial Rules
4. The Whistleblowing Policy
5. The Employee Code of Conduct

3.4 A Diversity Impact Assessment (DIA) screening form has been undertaken and is attached at Appendix 2. It is not necessary to undertake a full assessment on the draft policy.

3.5 The Bribery Act Policy was considered by the Audit Committee on 10 July 2012. The views of the Audit Committee will be reported to the Employment Matters Committee.

4. Risk management

4.1 There are reputational and legal risks to the Council for not pro-actively seeking to prevent bribery.

Risk	Description	Action to avoid or mitigate risk
Reputational and legal	bribery offence is committed by member of staff leading to liability for the council	Agree the Bribery Policy, provide information to staff and Councillors via the internet and through training
Reputational and legal	Agency staff, suppliers and contractors are not aware of the policy	Include reference to preventing bribery in contracts and tender specifications

5. Consultation

5.1 The Head of Audit has been consulted.

5.2 The Assistant Director, Organisational Services has been consulted and has proposed the inclusion of bribery within the Employee Code of Conduct under the existing section relating to fraud and corruption as follows:

New paragraph 13.5 (and renumber existing paragraphs 13.5 and 13.6 as paragraphs 13.6 and 13.7)

- **Bribery** – is an inducement or reward offered, promised or provided to gain personal, commercial, regulatory or contractual advantage.
Examples could be:
 - Giving, promising to give or offering payment, gift or hospitality in the hope of gaining a business advantage;
 - Accepting a payment from a third party when you know or suspect that it is offered with the expectation of business advantage.
- Procurement, recruitment, key decision making and contract management are particularly vulnerable areas.

6. Financial and legal implications

6.1 The legal implications are set out in the body of the report.

6.2 There are no financial implications arising directly from this report.

7. Recommendations

7.1 That the Employment Matters Committee considers the Bribery Act Policy and the views of the Audit Committee and refers the Bribery Act Policy, as set out in Appendix 1, to Council for approval.

7.2 That the Employment Matters Committee refers the additions to the Employee Code of Conduct, as set out in paragraph 5.2 above, to Council for approval.

Lead officer contact

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Background papers

None

Anti-Bribery Policy

What is bribery?

Bribery is an inducement or reward offered, promised or provided to gain personal, commercial, regulatory or contractual advantage.

Bribery could be through:

- The giving, promising to give or offering payment, gift or hospitality in the hope of gaining a business advantage
- Accepting a payment from a third party when you know or suspect that it is offered with the expectation of business advantage

Anyone receiving, or providing, gifts and hospitality, or having a business or personal interest beyond their main role within the Council, need to consider whether their actions leave themselves and/or the Council vulnerable to allegations of bribery. Procurement, recruitment, key decision-making, and contract management, are all areas of particular vulnerability.

Council's statement

Bribery is a criminal offence. The council does not pay or accept bribes or offer or accept improper inducements.

The Council is committed to the prevention and detection of bribery, and aims to maintain arrangements to ensure compliance.

The Council is committed to:

- setting and maintaining a clear anti-bribery policy
- making all members and employees aware of this policy
- ensuring there are appropriate mechanisms for members and employees to report any potential conflicts of interest
- encouraging vigilance
- ensuring there are suitable channels for members, employees and the general public to report concerns
- taking appropriate action when a concern comes to light

Bribery Act 2010

The Act sets out the offences that relate to the behaviour of an individual.

- Bribery of another person (section 1)
- Accepting a bribe (section 2)
- Bribing a foreign official (section 6)

The Act also sets out the corporate responsibility by the offence of failing to prevent bribery (section 7). The organisation will have a defence to this

corporate offence if it can demonstrate that it had adequate procedures in place to prevent bribery.

What are the penalties?

For an individual who commits an offence under this act the maximum penalties are:

- Conviction in a magistrates court – imprisonment term of 12 months and a fine of £5,000
- Conviction in a crown court – imprisonment term of 10 years and an unlimited fine

If the Council was found to have committed the offence under Section 7 there is an unlimited fine.

Employees who are found to have breached this policy may also be subject to disciplinary action.

Who in the Council is covered by this policy?

This policy covers all personnel.

