

Report of the Chief Officer – Audit & Risk

Report to Corporate Governance and Audit Committee

Date: 30 September 2011

Subject: The Bribery Act 2010

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. The Bribery Act 2010 came into force on 1 July 2011. The Act creates offences of offering or receiving bribes, bribery of foreign public officials and of failure to prevent a bribe being paid on an organisation's behalf.
2. The council already has a number of procedures in place to prevent or identify bribery.
3. Procedures for preventing or identifying bribery should be proportionate to the risk.
4. The main emphasis of the Act is for organisations to prevent a bribery being paid on their behalf.

Recommendations

5. The contents of the report should be noted.
6. CGAC should comment on the draft Anti-Bribery policy

1 Purpose of this report

- 1.1 To inform CGAC of the contents of the Act and the implications for the council.
- 1.2 To obtain support for the approval and communication of the Anti-Bribery Policy

2 Background information

- 2.1 The Bribery Act 2010 came into force on 1 July 2011. The Act creates offences of offering or receiving bribes, bribery of foreign public officials and of failure to prevent a bribe being paid on an organisation's behalf. Combating the risks of bribery is largely about common sense, not introducing burdensome procedures. The core principle it sets out is proportionality.
- 2.2 The principles make it clear that organisations should adopt a risk-based approach to managing bribery risks. Procedures should be proportionate to the risks faced by an organisation. No policies or procedures are capable of detecting and preventing all bribery. A risk-based approach will, however, serve to focus the effort where it is needed and will have most impact.
- 2.3 The Act repeals the Prevention of Corruption Act 1916, which is referred to in the Officers Code of Conduct. We will liaise with HR with a view to updating the Code of Conduct.

3 Main issues

- 3.1 The Act contains two general offences covering
 - the offering, promising or giving of a bribe (active bribery) and
 - the requesting, agreeing to receive or accepting of a bribe (passive bribery)
- 3.2 It also sets out two further offences which specifically address commercial bribery,
 - an offence relating to bribery of a foreign public official in order to obtain or retain business or an advantage in the conduct of business
 - a corporate liability for failing to prevent bribery on behalf of a commercial organisation.
- 3.3 The emphasis of the first, third and fourth offences relate to the giving of bribes and, as such, place a responsibility on the organisations to put steps in place to prevent persons associated with them from committing bribery on their behalf.
- 3.4 This is not a situation that the council is likely to face but we should be proactive by including the requirement for potential contractors to include their method statement for preventing bribery when they submit a tender and for this to be included in the tender evaluation.
- 3.5 The second offence of requesting, agreeing to receive or accepting of a bribe is the one which has greater implications for the council.
- 3.6 We need to assess what controls we have in place, assess their adequacy and improve them or introduce new controls where necessary.

- 3.7 The main controls that we currently have in place are detailed in Appendix A.
- 3.8 A draft Anti-Bribery Policy has been produced and is attached at Appendix B. At this stage, the Council is exploring options to address the issues addressed in the Bribery Act. For example, some authorities have, thus far, decided not to adopt an anti-bribery policy. Others have taken the lead from the Chartered Institute of Public Finance and Accountancy who have produced a pro forma policy for Councils to adapt for local circumstances. Members comments are sought on the draft policy.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 The Anti-Bribery Policy should be communicated to employees and contractors of the council.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 This report does not highlight any issues regarding equality, diversity, cohesion and integration.

4.3 Council Policies and City Priorities

- 4.3.1 The Anti-Bribery Policy should help us to achieve our spending money wisely and being open, honest and trusted values.

4.4 Resources and Value for Money

- 4.4.1 Preventing bribery should assist in achieving value for money when procuring goods and services.
- 4.4.2 The council could be liable to a fine if we breach the Act.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 Failure to take appropriate action could result in individuals and/or the council being subject to court action.

4.6 Risk Management

- 4.6.1 We need to ensure that we take action proportionate to the risk.

