

## **ANTI BRIBERY AND CORRUPTION BRIEFING**

### **INTRODUCTION**

The council is committed to the prevention, deterrence and detection of bribery and has a zero-tolerance towards bribery. The council aims to maintain anti-bribery compliance as “business as usual”, rather than a one-off exercise.

As a new council came into power in May 2014, which includes several new councillors, it is an apt time to reiterate the requirements placed on members in respect of anti-bribery when carrying out their office. This briefing is intended to sit along side the other training members have been receiving since the election.

### **WHAT IS BRIBERY?**

Bribery is defined 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.

In other words bribery is an inducement or reward offered, promised or provided to gain personal, commercial, regulatory or contractual advantage.

### **THE BRIBERY ACT**

The Bribery Act 2010 (‘the Act’) came into force in July 2011. It was introduced to update and enhance UK law on bribery including foreign bribery.

The Act contains four substantive criminal offences, which are:

- bribing another person;
- receiving a bribe;
- bribing a foreign public official; and
- a corporate offence of a commercial organisation failing to prevent bribery.

The Act applies across the UK, covers the private and public sectors and relates to any function of a public nature, or any activity connected with a business, performed in the course of employment, or performed on behalf of an organisation.

The Act extends to employees, members, agents and subsidiaries of the organisation and can also include contractors to the extent that they perform services for or on behalf of the organisation. It is less likely to include sub-contractors.

The scope of the last of the four offences is considerable. However an organisation can provide a defence to it by showing it had adequate procedures in place to prevent bribery from taking place (see below for what constitutes ‘adequate procedures’).

Penalties for falling foul of the Act for individuals can be severe with 7-10 years imprisonment in the worst case scenario. Organisations which fail to take all reasonable steps to prevent bribery taking place face unlimited fines.

### **IS THE COUNCIL A “COMMERCIAL ORGANISATION”?**

Guidance issued on the Bribery Act by the Ministry of Justice (‘the MOJ Guidance’) states that a “commercial organisation” is any body formed in the UK and “...it does not matter if it pursues

primarily charitable or educational aims or purely public functions". As such, the council is a 'commercial organisation'.

## **WHAT CONSTITUTES 'ADEQUATE PROCEDURES'?**

As stated above an organisation can defend a charge that it has failed to prevent bribery by demonstrating that it had adequate procedures in place to prevent bribery.

The MOJ Guidance sets out what constitutes 'adequate procedures' and focuses on six principles (see below) which are intended to help organisations put such procedures in place. Whilst there is an acknowledgement that no policies or procedures are capable of detecting and preventing all bribery it considers that a risk based approach which is proportionate to the risks faced by an organisation will serve to focus effort where it is needed and where it will have most impact. It is clear there is no "one size fits all" approach: it is for each organisation to determine what steps should be taken which are suitable for its own circumstances. It is emphasised that whether the procedures of an organisation are adequate will ultimately be a matter for the courts to decide on a case-by-case basis but that adequate procedures need to be applied proportionately, based on the level of risk of bribery in the organisation.

### **The Six Principles**

- i) Proportionality – the procedures have to be "proportionate" to the level of risk an organisation faces as well as the nature, scale and complexity of its activities.
- ii) Top level commitment – in practical terms this means establishing a culture across the organisation in which bribery and corruption is unacceptable with this culture being championed by senior officers across the whole organisation. A message of zero tolerance to bribery published on the organisation's website is one way of demonstrating this. The council has such a message on its website.
- iii) Risk Assessment – this is about knowing and keeping up to date with bribery risks faced in the sector an organisation operates in.
- iv) Due Diligence – an organisation needs to apply due diligence procedures in respect of persons associated with it, e.g. through research and due diligence checks on suppliers. Some business relationships are riskier than others and a proportionate approach needs to be taken.
- v) Communication and training – it is essential that the message about bribery is promoted across the entire organisation. As well as promoting the message an organisation needs to ensure the message is understood and its policies and procedures are easily accessible.
- vi) Monitoring and review – once an organisation has put its procedures in place it can not sit back and think everything has been done. There is a need to carry out a regular audit to ensure the procedures are current and adequate and the organisation must be able to point to a clear audit trail to demonstrate this has been done.