This includes all levels and grades of employees, employed on a permanent or temporary basis, working in all areas of the Council's business. It also includes contractors, volunteers and consultants. For ease of reference when this policy refers to "employees" it relates to all of the above. The policy is also relevant to Members.

The Council will work with schools to ensure that they comply with this policy.

The Council will also seek to promote this policy with partners and suppliers.

Employee Responsibilities

All employees are required to:

- act with honesty and integrity at all times
- avoid activity that breaches this policy
- read and understand this policy
- raise concerns if they believe/suspect a conflict with this policy has occurred, or is likely to occur in the future

Corporate Responsibilities

There is a corporate responsibility to ensure that the policy and procedures in place are appropriate.

Proportionality

The policy and procedures have been developed based on the nature of the risk that the council faces. In order to determine this the level and nature of the risk has been assessed.

Top level commitment

The lead officer is the Assistant Director Legal & Corporate Services. The Corporate Management Team is committed to upholding the highest standards of probity and integrity. The policy is presented to Audit Committee and formally approved by Cabinet

Due diligence

The Council applies due diligence procedures taking a proportionate and risk based approach

Communication/training

This policy is published to all employees, and on the Council's website, thereby demonstrating the top level commitment. Employee awareness is monitored.

Monitoring/review

The number and nature of incidents reported will be recorded and reported annually to Audit Committee. Detailed reports of any investigations undertaken will also be provided to Audit Committee along with any lessons learned.

The policy will be subject to annual review which will include a review of the level of risk.

Raising a Concern

Employees and Members have a responsibility to raise any concern that they have in relation to this policy.

Employees concerns can be raised with a line manager, directly with the Assistant Director Legal & Corporate Services, or through the whistleblowing procedure.

Members can raise a concern with the Assistant Director Legal & Corporate Services.

Reporting Mechanism

The Assistant Director of Legal Services has overall responsibility for this policy and will report annually to Audit Committee.

Any investigated incidents will be reported to the Audit Committee

Wider Framework

Relevant policies

- Anti Fraud and Corruption Policy
- Whistleblowing Policy

Relevant Rules

- Financial Rules (Chapter 4, part 6)
- Contract Rules (Chapter 4, part 7)
- Employment Rules (Chapter 4, part 8)

Codes of Conduct

- Members code of conduct (Chapter 5, part 1)
- Employee code of conduct (Chapter 5, part 3)
- Code of governance (Chapter 5, part 6)

Diversity Impact Assessment: Screening Form

Directorate	Name of Function or Policy or Major Service Change		
Business Support Department	Bribery Act Policy		
Officer responsible for assessment	Date of assessment	New or existing?	
Perry Holmes, Assistant Director, Legal & Corporate Services	27 June 2012	new	
Defining what is being assessed			
1. Briefly describe the purpose and objectives	The Bribery Act policy sets out the Councils approach to preventing bribery and for mitigating risk of liability failing to prevent bribery by an officer or other representative		
2. Who is intended to benefit, and in what way?	The policy has been introduced to benefit the Council, employees and service users.		
3. What outcomes are wanted?	Desired outcomes: <ul style="list-style-type: none"> - employees understanding the policy; - preventing bribery; - mitigating the risk of liability under the act for failing to prevent bribery. 		
4. What factors/forces could contribute/detract from the outcomes?	Contribute	Detract	
	- Raising awareness to all staff of the policy and what it means; -	- employees not understanding the policy and therefore failing to use it; -	
5. Who are the main stakeholders?	The council, employees and service users.		
6. Who implements this and who is responsible?	The Assistant Director, Legal & Corporate Services		

