

AUDIT COMMITTEE

Agenda Item 32

Brighton & Hove City Council

Subject: The Bribery Act 2010

Date of Meeting: 27th September 2011

Report of: Director of Finance

Contact Officer: Name: **Ian Withers** Tel: **29-1323**

E-mail: ian.withers@brighton-hove.gov.uk

Wards Affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT

- 1.1 This report summarises the key issues arising from the Bribery Act 2010. The Council currently has a Counter Fraud Strategy and a Whistleblowing Policy and the introduction of further legislation specific to bribery and corruption will further strengthen these together with the Council's response to counter fraud.
- 1.2 The Audit Committee are responsible for overseeing the Council's counter fraud arrangements.

2. RECOMMENDATIONS

- 2.1 That the Audit Committee notes the new legislation together with the Council's current response.
- 2.2 That the Audit Committee notes the significant issues contained in the report including:
 - The legislation came into force on 1st July 2011
 - The offences under the Act and associated penalties;
 - Initial assessment of bribery risks facing the Council;
 - Procedures currently in place to mitigate bribery risk; and
 - Current or planned actions relevant to a response to the Act.

3. BACKGROUND INFORMATION

- 3.1 The Bribery Act 2010 (the Act) became effective on 1st July 2011 and will affect all private and public sector organisations in the UK. The Ministry of Justice produced Statutory Guidance (the Guidance) at the end of March 2011 on how organisations including local authorities should comply with the Act.

3.2 The aims of the Act are to reduce the levels of corruption across the UK without being burdensome to business. 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”

3.3 The Act creates four new offences.

- **Bribing another Person (Section1))**

It will be an offence to offer, promise or give a 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 a financial or other advantage where the person doing so „knows or believes” that the acceptance of the advantage would itself 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.

In the local authority context, a function or activity will be a “relevant function or activity” for the purposes of the Act if it is of a public nature and a person performing it is expected either::

- to perform it in good faith;
- to perform it impartially; and
- the person is in a position of trust by virtue of performing it. If the function/activity is caught under one of these tests, then the Act states that it will be “improperly performed” if there is a breach of a “relevant expectation”. This “expectation” is itself an objective test of what a reasonable person in the UK would expect in relation to the function/activity.

- **Receiving a Bribe (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. This will be of particular relevance to the Council.

- **Bribery of a foreign official (Section 6)**, i.e. with the intention of influencing a public official in his foreign capacity

It is considered this offence not to be relevant to the Council.

- **Failure of 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 purposes 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. It is a defence if the organisation has adequate procedures in place to prevent bribery. In general, a public body would not be a commercial organisation for the purposes of the Act, however the Council may have subsidiaries which would come under the scope of the Act or it may carry out activities which are akin to running a private business. In any event it would be prudent for the Council to review its policies and procedures in light of the Act to ensure that they would be adequate in relation to those offences that could affect the Council, and to minimise risk.

The Act makes it clear that if the bribery offence is committed with the consent/connivance of a senior officer of the local authority, then that person is also personally guilty of an offence. This will potentially catch all those working at manager level and upwards. Penalties under the Act include fines and/or imprisonment for up to ten years (for the more serious offences).

4. ARRANGEMENTS TO MITIGATE THE RISK OF BRIBERY

- 4.1 A full bribery risk assessment has not yet been completed but an initial assessment of the risks is outlined below to determine the extent to which processes and procedures additional to those already in place may be required.
- 4.2 The Council is a large organisation with a large number of staff, contractors and service users. Some areas of business to which the Council works will bring with them higher bribery risks than others. However the Council does not carry out a large amount of business outside the UK and not with high risk countries in terms of bribery.
- 4.3 The Council does work with others in sectors particularly susceptible to bribery e.g. building and construction. Additionally, the Council does undertake some transactions in relation to which officers are more at risk of being offered inducements. For example:
- Procurement and awarding of contracts;
 - Awarding of licences and permits;
 - Planning applications and building regulations;
 - Assessment of entitlement to grants, benefits and other entitlements; and
 - Partnership and commissioning of services;

