

## BROMSGROVE DISTRICT COUNCIL

### **Audit Board**

Date 9th June 2011

#### **Bribery Act 2010**

Relevant Portfolio Holder	Councillor Roger Hollingworth
Relevant Head of Service	Teresa Kristunas
Key Decision	

#### **1. SUMMARY OF PROPOSALS**

- 1.1 To provide the Audit Board with the information necessary to prepare the council to implement processes and procedures to ensure compliance with the Bribery Act 2010. This Act comes into force on 1st July 2011.

#### **2. RECOMMENDATIONS**

- 2.1 That the attached information is carefully considered so that the implications of the Bribery Act 2010 are included in future strategy within the Council. There is a 3 month implementation period from 31st March 2011 to 30th June 2010. The Act comes into force from 1st July 2011.
- 2.2 That the Audit Board recommends to Cabinet that procedures are put in place to avert any possible actions against the Council, in relation to Bribery actions and in relation to potential legal actions that could be taken against the Council for not having 'adequate' procedures in place.

#### **3. BACKGROUND**

- 3.1 The Act was originally intended to be implemented in October 2010, however was delayed to take into account a consultation exercise. In addition, it was held back to await the written guidance from the Ministry of Justice.

This guidance was issued on 30th March 2011, which means that the Act comes into force from 1st July 2011.

This gives a period of 3 months to enable organisations such as Local Authorities, to implement relevant procedures prior to the Act going "live". Organisations must continue to comply with sector-specific regulations and standards at all times.

## BROMSGROVE DISTRICT COUNCIL

### **Audit Board**

Date 9th June 2011

---

The Act applies to individuals in the public service of the Crown as it applies to other individuals. Initiation of proceedings is limited to, or with the consent of, the Director of Public Prosecutions, the Director of the Serious Fraud Office and the Director of Revenue and Customs Prosecutions.

A bribe is a financial or other advantage that is offered or requested with the intention of inducing or rewarding the improper performance of a relevant function or activity, or with the knowledge or belief that the acceptance of such an advantage would constitute the improper performance of such a function or activity.

A relevant function or activity is:

- any function of a public nature
- any activity connected with a business
- any activity performed in the course of a person's employment
- any activity performed by or on behalf of a body of persons,

where it meets one or more of the following conditions:

- a person performing it is expected to perform it in good faith
- is expected to perform it impartially
- or is in a position of trust by virtue of performing it.

- **Members can refer to Appendix A for the details of Act**

#### **Additional risk area's**

##### 1. Facilitation payments

Otherwise known as 'grease' payments. They are designed to make things happen but they don't secure agreement. One suggestion at the briefing attended, was that Section 106 payments may fall into this category, but that was opinion only, with no legal basis. However it would need considered in order ensuring that these payments do not fall foul of the Bribery Act.

## **BROMSGROVE DISTRICT COUNCIL**

### **Audit Board**

Date 9th June 2011

---

#### 2. Gifts and hospitality

Genuine hospitality that is reasonable is acceptable. Where it is thought that gifts and/or hospitality was really a cover for bribing someone, the authorities would look at such things as the level of hospitality offered, the way in which it was provided and the level of influence the person receiving it had on the business decision in question. However, if it is reasonable and proportionate it should be accepted. It would however be a good idea to have a corporate wide register of gifts and hospitality that could be used as a reference point, both for the issues at hand here, but also for any other corporate internal enquiries that may be needed. It not only protects those officers/staff members who receive such gifts and/or hospitality, but also reinforces the corporate 'defence' argument, should it be challenged.

#### 4. **KEY ISSUES**

- 4.1 The issues of Bribery need to be included in documentation held by the Council in relation to Senior Management, Members, Staff and any person associated with the Council that performs services either for or on behalf of the Council. This includes agency workers, contractors and suppliers.

Policies need to be updated to reflect this element, to include HR policies/procedures/contracts, the Corporate Anti-Fraud and Corruption Strategy, and Procurement documentation and contracts.

Commitment from Senior Management is necessary to ensure that the Council can conduct its business without bribery.

A single point of contact needs to be set up to review and monitor compliance with the Act. It is anticipated that this would sit with the S151 Officer, as fraud and corruption issues against the Council are part of the S151 responsibilities under the Local Government Act 1972.

Training would need to be considered to ensure that new employees are aware of the stance in addition to Managers are aware of the zero tolerance. General awareness can be circulated via the Quarterly Corporate Fraud Newsletter.

Risk assessments would need to be undertaken at a corporate level to highlight the proposed level of risk. However, if all of the above was achieved it would be reasonable to assume that the level of risk would be low.