5 Conclusions

- 5.1 The introduction of the Act has implications for the council – we need to bear in mind that our actions should be proportionate and provide an assurance that our anti-bribery controls are adequate.
- 5.2 The main emphasis of the Act is for organisations to prevent a bribe being paid on their behalf.
- 5.3 The council already has a number of procedures in place to prevent (or identify) bribery.

5.4 Given the introduction of the new legislation, the council should adopt an Anti-Bribery policy to ensure that it complies with the Act.

6 Recommendations

6.1 The contents of the report should be noted.

6.2 CGAC should comment on the draft Anti-Bribery policy which, when approved, should be adequately publicised and communicated across the council

6.3 Potential contractors should be required to include their method statement for preventing bribery when they submit a tender and for this to be included in the tender evaluation.

7 Background documents

7.1 Contract Procedure Rules and Code of Practice

7.2 Members Code of Conduct

7.3 Officers Code of Conduct (including Gifts & Hospitality)

7.4 Whistleblowing Policy

7.5 Raising Concerns Policy

Existing Controls

There are a number of controls in place to protect the council against bribery.

Contract Procedure Rules and Code of Practice

CPRs set down rules for the whole of the procurement exercise and, if followed, minimise the risk of bribery taking place.

In addition, the Code of Practice states,

- *Adequate division of duties and internal checking must exist and must be capable of being audited by the maintenance of documentary evidence detailing the nature and extent of checks undertaken. Failure to comply with the Contracts' Procedure Rules, this Code of Practice and Financial Procedure Rules by officers can result in disciplinary action.*
- *All officers (including temporary staff) involved with purchasing goods, services and works must notify their line manager immediately if they become aware of any conflict of interest that arises during a procurement procedure. This will include, for example, instances where the officer or the officer's family have an interest in a company submitting a tender or quotation.*

Members Code of Conduct

You must not do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage.

You must, when using or authorising the use by others of the resources of your authority act in accordance with your authority's reasonable requirements;

Officers Code of Conduct

The Code of Conduct is aimed at ensuring that employees are aware of the standards of behaviour expected of them by Leeds City Council (LCC). The Code of Conduct applies to all employees of Leeds City Council and goes into detail about being aware of the code, how it should be applied and the consequences of breaching it. It includes the following:-

The public is entitled to expect the highest standards of conduct from all employees who work for Leeds City Council.

Individuals are responsible for ensuring that they are aware of the Code and that they comply with its requirements.

Failure to observe the standards set out in this code may be regarded as serious and any breach may render an employee liable to disciplinary action, which may include dismissal.

Section 117 of the Local Government Act 1972 specifies that "an officer shall not, under colour of his office or employment accept any fee or reward whatsoever other than his/her proper remuneration".

Section 2 of the Prevention of Corruption Act 1916 provides that where it is proved that anyone holding or seeking a contract with a public body has made a payment to an employee of that body, the payment shall be deemed to be corrupt unless the contrary is proved. This has been repealed by the Bribery Act

There is also a detailed section about the receipt of, or being offered, gifts and hospitality. This outlines what to do if offered a gift or hospitality, including declaring and recording it, and details of the type of gift that may be received and under what circumstances.

Whistleblowing Policy

The Council is committed to the highest standards of openness, probity and accountability. In line with that commitment, we encourage Council employees and Members, who have serious concerns about any aspect of the Council's work, to come forward and voice those concerns.

Concerns to be reported under this policy may relate to something that:

- *is unlawful;*
- *is against the Council's Contract Procedure Rules, Financial Procedure Rules or other policies;*
- *falls below established standards or practice; or*
- *amounts to improper conduct*

Raising Concerns Policy

The Council is committed to the highest standards of openness and accountability. In line with that commitment, we encourage members of the public, who have serious concerns about any aspect of the Council's work to come forward and voice those concerns.

