

Bath & North East Somerset Council			
MEETING:	Corporate Audit Committee		
MEETING DATE:	29 th September 2011	AGENDA ITEM NUMBER	
TITLE:	Bribery Act 2010		
WARD:	ALL		
AN OPEN PUBLIC ITEM			
List of attachments to this report:			

1 THE ISSUE

1.1 The Bribery Act 2010 became effective on 1st July 2011. The purpose of the report is to update the Committee on its implications as it is responsible for overseeing the implementation of the Anti-Fraud & Corruption Policy and Fraud Response Plan. A wider review of Anti-Fraud & Corruption arrangements will be presented at the December Committee meeting.

2 RECOMMENDATION

2.1 The Corporate Audit Committee is asked to:

Note the report and acknowledge the new legislation together with the Council's current response to this.

3 FINANCIAL IMPLICATIONS

3.1 There are no direct financial implications relevant to this report.

4 THE REPORT

4.1 The Bribery Act 2010

4.1 The Bribery Act 2010 became effective on 1st July 2011. The aims of the Act are to reduce the levels of corruption across the UK without being burdensome to business.

4.2 The Act generally defines bribery as giving someone a 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.

4.3 Genuine hospitality or similar business expenditure that is reasonable and proportionate is allowable and not covered by the Act. However, facilitation payments are considered bribes (payments to induce officials to perform routine functions they are otherwise obligated to perform).

4.4 There are four key offences under the Act:

General Offences:

- bribery of another person (section 1)
- accepting a bribe (section 2)

Commercial Offences:

- bribing a foreign public official (section 6)
- failure of a commercial organisation to prevent bribery (section 7)

4.5 All of the offences (save for the section 7 offence) may be dealt with in either the Magistrates' Court or the Crown Court. An individual convicted of an offence in the Magistrates' Court may be liable to a prison sentence of up to 12 months or a fine of £5,000, or both. However, in the Crown Court the maximum sentence significantly increases to a sentence of imprisonment of up to 10 years or an unlimited fine, or both. In respect of any other person (e.g. organisations) the maximum fine in the Magistrates' Court is £5,000 but in the Crown Court the fine is unlimited.

4.6 The section 7 offence of failure of a commercial organisation to prevent bribery is indictable only and must therefore be dealt with in the Crown Court where the maximum penalty is an unlimited fine.

4.7 Senior officers may also be convicted of an offence if they are deemed to have given their consent/connivance to giving/receiving a bribe or bribing a foreign official.

4.8 Implications for B&NES

4.9 The Act supports the principle of free and fair competition in contracting and procurement. However, section 7 of the Act introduces an offence by 'commercial organisations' if they fail to prevent bribery. Commercial organisations are defined as a body or partnership incorporated or formed which carries on a business, or part of a business in the UK. So long as the organisation in question is incorporated (by whatever means) or is a partnership, it does not matter if it pursues primarily charitable or educational aims or purely public functions, it will be caught if it engages in commercial activities.

4.10 The Courts will be the final arbiter as to whether an organisation "carries on a business" taking into account the particular facts in individual cases. However, the Council is clearly capable of falling within the definition of commercial organisation and therefore it could be liable if:

- A very senior person in the organisation commits a bribery offence. This person's activities could be attributed to the Council.
- A person associated with it, e.g. an employee or someone acting on behalf of the Council bribes another person (under section 1 or section 6) to gain a business advantage for the Council.

4.11 Section 7 of the Act does provide a defence for commercial organisations against prosecution if there are adequate procedures in place to prevent bribery. The Secretary of State has published Statutory Guidance about procedures that relevant commercial organisations can put into place to prevent persons associated with them from bribing.

4.12 Council officers and Members are clearly caught by the offences of bribery of another person and accepting a bribe contained in sections 1 and 2 of the Act respectively. This is because these offences are concerned with "performance of a relevant function or activity" which include any function of a public nature, any activity connected with a business, any activity performed in the course of employment and any activity performed by or on behalf of a body of persons (whether corporate or unincorporated).

4.13 The extent to which there is a need for such procedures depends on the level of risk of bribery being committed on behalf of the Council. The following paragraphs consider the bribery risks for the Council overall and conclude that the highest risk is that of our staff accepting bribes in exchange for preferential treatment for service users or contract awarding.

4.14 Initial Bribery Risk Assessment

4.15 A full bribery risk assessment has yet to be completed and agreed by the Council. However, an initial assessment of the risks is outlined below to determine the extent to which procedures additional to those already in place may be required and make an early assessment of these.

4.16 The Council is a large organisation with huge numbers of staff, contractors and service users. Some areas of business in which the Council works bring with them higher bribery risks than others. However, the Council does not do any real business outside of the UK and not with high risk countries in terms of bribery.

4.17 A relatively small amount of commercial work is undertaken by the Council and only very limited amounts are spent on providing hospitality to those outside of the Council.

