

Subject:	Bribery Act 2010	Status:	For Publication
Report to:	Standards Committee Cabinet	Date:	20 th September 2011 26 th October 2011
Report of:	Head of Legal and Democratic Services	Portfolio Holder:	Finance and Resources
Key Decision:	<input type="checkbox"/> Forward Plan <input checked="" type="checkbox"/>	General Exception <input type="checkbox"/>	Special Urgency <input type="checkbox"/>
Community Impact Assessment:	Required:	Yes	Attached: Yes (draft)
Biodiversity Impact Assessment	Required:	No	Attached: N/A
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1.	RECOMMENDATION(S)
1.1	That members recommend: - formal approval of the Anti Bribery Policy and Procedure by Cabinet -that the Head of Legal and Democratic Services should review existing relevant policies and procedures and amend as necessary, in consultation with the Director of Business, to comply with the new legislation.
1.2	All future minor amendments to the policy to be delegated to the Head of legal and Democratic Services in consultation with the Portfolio Holder.

2. PURPOSE OF REPORT

- 2.1 To brief members on the main provisions of the Bribery Act 2010 which came into force on 1st July 2011. To also consult on the council's draft anti bribery policy and procedure. The said policy is based on the CIPFA (Chartered Institute of Public Finance and Accounting) model policy and is attached at Appendix 1. The draft Community Impact Assessment is attached at Appendix 2.

3. CORPORATE PRIORITIES

- 3.1 The matters discussed in this report impact directly on the following corporate priorities:
- **A healthy and successful Rossendale** – supporting vibrant communities and a strong economy.
 - **Responsive and value for money local services** – responding to and meeting the different needs of customers and improving the cost effectiveness of services.

4. RISK ASSESSMENT IMPLICATIONS

- 4.1 All the issues raised and the recommendation(s) in this report involve risk considerations as set out below:

Failure to review policy and procedures and to draft a policy related to this new Act would leave the Council vulnerable to prosecution. An individual guilty of an offence under this legislation could be imprisoned for up to 10 years and/or receive an unlimited fine. The Council could also be liable to an unlimited fine. Furthermore, failure to comply would lead to considerable damage to the Council's reputation.

5. BACKGROUND AND OPTIONS

5.1 The Act deals only with bribery – not other forms of white collar crime (e.g. fraud, theft, record offences, money laundering). An organisation might be liable for failing to prevent a person from bribing on its behalf but only if that person performs services for you in business. The liability for the actions of someone who simply supplies goods is very unlikely.

The Act creates 4 new offences:-

- Bribery of another person.
- Accepting a bribe.
- Bribing a foreign official.
- Failure of a commercial organisation to prevent bribery.

There is a full **defence** if you can demonstrate you had adequate procedures in place to prevent bribery.

There is no requirement to put bribery prevention procedures in place if there is no risk of bribery on behalf of the organisation.

Hospitality is not prohibited by the Act and facilitation payments are classed as bribes under the legislation, just as they are under the previous law.

Bribery is defined as *giving somebody financial or other advantage to encourage that person to perform their functions or activities improperly or to reward that person for having already done so.*

An organisation could be liable if a very senior person e.g. Director commits a bribery offence. This person's activities would then be attributed to the organisation. An organisation could also be liable where someone who performs services for it e.g. employee, agent, pays a bribe specifically to get or keep business or gain a business advantage for the organisation.

No-one can be prosecuted in England unless the Director of Public Prosecutions or Director of Serious Fraud Office is personally satisfied a conviction is more likely than not and is in the public interest.

5.2 **Adequate procedures**. Adequate procedures to prevent bribery depend on the risks the organisation faces, nature, size and complexity of the business. **Six principles** should be considered in helping decide what, if anything, an organisation needs to do differently:-

5.2.1 **Proportionality**, action taken should be proportional to the risks faced/size of business. You might need to do more to prevent bribery if e.g. operating in an overseas market where bribery is common place.

5.2.2 **Top Level Commitment**, senior management are in the best position to ensure the organisation conducts its business without bribery. We must show that we have been active in making sure staff (including middle management) and key people who conduct business with us, understand that we do not tolerate bribery.

5.2.3 **Risk Assessment**, the organisation should consider e.g. researching markets in which we operate.

5.2.4 **Due diligence**, we must know exactly who we are dealing with as this helps protect us from taking on people who might be less than trustworthy e.g. consider

questions/checks before engaging others to represent us in business dealings.

5.2.5 Communication - policies and procedures should be well communicated to staff and others who perform services for us. Enhancing awareness helps to deter bribery by making clear the basis on which we do business. Robust training is therefore important.