## **BROMSGROVE DISTRICT COUNCIL**

### **Audit Board**

Date 9th June 2011

---

#### **5. FINANCIAL IMPLICATIONS**

- 5.1 It would not be expensive to ensure compliance with the Act. However the issue of training may well incur some expense, certainly in Officers time as a minimum.

#### **6. LEGAL IMPLICATIONS**

- 6.1 The Bribery Act 2010 comes into force from 1 July 2011. Organisations are being given a 3 month period to prepare for the Act's implementation. Guidance has been received from the Ministry of Justice in relation to what organisations must consider. Local Authorities are not exempt from it, as they are 'formed' within the UK and conduct business.

#### **7. POLICY IMPLICATIONS**

- 7.1 Policies will need updating, alongside procedures. These policies will need approval from SMT as a minimum, confirming a zero tolerance. However Members should also be aware of the implications. It would therefore be advisable to ensure that Members do have sight of updated policies so that they can satisfy themselves that the Council is doing everything it can to ensure that the risk of Bribery is minimised.

#### **8. COUNCIL OBJECTIVES**

- 8.1 Improvement

#### **9. RISK MANAGEMENT INCLUDING HEALTH & SAFETY CONSIDERATIONS**

Risk assessments would need to be undertaken on a corporate level to highlight the proposed level of risk. However, if all of the above was achieved it would be reasonable to assume that the level of risk would be low.

- 9.1 The main risks associated with the details included in this report are:

- Disbarment from contracts
- Loss of reputation
- Negative publicity
- Loss of contract specifications/the wrong people doing the jobs under contract

## **BROMSGROVE DISTRICT COUNCIL**

### **Audit Board**

Date 9th June 2011

---

9.2 These risks will need to be managed via the Corporate Risk

#### **10. CUSTOMER IMPLICATIONS**

10.1 Suppliers and Contractors will need to be made aware of the zero tolerance approach in order to minimise and reduce the threat of Bribery whilst undertaking business with the Council. This can be catered for by including information in Procurement documents and contracts.

#### **11. EQUALITIES AND DIVERSITY IMPLICATIONS**

11.1 This will not have any equality and diversity implications – it will be a process that the Council will need to put in place in order to comply with the Bribery Act 2010.

#### **12. VALUE FOR MONEY IMPLICATIONS, PROCUREMENT AND ASSET MANAGEMENT**

12.1 Reduction and/or minimisation in possible bribery being undertaken by suppliers and contractors who have business with the Council, against the Council.

#### **13. CLIMATE CHANGE, CARBON IMPLICATIONS AND BIODIVERSITY**

13.1 n/a.

#### **14. HUMAN RESOURCES IMPLICATIONS**

14.1 HR Policies and procedures will need to be updated to ensure that all staff are aware of the zero tolerance stance being taken by the Council, in relation to any activity involving Bribery.

#### **15. GOVERNANCE/PERFORMANCE MANAGEMENT IMPLICATIONS**

15.1 By implementing the above, governance of the council will be protected and we will be able to show that we are serious about preventing bribery both within and against the organisation. If challenged, we can then successfully defend ourselves.

**BROMSGROVE DISTRICT COUNCIL**

**Audit Board**

Date 9th June 2011

**16. COMMUNITY SAFETY IMPLICATIONS INCLUDING SECTION 17 OF CRIME AND DISORDER ACT 1998**

16.1 n/a

**17. HEALTH INEQUALITIES IMPLICATIONS**

17.1 n/a

**18. LESSONS LEARNT**

18.1 n/a

**19. COMMUNITY AND STAKEHOLDER ENGAGEMENT**

19.1 n/a

**20. OTHERS CONSULTED ON THE REPORT**

Portfolio Holder	NO
Chief Executive	NO
Executive Director (S151 Officer)	YES
Executive Director – Leisure, Cultural, Environmental and Community Services	NO
Executive Director – Planning & Regeneration, Regulatory and Housing Services	NO
Director of Policy, Performance and Partnerships	NO
Head of Service	YES
Head of Resources	YES
Head of Legal, Equalities & Democratic Services	NO
Corporate Procurement Team	NO

**BROMSGROVE DISTRICT COUNCIL**

**Audit Board**

Date 9th June 2011

---

**21. WARDS AFFECTED**

All wards

**22. APPENDICES**

Appendix A – Details of the Act

**23. BACKGROUND PAPERS**

Bribery Act 2010 Guidance

Bribery Act 2010 Quick Start Guide – both available from Ministry of Justice

**24. KEY**

n/a

**AUTHOR OF REPORT**

Name: Marie Wall  
E Mail: m.wall@bromsgrove.gov.uk  
Tel: 01527 881240

**Section 1 of the Bribery Act 2010**

Bribing another person:

- offer, promise or gift a financial or other advantage to another person either
- intending to induce, or reward, a persons improper performance of a relevant function or activity or
- knowing or believing acceptance of the advantage itself constitutes improper performance

Such bribes could be in money, payment in kind, goods or services.

