

AUDIT COMMITTEE

5 December 2011

WINCHESTER CITY COUNCIL ANTI-BRIBERY POLICY AND ACTION PLAN

REPORT OF INTERNAL AUDIT MANAGER

Contact Officer: John Cummins Tel: 01962 848 454 jcummins@winchester.gov.uk

RECENT REFERENCES:

PS442 – Internal Audit Strategy and Audit Plan 2011/12 to 2013/14 – 7 March 2011

AUD001 – Review of the Effectiveness of Internal Audit (including End of Year Report to 31 March 2011) – 29 June 2011

AUD010 – Internal Audit Progress Report to 31 August 2011 – 26 September 2011

AUD017 – Internal Audit Progress Report to 30 November 2011 (including update on outstanding high risk audit actions due for implementation prior to 31 October 2011) – 5 December 2011

EXECUTIVE SUMMARY:

The Bribery Act 2010 came into force on the 1 July 2011 and applies to all public and private sector organisations. The Act acknowledges that each organisation's response to the Act will need to be commensurate with its risk of exposure to bribery.

The Bribery Act introduces four new offences :

- Bribing another person
- Receiving a bribe
- Bribery of a foreign official
- Failure of a commercial organisation to prevent bribery

The attached policy (Appendix A), provides a response by Winchester City Council to the Act. The policy is designed to foster a culture within the Council in which bribery is never acceptable This will rely on top level commitment and ensuring that the policy is embedded and understood throughout the Council. The policy will, Therefore, be promoted through staff briefings and the Council's website.

This policy will also form a part of the underlying governance framework which helps to drive effective delivery of the Council's priorities.

The Council currently has an Anti-Fraud and Corruption Policy and Fraud Response Plan and a Whistle-blowing Policy in place. The introduction of legislation will strengthen and support these policies.

The Anti-Bribery Policy is shown in Appendix A and the Anti-Bribery Action Plan in Appendix B.

Other relevant policies include Winchester City Council's:
Anti-Fraud and Corruption Policy
Anti-Money Laundering (Treasury Management Panel statement No.9)
Whistle-blowing Policy
Gifts and Hospitality Protocol
Employee Code of Conduct

RECOMMENDATIONS:

1. That Winchester City Council's Anti-Bribery Policy (Appendix A) and Action Plan (Appendix B) be approved and incorporated in the Anti- Fraud and Corruption Section of the Constitution.

AUDIT COMMITTEE

5 December 2011

WINCHESTER CITY COUNCIL ANTI-BRIBERY POLICY AND ACTION PLAN

REPORT OF INTERNAL AUDIT MANAGER

DETAIL:

1 Introduction

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

1.2 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.

1.3 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).

1.4 There are four key offences under the Act:

General Offences

- Bribing another person (section 1)
- Receiving a bribe (section 2)

Commercial Offences

- Bribery of a foreign official (section 6)
- Failure of a commercial organisation to prevent bribery (section 7)

1.5 Appendix A shows the proposed draft Anti-Bribery policy for Winchester City Council and within it a summary of the key aspects of the Bribery Act 2010 are covered and the Council's commitment to complying with the Act.

2 Implications for Winchester City Council

2.1 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.

- 2.2 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.
- 2.3 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.
- 2.4 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).
- 2.5 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. A full risk assessment is to be undertaken as identified in the Action Plan shown in Appendix B. It is likely that the highest risk is that of our staff accepting bribes in exchange for preferential treatment for service users or contract awarding.
- 2.6 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 (six months in Northern Ireland), 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.
- 2.7 The Council, if convicted under sections 1, 2 or 6 will also face the same level of fines and, if guilty of an offence under Section 7, is liable

to an unlimited fine.

3. Arrangements to Mitigate the Risk of Bribery

3.1 The Ministry of Justice published guidance about anti-bribery procedures in respect of the offence under Section 7 and sets out six principles that are intended to help commercial organisations of all sizes and sectors understand what sorts of procedures they can put in place to prevent bribery.

3.2 The Six Principles

Proportionality

The action organisations should take should be proportionate to the risks it faces and to the size of the business. For example, large organisations operating in an overseas market where bribery is known to be common place will need to do more than prevent bribery.

Top Level Commitment

Those at the top of the organisation are in the best position to ensure that the organisation conducts its business without bribery. A culture should be established in which bribery is never acceptable. Steps should be taken to ensure that the organisations policy and procedures are clearly communicated to all levels of management and staff; and any relevant external parties.

Risk Assessment

Organisations are asked to think about the bribery risks that they face. It may be that if the risk is deemed small, and therefore little risk of bribery being committed on behalf of the organisation, then procedures adopted should be proportionate to that risk.