- 4.4 The Council has received and continues to receive allegations of possible bribery and corruption and these are investigated by Audit & Business Risk as part of its corporate fraud responsibilities. The levels of such cases referred indicate that the section 2 risk of Officers and Members being bribed is the highest risk of the bribery offences. Unfortunately though bribery cases are very difficult to prove to a level where a criminal prosecution is successful.
- 4.5 The Statutory Guidance states that procedures in place to mitigate the risk of bribery should reflect the level of exposure to risk. The initial risk assessment suggests the main risk is that of Officers and Members being offered bribes. The offence if proven would result in the prosecution of the individual (up to 10 years imprisonment) rather than the Council. However the Council will be expected to demonstrate as a legal defence that it has implemented 'adequate procedures' otherwise could be fined in breach of the Act.
- 4.6 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 Officers' Governance Board to ensure the above assessment accurately reflects 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 and a clear statement from the Leader and Chief Executive. The Council already has a Counter Fraud Strategy and a Whistle-blowing Policy and these will be reviewed to ensure they clearly refer to the requirements of the Act and a clear message regarding the Council's zero tolerance towards bribery and the consequences to staff, members and others associated with the Council. Some local authorities are in the process of introducing a separate policy on Bribery, however this is currently not considered necessary at the Council.
- **Proportionate Procedures** - the Council should have procedures proportionate to the bribery risks it faces as follows:

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 Code of Conducts for both Members and Officers that prohibits acceptance of financial inducements and details the rules regarding acceptance of Gifts and Hospitality. Whilst this exists there are issues over its robustness and this will be reviewed in 2011/12 to improve including the use of IT. There is a specific Code for Members involved in planning, etc. The Employees Code of Conduct does not however identify high risk groups and requirement of them to make regular declaration interests, gifts and hospitality even if Nil.
- Financial Regulations make it clear that accepting inducements is not acceptable
- Procurement Rules are in place to ensure fair competition in awarding of contracts. These will however be reviewed in 2010/11 to ensure rules and standards are robust in making it clear to potential contractors 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 and Fraud Hot-line 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. Due diligence forms part of the Council's HR Policies including for employee recruitment/vetting but is planned to be reviewed again during 2011/12 to ensure robust in light of further bribery and other emerging risks facing the Council.
- **Communication** - the Council already has some procedures in place to ensure fraud and corruption policies and procedures are communicated and understood by its staff. These will be reviewed during 2011/12 as part of proactive measures contained in the Council's Counter Fraud Programme including e-learning awareness training (including Bribery) to all staff on fraud awareness, greater use of the Council's Intranet and Internet, targeted release of information to high risk Officers and Members (those in a position that could be bribed) and clear messages to potential contractors that bribery of Council officials will not be tolerated.

- **Monitoring and Review** - of the procedures in place to 'deter, detect and investigate bribery'. Audit & Business Risk will continue to review compliance with policies and procedures and investigate any suspected bribery. The guidance suggests that organisations may wish to seek some form of external verification of the effectiveness of their anti-bribery procedures. Comparison will be made with other local authorities procedures through regional audit groups and directly.

5. FINANCIAL & OTHER IMPLICATIONS:

5.1 Financial Implications:

It is important that effective procedures are in place to prevent financial loss to the Council from fraud and corruption. There are no financial implications in meeting the requirements of the Act as associated actions will be absorbed in the planned work programme of Audit & Business Risk. Mitigating against these risks is important as failure to implement adequate procedures could result in a criminal court decision to be in breach of Section 2 of the Act and subsequent fine for the Council. There would also be financial implications if bribery occurred or contract costs were increased.

Finance Officer consulted: *Anne Silley*

14th September 2011

5.2 *Legal Implications:*

Legal implications are contained within the body of this report.

Legal Officer consulted: *Oliver Dixon*

15th September 2011

5.3 Equalities Implications:

There are no direct equalities implications arising directly from this report

5.4 Sustainability Implications:

There are no direct sustainability implications arising from this report.

5.5 Crime & Disorder Implications:

There no direct implications for the prevention of crime and disorder arising from this report.

5.6 Risk and Opportunity Management Implications:

Risk implications are contained within the body of this report.

5.7 Corporate / Citywide Implications:

Robust corporate governance arrangements are essential to the sound management of the City Council and the achievement of its objectives as set out in the Corporate Plan.

SUPPORTING DOCUMENTATION

Documents in Members Room

1. None

Background Documents

1. The Bribery Act 2010
2. The Bribery Act 2010 Guidance (Ministry of Justice) 2011