4.18 The Council does work with others in sectors particularly susceptible to bribery – e.g. the building trade generally is traditionally a high risk sector. Additionally, the Council does undertake some transactions in relation to which officers are more at risk of being offered inducements:

- procurement and awarding of contracts
- awarding of licences and permits
- planning applications and building regulations
- allocation of educational places
- assessment of entitlement to grants, benefits and other entitlements
- partnership and commissioning of services

4.19 The Council has received and continues to receive allegations of possible bribery and corruption involving our staff and Internal Audit always investigate such cases. The levels of such cases referred indicate that the section 2 risk of our staff being bribed is the highest risk of the bribery offences. Unfortunately, bribery cases are very difficult to prove to a level where a criminal prosecution can take place.

4.20 In summary, an initial risk assessment would suggest that there is limited bribery risk across the Council. The most likely offence is that of our staff being bribed. As such, the risk of the Council being prosecuted for failing to prevent our staff/agents bribing others on behalf of the organisation is low.

4.21 Procedural Arrangements to Mitigate the Risk of Bribery

4.22 The procedures in place to mitigate the risk of bribery should reflect the level of risk. The initial risk assessment suggests the main risk is that of our staff being bribed. This offence, if proven, would result in prosecution of the individual rather than the Council. The Council itself is unlikely to face prosecution for not preventing bribery and have a legal need to rely on a defence of 'adequate procedures'. However, the guidance to the Act relating to 'adequate procedures' is soundly based for all bribery risks and in many respects the Council already has such procedures in place. The guidance suggests six principles of good procedures:

- **Risk Assessment** - the initial risk assessment is set out above but further risk assessment will be completed and agreed with the S151 Officer to ensure the above assessment accurately reflect the bribery risks faced by the Council.
- **Top Level Commitment** - those at the top of the organisation are in the best position to foster a culture of integrity in which any type of bribery is unacceptable. This commitment needs to be reflected and communicated in appropriate policies. The Council already has an Anti-Fraud Policy and a Whistle-blowing Policy and these will be reviewed to ensure they contain the correct messages regarding the Council's zero tolerance towards bribery and the consequences to staff, members and others associated with the Council. At this stage it is not felt a separate policy on Bribery is necessary.
- **Proportionate Procedures** - the Council should have procedures proportionate to the bribery risks it faces.

Preventing Bribery of Others: (low risk)

- Financial Regulations are in place to control spending and provide for only authorised expenditure. They include provision that individuals and organisations who deal with the Council, internally and externally, will act with integrity and without thoughts or actions of fraud or corruption.
- Recruitment procedures include vetting of staff before they are offered positions with the Council.
- The Council publishes all transactions over £500 in value to promote transparency of its spending activities.

Preventing Bribery of Our staff or Associates: (higher risk)

- The Council has a Code of Conduct for both Members and staff that prohibits acceptance of financial inducements and details the rules regarding acceptance of Gifts and Hospitality. The staff code requires identification of high risk employees and requirement of them to declare interests, gifts and hospitality more frequently than lower risk staff.
 - Financial Regulations make it clear that accepting inducements is not acceptable.
 - Procurement Regulations are in place to ensure fair competition in awarding of contracts. The regulations and standard documentation used for issuing tenders and awarding of contracts makes it clear that bribery of Council staff is not acceptable and that contracts will be terminated if there is evidence of this.
 - The Council has well defined decision making arrangements which aim to ensure that decisions are made by those free of any conflict of interest including a requirement for Members to declare interests during meetings.
 - The Council's Whistle-blowing Policy provides for anyone who suspects bribery to report it.
- **Due Diligence** - in respect of the person(s) who will/do perform services for or on behalf of the Council. This area will be reviewed again during 2011/12 to ensure it is sufficiently robust in light of the bribery risks faced by the Council.
 - **Communication** - the Council already has procedures in place to ensure fraud and corruption policies and procedures are communicated and understood by its staff. These include the regular publication of a fraud bulletin highlighting cases and learning lessons. Additionally, messages in pay slips are routinely posted to maintain an

awareness of fraud initiatives. The need for targeted release of information to high risk staff (those in a position to be bribed) regarding the provisions of the Bribery Act and a clear message that such activity will not be tolerated is currently being considered. Contract documentation is clear that attempting to bribe Council officials will not be tolerated.

- **Monitoring and Review** - of the procedures in place to prevent bribery by persons associated with it and making improvements where necessary. It is intended to compare the above approach with that of other local authorities to ensure our risk assessment and approach is in line with other councils' arrangements. Additionally, Internal Audit review compliance with policies and procedures to ensure adherence.

5 RISK MANAGEMENT

- 5.1. The bribery risks faced by the Council are identified and assessed in paragraph 3 above. Actions in place or to manage these risks currently or areas for potential improvement are identified in paragraph 4. In summary, the main bribery risk affecting the council is that of Council Members or staff being bribed.

6 EQUALITIES

- 6.1 A proportionate equalities impact assessment has been carried out in relation to this report. There are no significant issues to report to the Committee.

7 CONSULTATION

- 7.1 The report was distributed to the S151 Officer and Monitoring Office for consultation.

Contact person	Jeff Wring (01225 477323)
Background papers	The Bribery Act 2010 Ministry of Justice Guidance
Please contact the report author if you need to access this report in an alternative format	