**Section 2 of the Bribery Act 2010**

Being Bribed

- requests, agreements to receive or acceptance of financial or other advantage;
- intending in consequence that a relevant function or activity should be performed improperly,
- itself constitutes improper performance,
- rewards improper performance

This section relates to individual officers and could lead to prosecution of Senior Management Officers under Section 7.

**Section 6 of the Bribery Act 2010**

Bribery of Foreign Public Officials

- Offering, promising or giving a financial or other advantage, either directly or indirectly, intending to obtain or regain business or an advantage in the conduct of business.
- “Business” includes trade or profession.



**Section 7 of the Bribery Act 2010**

Failure of a commercial organisation to prevent bribery

- if a person associated with an organisation bribes another person to obtain or retain business, or a business advantage for the organisation
- the organisation may not have actual knowledge or day-to-day control over actions and could therefore unknowingly commit an offence
- there is a defence, if the organisation can prove that it had in place “adequate procedures” to prevent persons associated with it from committing such acts.

A relevant commercial organisation is defined as a “body or partnership incorporated or formed in the UK irrespective of where it carries on a business, or an incorporated body or partnership which carries on a business or part of a business in the UK.....”. The key concept is that of an organisation which ‘carries on a business’.....the courts will be the final arbiter as to whether an organisation ‘carries on a business’, but current legal indicators suggest that Local Authorities are included in this definition as being a body formed in the UK. Government expects that by applying a common sense approach, it does not matter if the organisation pursues primarily charitable or educational aims or purely public functions.

A person **associated** with a commercial organisation is defined as a person who ‘performs services’ for or on behalf of the organisation. This person can be an individual or an incorporated or unincorporated body. This includes agency workers, contractors and suppliers. Suppliers who can be said to be performing services for a commercial organisation rather than simply acting as a seller of goods, may therefore be classed as an ‘associated’ person.

**Defence**

It is a defence if the organisation can show that it has adequate bribery prevention procedures in place. This should be informed by six general principles.

These principles are flexible and outcome focussed, to allow each organisation to tailor its policies and procedures so that they are proportionate to the nature, scale and complexity of its activities. The outcome should always be robust and effective anti-bribery procedures

**The Six Principles**

1. Proportionality

The action you take should be proportionate to the risks you face and to the size of your business. We should be regularly and comprehensively assessing the nature and extent of risks relating to bribery to which the Council may be exposed.

2. 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 is clearly communicated to all levels of management, the workforce and any relevant external factors. Such examples, would be a leadership statement, training and inclusion of expectations on procurement documentation and contracts.

3. Risk Assessment

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. Examples would include, basic induction training, fraud newsletters, procurement controls with suppliers and contractors. There may not be a need for a full comprehensive policy, instead it could be included within other corporate policies, such as the Anti-Fraud and Corruption Strategy.

4. Due Diligence

Knowing exactly who you deal with can help to protect your organisation from taking on people who might be less than trustworthy. You may therefore wish to ask questions and do a few checks before engaging others to represent you 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.

## **BROMSGROVE DISTRICT COUNCIL**

### **Audit Board**

**Date 9th June 2011**

---

#### 5. Communication

Communicating policies and procedures to staff and to others who will perform services for you to enhance awareness and help deter bribery by making clear the basis on which the organisation does business. Training and general raising of awareness is a must on this. Ensuring that the procurement team are fully aware of implications also, in addition to including clauses within HR documents/policies and contracts. In addition to this, there would need to be a written procedure on how to investigate such occurrences.

#### 6. Monitoring and Review.

To institute monitoring and review mechanisms to ensure compliance with relevant policies, procedures and identify any issues as they arise, and to subsequently implement improvements as appropriate. Consideration needs to be given to who will be responsible for ensuring that all procedures and processes are kept up to date, for ensuring that training and cascading of information is undertaken.

#### **Penalties**

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

- on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum (£5000), or to both
- on conviction on indictment, to imprisonment for a term not exceeding 10 years, or to a fine, or both.

A person guilty of an offence under section 7 is liable on conviction on indictment to a fine.

#### **Protection in Real Terms**

Defence can be considered 'adequate' if the following was in place:

- Risk Awareness and preparation
- Communication and Senior Management buy-in
- 'Zero tolerance', process v culture
- Education and training
- Audit Trail and integration with counter fraud processes

**BROMSGROVE DISTRICT COUNCIL**

**Audit Board**

**Date 9th June 2011**

---

**Consequences**

- disbarment from contract tenders
- adverse publicity (everyone is under the microscope)
- reputational risks
- the wrong people undertaking contracts etc, with potential loss of specification and work not being up to standard