Due Diligence

Knowing exactly who the organisation is dealing with can help to protect the organisation from taking on people who might be less than trustworthy. The organisation may therefore wish to ask questions and do a few checks before engaging others to represent it in business dealings. Due diligence covers all parties to a business relationship, including the organisation, supply chain, agents and intermediaries, all forms of joint venture and similar relationships.

Communication

Communicating policies and procedures to staff and to others who will perform services for the organisation will enhance awareness and help deter bribery by making clear the basis on which the organisation does

business. Training and general raising awareness should be considered.

Monitoring and Review.

The risks that the organisation faces and the effectiveness of procedures may change over time. Monitoring and review mechanisms should be in place to ensure compliance with relevant policies, procedures and identify any issues as they arise, and to subsequently implement improvements as appropriate.

- 3.3 The Council already have in place a range of policies and procedures which contribute to the mitigation of risk of bribery. Including a Risk Management Strategy and Framework, an Anti-Fraud and Corruption Policy, Fraud Response Plan and Whistle-blowing Policy. In addition the Council has Financial Procedural Rules, Recruitment Vetting procedures, transparency in publishing all transactions over £500 in value, a Code of Conduct for Members and Officers, procedures for declaration of interests, hospitality and gifts.
- 3.4 The Council has procedures in place to ensure to ensure anti-fraud and corruption policies and procedures are communicated and understood by staff.
- 3.5 Appendix B provides a summary of the actions to be undertaken to ensure compliance with the Bribery Act.

4. Other Matters

- 4.1 The Council already has a robust governance framework providing a range of protections to help mitigate any risk of bribery and these have or in the process of being reviewed and adapted where necessary following the act coming into force. Minor amendments will be made where considered necessary to Contract Procedural Rules, Employee Code of Conduct, Anti-Fraud and Corruption Policy and the Gifts and Hospitality Protocol.

OTHER CONSIDERATIONS:

5. SUSTAINABILITY COMMUNITY STRATEGY AND CHANGE PLANS (RELEVANCE TO):

- 5.1 The Anti-Bribery Policy contributes to the corporate governance arrangements of Winchester City Council, which in turn supports the achievement of the objectives of the Sustainable Community Strategy and Corporate Business Plan.

6. RESOURCE IMPLICATIONS:

6.1 None.

7. RISK MANAGEMENT ISSUES

7.1 A full risk assessment of the bribery risks faced by the Council will be accessed by Internal Audit in January and reported to the Corporate Management Team for agreement. An update will be provide to the Audit Committee in March 2012.

BACKGROUND DOCUMENTS:

Working papers and reports held within the Governance Group.

The Bribery Act can be found on the following internet link:

www.opsi.gov.uk/acts/acts2010/ukpga_20100023_en_1

Ministry of Justice Guidance

APPENDICES:

Appendix A: Anti-Bribery Policy

Appendix B: Anti-Bribery Action Plan

Winchester City Council - Anti Bribery Policy**Appendix A****CONTENTS**

- 1.0 Bribery
- 2.0 The Bribery Act
- 3.0 Penalties
- 4.0 Policy Statement – Anti Bribery
- 5.0 Objectives of this policy
- 6.0 Scope of this policy
- 7.0 The Council’s commitment to action
- 8.0 Anti Bribery procedures
- 9.0 Bribery is not tolerated
- 10.0 Facilitation payments
- 11.0 Gifts and hospitality
- 12.0 Public contracts and failure to prevent bribery
- 13.0 Officer responsibilities
- 14.0 Monitoring and review
- 15.0 Raising a concern

1.0 BRIBERY

- 1.1 Is an inducement or reward offered, promised or provided to gain personal, commercial, regulatory or contractual advantage.
- 1.2 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).

2.0 THE BRIBERY ACT

- 2.1 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)
- 2.2 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.
- 2.3 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. This is what is known as a “strict liability” offence. This means that there is no need to prove negligence or management complicity. 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.

3.0 PENALTIES

- 3.1 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 (six months in Northern Ireland), 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.
- 3.2 The Council, if convicted under Sections 1, 2 or 6 will also face the same level of fines and, if guilty of an offence under Section 7, is liable to an unlimited fine.

4.0 POLICY STATEMENT - ANTI BRIBERY

- 4.1 Bribery is a criminal offence. The Council does not, and will not, pay bribes or offer improper inducements to anyone for any purpose, nor does the Council accept bribes or improper inducements.
- 4.2 To use a third party as a conduit to channel bribes to others is a criminal offence. The Council does not, and will not, engage indirectly in or otherwise encourage bribery.
- 4.3 The Council is committed to the prevention, deterrence and detection of bribery and has a zero-tolerance towards bribery.