5.2.6 Monitoring and Review - risks faced and effectiveness of procedures may change over time and we should keep pace with any changes.

5.3 **Assessing Risks**

Simple practical steps can be taken to mitigate e.g. consulting business representative bodies for up to date knowledge.

Complex procedures are not required if there is very little risk of bribery. Proportionate procedures may already be in place through existing controls over organisational expenditure, accounting and agent contracts etc. Although parties to a contract are free to agree whatever terms are appropriate, the Act does not require compliance with the anti bribery procedures of business partners in order to rely on the defence.

How much due diligence required will depend on the risk assessment. If it is low then all you may need to do is satisfy yourself that people performing services for you are genuine and someone you can trust to do business without bribery. This could be done by making enquiries with business contacts, local chambers of commerce, business associations or via the internet etc.

Where risks are higher you may need to do more e.g. ask your agent for a CV, financial statements or accounts under the references. These may then be followed up to ensure they are genuine. Techniques need not be sophisticated nor costly. Personal contact, allowing you to assess a person for yourself, can be very helpful.

The Act does not require external verification of any bribery prevention measures you have put in place.

Hospitality and similar business expenditure is still allowed but must be reasonable and proportionate e.g. bona fide promotional activities. Authorities would look at things that show the level of hospitality offered, the way in which it was provided and the level of influence the person receiving it had on the business decision in question. Activities depend upon the sort of business conducted by the organisation. The Act would allow organisations to continue to provide tickets to sporting events, take clients to dinner, offer gifts as a reflection of good relations or pay reasonable travel expenses to demonstrate your goods or services etc. This is not really relevant to local authorities as we have our own specific policies on this issue.

COMMENTS FROM STATUTORY OFFICERS:

6. SECTION 151 OFFICER

6.1 Financial implications have been commented on in the body of the report.

7. MONITORING OFFICER

7.1 The legal implications are outlined in the main report and draft policy attached.

8. HEAD OF PEOPLE AND POLICY (ON BEHALF OF THE HEAD OF PAID SERVICE)

8.1 The Officers Code of Conduct is circulated to all employees and they are required to acknowledge receipt. Breaches of the Code will be dealt with under the Disciplinary Procedure. In addition, the policy is being reported at the Joint Consultative Committee on 22nd September 2011.

9. CONSULTATION CARRIED OUT

9.1 This matter was reported to Management Team on 4th July 2011, together with the draft policy and Community Impact Assessment.

9.2 Officer and member consultation took place between 20th July 2011 and 20th August 2011. There were no comments on the contents of the Policy.

9.3 As noted at 8.1, the policy is being reported on at the Joint Consultative Committee on 22nd September 2011.

10. CONCLUSION

10.1

The Council already has a number of associated safeguards against corruption and associated conduct. We are continuing to develop a strong approach to corporate governance and a framework that seeks to manage risk in order to minimise the incidence of fraud and other adverse events within the Authority. Much of the corporate governance framework is actually incorporated within the Constitution of the Council and includes all the following elements:

- Standards Committee
- Overview and Scrutiny Committees/Procedure Rules
- Regulatory Committees
- Standing Orders
- Financial Procedure Rules
- Access to Information Procedure Rules
- Budget and Policy Framework Procedure Rules
- Executive Procedure Rules
- Members and Officers Codes of Conduct
- Protocol on Member/Officer Relations
- Members Allowances Scheme

In addition to the above constitutional provisions, the Council has in place the following policies and procedures:

- Risk Management Policy Strategy and Procedures
- Disciplinary Procedure
- Monitoring Officer Arrangements
- Registers of Interest
- Registers of Hospitality, Gifts and Entertainment
- IT Security Policy
- Best Value Framework
- Business Planning Procedures
- Health and Safety Policy and Procedures
- Members Code of Good Practice in Planning
- Housing Benefit and Council Tax Benefit Sanction and Prosecution Policy

Training on the act will be delivered to officers in October 2011 and members on a date to be confirmed by the development working group.

Background Papers

Document	Place of Inspection
<p>The Ministry of Justice has produced detailed guidance about the Act and procedures that organisations can put in place to prevent bribery as well as a set of illustrative case studies which is very helpful.</p>	<p>A quick start guide has also been published which sets out the key points.</p> <p>Bribery Act 2010: Guidance about commercial organisations preventing bribery (PDF 0.38mb 45 pages)</p> <p>Quick start guide (PDF 0.27mb 9 pages)</p>