Concerns to be reported under this policy may relate to:

- *Fraud or financial irregularity*
- *Corruption, bribery or blackmail*
- *Criminal offences*
- *Failure to comply with a legal or regulatory obligation*
- *Improper use of authority*

Draft Policy Statement - Anti Bribery

Bribery is a criminal offence. We do not, and will not, pay bribes or offer improper inducements to anyone for any purpose, nor do we or will we, accept bribes or improper inducements.

To use a third party as a conduit to channel bribes to others is a criminal offence. We do not, and will not, engage indirectly in or otherwise encourage bribery.

We are committed to the prevention, deterrence and detection of bribery. We have zero-tolerance towards bribery. We aim to maintain anti-bribery compliance “business as usual”, rather than as a one-off exercise.

Objective of this policy

This policy provides a coherent and consistent framework to enable the council’s employees to understand and implement arrangements enabling compliance. In conjunction with related policies and key documents it will also enable employees to identify and effectively report a potential breach.

We require that all personnel, including those permanently employed, temporary agency staff and contractors:

- act honestly and with integrity at all times and to safeguard the council’s resources for which they are responsible
- comply with the spirit, as well as the letter, of the laws and regulations of all jurisdictions in which the council operates, in respect of the lawful and responsible conduct of activities

Scope of this policy

This policy applies to all of the council’s activities. For partners, joint ventures and suppliers, we will seek to promote the adoption of policies consistent with the principles set out in this policy.

Within the council, the responsibility to control the risk of bribery occurring resides at all levels of the council. It does not rest solely within assurance functions, but in all business units and corporate functions.

This policy covers all personnel, including all levels and grades, those permanently employed, temporary agency staff, contractors, non-executives, agents, Members (including independent members), volunteers and consultants.

This council’s commitment to action

This council commits to:

- Setting out a clear anti-bribery policy and keeping it up to date

- Making employees aware of their responsibilities to adhere strictly to this policy at all times
- Encouraging its employees to be vigilant and to report any suspicions of bribery, providing them with suitable channels of communication and ensuring sensitive information is treated appropriately
- Rigorously investigating instances of alleged bribery and assisting police and other appropriate authorities in any resultant prosecution
- Taking firm and vigorous action against any individual(s) involved in bribery
- Provide information to all employees to report breaches and suspected breaches of this policy
- Include appropriate clauses in contracts to prevent bribery.

Bribery

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

The Bribery Act

There are four key offences under the Act:

- bribery of another person (section 1)
- accepting a bribe (section 2)
- bribing a foreign official (section 6)
- failing to prevent bribery (section 7)

The Bribery Act 2010 makes it an offence to offer, promise or give a bribe (Section 1). It also makes it an offence to request, agree to receive, or accept a bribe (Section 2). Section 6 of the Act creates a separate offence of bribing a foreign public official with the intention of obtaining or retaining business or an advantage in the conduct of business. There is also a corporate offence under Section 7 of failure by a commercial organisation to prevent bribery that is intended to obtain or retain business, or an advantage in the conduct of business, for the organisation. An organisation will have a defence to this corporate offence if it can show that it had in place adequate procedures designed to prevent bribery by or of persons associated with the organisation.

What are “adequate procedures”?

Whether the procedures are adequate will ultimately be a matter for the courts to decide on a case-by-case basis. Adequate procedures need to be applied proportionately, based on the level of risk of bribery in the organisation. It is for individual organisations to determine proportionate procedures in the recommended areas of six principals. These principles are not prescriptive. They are intended to be flexible and outcome focussed, allowing for the different circumstances of organisations. Small organisations will, for example, face different challenges to those faced by large multi-national enterprises. The detail of how organisations apply these principles will vary, but the outcome should always be robust and effective anti-bribery procedures.

Proportionate procedures

The council's procedures to prevent bribery by persons associated with it are proportionate to the bribery risks it faces and to the nature, scale and complexity of its activities. They are also clear, practical, accessible, effectively implemented and enforced.

Risk Assessment

The council assesses 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 is periodic, informed and documented. It includes financial risks but also other risks such as reputational damage.

Due diligence

The council applies 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.

Communication

The council seeks 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.