5.0 OBJECTIVE OF THIS POLICY

- 5.1 This policy provides a coherent and consistent framework to enable the Council's members and officers to understand and implement arrangements enabling compliance. In conjunction with related policies and key documents it will also enable members and officers to identify and effectively report a potential breach.
- 5.2 All members and officers including those permanently employed, temporary agency staff and contractors must:
- 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.

6.0 SCOPE OF THIS POLICY

- 6.1 This policy applies to all of the Council's activities. For partners and suppliers, we will seek to promote the adoption of policies consistent with the principles set out in this policy.
- 6.2 Within the Council, the responsibility to control the risk of bribery occurring resides at all levels of the organisation.
- 6.3 This policy covers all officers including those permanently employed, temporary agency staff, contractors, non-executives, agents, members (including independent or co-opted members), volunteers and consultants.

7.0 THE COUNCIL'S COMMITMENT TO ACTION

- 7.1 The Council commits to:
- Setting out a clear anti-bribery policy and keeping it up to date.
 - Making all members and officers aware of the Council's policy and procedures and their responsibilities to adhere strictly to this policy at all times.
 - Encouraging its members and officers 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 members and officers to report breaches and suspected breaches of this policy.
 - Include appropriate clauses in contracts to prevent bribery.

8.0 ANTI-BRIBERY PROCEDURES

- 8.1 The Council's procedures cover six principles:-

Proportionality

The Council has procedures in place to prevent bribery by persons associated with it. These procedures are clear, practical, accessible, effectively implemented and enforced.

Top level commitment

The Corporate Management Team and Heads of Service are committed to preventing bribery and foster a culture within the organisation in which bribery is never acceptable.

Risk Assessment

The nature and extent of the Council's exposure to potential external and internal risks of bribery on its behalf by persons associated with it is periodically assessed. This includes financial risks but also other risks such as reputational damage.

Due diligence

The Council takes 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 (including training)

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.

9.0 BRIBERY IS NOT TOLERATED

9.1 It is unacceptable to:

- Give, promise to give, or offer a payment, gift or hospitality with the expectation or hope that a business advantage will be received, or to reward a business advantage already given.
- Give, promise to give, or offer a payment, gift or hospitality to a government official, agent or representative to "facilitate" or expedite a routine procedure.
- 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.

10.0 FACILITATION PAYMENTS

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

11.0 GIFTS AND HOSPITALITY

11.1 The Council's policy regarding the requirements for gifts and hospitality is set out within the Gifts and Hospitality Protocol and Employee Code of Conduct.

12.0 PUBLIC CONTRACTS AND FAILURE TO PREVENT BRIBERY

12.1 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. This Council has the discretion to exclude organisations convicted of this offence.

13.0 OFFICER RESPONSIBILITIES

13.1 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 officers are required to avoid activity that breaches this policy. Officers must:

- Ensure that the policy has been read and comply with the requirements.
- Raise concerns as soon as possible where this policy has been breached or suspect a breach of this policy has occurred, or may occur in the future.

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

14.0 MONITORING AND REVIEW

14.1 Procedures designed to prevent bribery are monitored and reviewed and improvements are made where necessary.

15.0 RAISING A CONCERN

15.1 The Council has a responsibility to help detect, prevent and report instances of bribery.

15.2 In the event that an incident of bribery, corruption, or wrongdoing is reported, the Council will act as soon as possible to evaluate the situation. There are clearly defined procedures for investigating fraud, misconduct and non-compliance issues and these will be followed in any investigation of this kind.

15.3 Details of how to raise a concern are outlined in the Council's Whistle-Blowing Policy.

Anti-Bribery Action Plan**Appendix B**

<u>Action Point</u>	<u>Action Required</u>	<u>Date and Responsible Officer</u>
1	Minor updates to be made to the Anti-Fraud and Corruption Policy, Fraud Response Plan and the Whistle-blowing Policy.	31 December 2011 - Internal Audit Manager
2	Review Code of Conduct for Officers and Members and identify if any updates required. If required likely to be minor changes.	31 December 2011 - Internal Audit Manager
3	Review Contract Procedural Rules and procurement practices for any changes required.	31 January 2012- Internal Audit Manager and the Head of Legal Services
4	Undertake risk assessment to identify areas of most risk of Bribery.	31 January 2012 - Internal Audit Manager in consultation with the Corporate Management Team
5	Training to be provided to the Senior Management Team on the Bribery Act and refresher training on Anti-Fraud and Corruption.	29 February 2012 – Internal Audit Manager
6	Staff Awareness through publication of information on Anti-Fraud and Corruption, including the Bribery Act.	29 February 2012 – Internal Audit Manager
7	Internal Audit update report on this Action Plan to the Audit Committee.	March 2012
8	Internal Audit Plan for 2012/13 to include provision to review Anti-Fraud and Corruption, including the Bribery Act.	30 September 2012