Assessing impact		
7. Are there concerns that there <u>could</u> be a differential impact due to <i>racial groups</i>?		Brief statement of main issue
	NO	
What evidence exists for this?	-	The Bribery Act has itself been the subject of an impact assessment and is seen to have no impact on the equalities duties of the government
	-	Care has been taken in the drafting of this policy to ensure that best practice examples of policies from other council's are considered
	-	
8. Are there concerns that there <u>could</u> be a differential impact due to <i>disability</i>?		Brief statement of main issue
	NO	
What evidence exists for this?	-	The Bribery Act has itself been the subject of an impact assessment and is seen to have no impact on the equalities duties of the government
	-	Care has been taken in the drafting of this policy to ensure that best practice examples of policies from other council's are considered
	-	
9. Are there concerns that there <u>could</u> be a differential impact due to <i>gender</i>?		Brief statement of main issue
	NO	
What evidence exists for this?	-	The Bribery Act has itself been the subject of an impact assessment and is seen to have no impact on the equalities duties of the government
	-	Care has been taken in the drafting of this policy to ensure that best practice examples of policies from other council's are considered
	-	
10. Are there concerns there <u>could</u> be a differential impact due to <i>sexual orientation</i>?		Brief statement of main issue
	NO	
What evidence exists for this?	-	The Bribery Act has itself been the subject of an impact assessment and is seen to have no impact on the equalities duties of the government
	-	Care has been taken in the drafting of this policy to ensure that best practice examples of policies from other council's are considered
	-	
11. Are there concerns there <u>could</u> be a have a differential impact due to <i>religion or belief</i>?		Brief statement of main issue
	NO	
What evidence exists for this?	-	The Bribery Act has itself been the subject of an impact assessment and is seen to have no impact on the equalities duties of the government

		<ul style="list-style-type: none"> - Care has been taken in the drafting of this policy to ensure that best practice examples of policies from other council's are considered -
12. Are there concerns there <u>could</u> be a differential impact due to people's age?		Brief statement of main issue
	NO	
What evidence exists for this?		<ul style="list-style-type: none"> - The Bribery Act has itself been the subject of an impact assessment and is seen to have no impact on the equalities duties of the government - Care has been taken in the drafting of this policy to ensure that best practice examples of policies from other council's are considered -
13. Are there concerns that there <u>could</u> be a differential impact due to <i>being trans-gendered or transsexual</i>?		Brief statement of main issue
	NO	
What evidence exists for this?		<ul style="list-style-type: none"> - The Bribery Act has itself been the subject of an impact assessment and is seen to have no impact on the equalities duties of the government - Care has been taken in the drafting of this policy to ensure that best practice examples of policies from other council's are considered -
14. Are there any <i>other</i> groups that would find it difficult to access/make use of the function (e.g. young parents, commuters, people with caring responsibilities or dependants, young carers, or people living in rural areas)?		If yes, which group(s)?
	NO	
What evidence exists for this?		<ul style="list-style-type: none"> - The Bribery Act has itself been the subject of an impact assessment and is seen to have no impact on the equalities duties of the government - Care has been taken in the drafting of this policy to ensure that best practice examples of policies from other council's are considered -

15. Are there concerns there <u>could</u> have a differential impact due to <i>multiple discriminations</i> (e.g. disability <u>and</u> age)?		Brief statement of main issue
	NO	
What evidence exists for this?	-	The Bribery Act has itself been the subject of an impact assessment and is seen to have no impact on the equalities duties of the government - Care has been taken in the drafting of this policy to ensure that best practice examples of policies from other council's are considered -
Conclusions & recommendation		
16. Could the differential impacts identified in questions 7-15 amount to there being the potential for adverse impact?	YES	N/A
	NO	
17. Can the adverse impact be justified on the grounds of promoting equality of opportunity for one group? Or another reason?	YES	N/A
	NO	
Recommendation to proceed to a full impact assessment?		
NO	This function/ policy/ service change complies with the requirements of the legislation and there is evidence to show this is the case.	
NO, BUT ...	What is required to ensure this complies with the requirements of the legislation? (see DIA Guidance Notes)?	The Audit Committee will oversee the operation of this policy and will ensure that it does not have an adverse impact
YES	Give details of key person responsible and target date for carrying out full impact assessment (see DIA Guidance Notes)	n/a

Planning ahead: Reminders for the next review		
Date of next review	On-going	
Areas to check at next review (e.g. new census information, new legislation due)	Check whether the policy is being used and whether employees are aware of the policy and its purpose.	
Is there <i>another</i> group (e.g. new communities) that is relevant and ought to be considered next time?		
Signed (completing officer/service manager)	Date	
Signed (service manager/Assistant Director)	Date	