## **GIFTS, HOSPITALITY AND CORPORATE SPONSORSHIP**

The Act does not automatically prevent the acceptance of all gifts, hospitality or corporate sponsorship. However such gifts, hospitality or corporate sponsorship **must** be reasonable and proportionate where the aim is to improve an organisation's image or improve business

relationships. The gift or hospitality must in its broader context not be aimed at influencing performance and/or decision making.

However if the gift, hospitality or corporate sponsorship is extraordinarily lavish or has the ability to influence or reward improper performance by the recipient it may constitute an offence under the Act.

Even a relatively small gift to a sole or key decision maker at an inappropriate time such as in advance of a tender for work being offered by an organisation may be caught by the Act if, in its context, it could elicit the improper performance of that function. Gifts or hospitality deliberately concealed or not genuinely connected with legitimate business may also lead to prosecution under the Act.

## **FACILITATION PAYMENTS**

These are payments to people for carrying out work they're contractually required to do anyway. Historically, officials around the world often require them to speed up business. They are illegal under the Act.

## **MEMBER RESPONSIBILITIES**

The prevention, detection and reporting of bribery and other forms of corruption are the responsibility of all those working for the council or under its control. All members (and staff) are required to avoid activity that breaches the provisions of the Act.

This responsibility manifests itself in the council's Code of Conduct for Members which requires councillors to behave in a manner which is consistent with a number of principles including:-

i) the principle of 'Integrity' in that holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties; and

ii) the principle of 'objectivity' namely that in carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards or benefits, holders of public office should make choices on merit.

If in the course of their duties someone approaches a member with a view to influencing the outcome of a project, procurement or decision the member should report the matter to his/her party whip as well as the council's Monitoring Officer or alternatively follow the Fraud and Bribery Response Plan (see link below). Similarly if a member receives information that an act of bribery has taken place they should take the same steps.

<http://thesource/tools-and-resources/finance/financial-guidance-and-procedures/control-of-resources/prevention-and-detection-of-fraud/responding-to-fraud/the-fraud-and-bribery-response-plan>

The council has arrangements in place whereby members can record any gifts and hospitality which they accept. The requirements are set out in the council's Member and Officer Protocol. The Bribery Act does not change those existing arrangements.

## **PROSECUTIONS BROUGHT TO DATE**

There have been a small number of prosecutions brought since the Act came into force. These have tended to be against individuals rather than corporate bodies and include a magistrate's court clerk who accepted the sum of £500 in exchange for not adding the details of a traffic summons to the court's data base and an individual who offered a sum of money to a council licensing officer in order to try and secure a taxi licence.

However it should also be noted that a district councillor in Devon (who was also a planning consultant) was suspended by his party and then resigned after he was filmed by an undercover reporter claiming he could influence the planning process. The local authority had referred the councillor's comments to the police under the Bribery Act 2010.

## **PRACTICAL STEPS - REVIEW OF POLICIES AND PROCEDURES**

A review of the council's current policies, procedures and other documentation has been undertaken to ensure that they are sufficiently robust to prevent bribery and mitigate the risk of committing an offence under the Act. Documentation reviewed includes the following:

- Corporate Anti-fraud statement
- Fraud response plan
- Corporate Anti-Fraud Prosecution Policy
- Fraud sanctions panel terms of reference and procedures
- Whistleblowing policy
- Employee contract of employment
- Employee code of conduct
- Disciplinary procedures
- Employee and member induction
- Tools and resources (including gifts and hospitality)
- Scheme of delegation for financial authority and accountability
- Departmental schemes of management
- Declarations of interest
- Procurement (including approved list)/contract documentation
- Member code of conduct.

The council's procurement procedures including both tendering and contract documentation have been reviewed to ensure that bidders and contractors are clear that the council does not tolerate bribery or do business with organisations convicted of it.

In order to demonstrate that the council has adequate procedures to prevent bribery in place, it will be necessary to show that they are not just theoretical but are being acted upon in practice. Procedures will need to be kept under review and updated and improved where appropriate. This will be achieved in part through the internal audit programme and work of the corporate anti-fraud team.

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