

By: Alex King – Deputy Leader
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To: Governance and Audit Committee – 14 September 2011
Subject: BRIBERY ACT 2010
Classification: Unrestricted

Summary: This paper provides a summary of the proposed response to the commencement of the Bribery Act 2010.

FOR ASSURANCE

Introduction and background

1. The Bribery Act came into force on the 1st July 2011. The Act modernises the law on bribery. The Act sets out four offences:
 - Section 1 - Offering, promising or giving a bribe to another person to perform a relevant 'function or activity' improperly, or to reward a person for the improper performance of such a function or activity. ('Active' bribery)
 - Section 2 - Requesting, agreeing to receive or accepting a bribe to perform a function or activity improperly, irrespective of whether the recipient of the bribe requests or receives it directly or through a third party, and irrespective of whether it is for the recipient's benefit. ('Passive' bribery)
 - Section 6 - Bribing a foreign public official.
 - Section 7 - Failure of a commercial organisation to prevent bribery. It should be noted that section 1 or section 6 needs to be proven for a section 7 offence to apply.
2. The maximum penalty for Members or Officers found guilty of an offence of bribery will be ten years' imprisonment, a fine of up to £5,000, or both, and the maximum penalty for the Council will be an unlimited fine.
3. The Act represents a significant change from the current law and places obligations on the Council to ensure that it has adequate procedures in place.
4. The Ministry of Justice has issued guidance in relation to adequate procedures which includes proportionality, top level commitment, risk assessment, due diligence, communication, monitoring and review.

The Council's Response

5. Both Internal Audit and Legal Services have considered the Council's response to the implementation of the Bribery Act. A response plan has been prepared and this will be agreed with the relevant corporate directors.

If agreed, it is anticipated that these actions will be completed and a progress report will be presented to the Committee in November 2011.

Recommendations

6. Members are asked to:

- Note the enactment of the Bribery Act and the Council's proposed response plan.

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Counter Fraud Manager
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Bribery Act Response Plan

Task No.	Key Principles of Bribery Act Guidance	Action Points	Corporate Lead	Proposed Target date	Progress	Completion date	Supporting Evidence
1	(1) Proportionate Procedures	The Anti-Fraud and Corruption Policy needs to be amended to reflect the requirements of the Bribery Act, including the investigation and monitoring of associates and any allegations/incidents of bribery. The Governance and Audit Committee approved the Anti-Fraud and Corruption Policy in March 2011. The additions required for the Bribery Act can be dealt with as an appendix to the policy. The Counter Fraud Manager will draft the appendix which will be submitted to Governance and Audit Committee for approval.	Corporate Director of Finance and Procurement.	Sep-11			
2		Review and update the Blue Book - Kent Scheme 2010 Terms and Conditions of Service. Key sections will include recruitment and selection, whistleblowing, gifts & hospitality, Kent Code and sponsorship.	Corporate Director of Human Resources	Nov- 11			

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3		The Constitution and the Member Code of Conduct will be reviewed and updated to reflect the Bribery Act.	Director of Governance and Law.	Nov- 11			
4		Review and update "Spending the Council's Money – The Code of Practice" The guidance in the document needs to highlight the potential risk of bribery and the action needed to minimise this risk. This will include any standard contracts, procurement processes, due diligence, risks register and insurance cover. This should cover the organisations supply chain, agents and intermediaries (if used), joint ventures and partnerships.	Corporate Director of Finance and Procurement.	Nov- 11			
5	(2) Top Level Commitment	The Managing Director should make a statement in support of the anti- bribery and corruption initiative and this statement should be published on the organisations website.	Managing Director	Nov- 11			

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6	(3) Risk Assessment	A risk management review should be undertaken to identify areas where risk of bribery is considered high. Risk registers should include specific bribery risks and mitigating actions.	Corporate Director of Finance and Procurement.	Oct- 11			
7	(4) Due Diligence	Due diligence procedures to be included in the review of Spending the Council's money.	Corporate Director of Finance and Procurement.	Nov- 11			
8	(5) Communication (including training)	Agree a targeted training plan to explain the Bribery Act and the standards expected of staff and members, including corporate induction.	Corporate Director of Human Resources	Nov- 11			
9		Provide information about the Bribery Act and its implications via K-Net, K-Mail and K-Mag.	Corporate Director of Human Resources	Nov- 11			

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10	(6) Monitoring and Review	Report all allegations of bribery to the Governance and Audit Committee. Governance and Audit Committee to receive reports on the progress of Bribery Act initiatives. Annual Governance Statement to include details of compliance with the Bribery Act.	Corporate Director of Finance and Procurement.	Nov- 11			