Monitoring and review

The council monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary.

The council is committed to proportional implementation of these principles.

Penalties

An individual guilty of an offence under sections 1, 2 or 6 is liable:

- On conviction in a magistrates court, to imprisonment for a maximum term of 12 months or to a fine not exceeding £5,000, or to both
- On conviction in a crown court, to imprisonment for a maximum term of ten years, or to an unlimited fine, or both

Organisations are liable for these fines and if guilty of an offence under section 7 are liable to an unlimited fine.

Bribery is not tolerated

It is unacceptable to:

- accept payment from a third party that you know or suspect is offered with the expectation that it will obtain a business advantage for them

- accept a gift or hospitality from a third party if you know or suspect that it is offered or provided with an expectation that a business advantage will be provided by us in return
- retaliate against or threaten a person who has refused to commit a bribery offence or who has raised concerns under this policy
- engage in activity in breach of this policy.

Facilitation payments

Facilitation payments are not tolerated and are illegal. Facilitation payments are unofficial payments made to public officials in order to secure or expedite actions.

Gifts and hospitality

This policy is not meant to change the requirements of our Officers Code of Practice (gifts and hospitality section). This makes it clear that, in general, gifts should be refused except where to refuse them would inhibit the normal business activities of the Council. Details of the type of gift that might be accepted are included in the Code.

Public contracts and failure to prevent bribery

Under the Public Contracts Regulations 2006 (which gives effect to EU law in the UK), a company is automatically and perpetually debarred from competing for public contracts where it is convicted of a corruption offence. There are no plans to amend the 2006 Regulations for this to include the crime of failure to prevent bribery. Organisations that are convicted of failing to prevent bribery are not automatically barred from participating in tenders for public contracts. The council has the discretion to exclude organisations convicted of this offence.

Staff responsibilities

The prevention, detection and reporting of bribery and other forms of corruption are the responsibility of all those working for the organisation or under its control. All appropriate staff are required to avoid activity that breaches this policy.

You must:

- ensure that you read, understand and comply with this policy
- raise concerns as soon as possible if you believe or suspect that a conflict with this policy has occurred, or may occur in the future.

As well as the possibility of civil and criminal prosecution, staff that breach this policy will face disciplinary action, which could result in dismissal for gross misconduct.

Raising a concern

The council is committed to ensuring that all of us have a safe, reliable, and confidential way of reporting any suspicious activity. We want each and every member of staff to know how they can raise concerns.

We all have a responsibility to help detect, prevent and report instances of bribery. If you have a concern regarding a suspected instance of bribery or corruption, please speak up –

your information and assistance will help. The sooner you act, the sooner it can be resolved.

There are multiple channels to help you raise concerns - please refer to the Whistleblowing policy. Preferably the disclosure will be made and resolved internally (e.g. to your head of department/on line reporting/telephone hotline). Secondly, where internal disclosure proves inappropriate, concerns can be raised with the regulator (e.g. external auditor). Raising concerns in these ways may be more likely to be considered reasonable than making disclosures publicly (e.g. to the media).

Concerns can be anonymous. In the event that an incident of bribery, corruption, or wrongdoing is reported, we will act as soon as possible to evaluate the situation. We have clearly defined procedures for investigating fraud, misconduct and non-compliance issues and these will be followed in any investigation of this kind. This is easier and quicker if concerns raised are not anonymous.

Staff who refuse to accept or offer a bribe, or those who raise concerns or report wrongdoing can understandably be worried about the repercussions. We aim to encourage openness and will support anyone who raises a genuine concern in good faith under this policy, even if they turn out to be mistaken.

We are committed to ensuring nobody suffers detrimental treatment through refusing to take part in bribery or corruption, or because of reporting a concern in good faith.

If you have any questions about these procedures, please contact Internal Audit

Other relevant policies

Members Code of Conduct

Officers Code of Conduct (including gifts and hospitality)

Anti money laundering policy

Whistleblowing policy

Raising Concerns policy