

Cheltenham Borough Council
Audit Committee – 22 June 2011
The Bribery Act 2010

Accountable member	Cabinet Member Corporate Services , Councillor Colin Hay
Accountable officer	Mark Sheldon, Director of Resources
Accountable scrutiny committee	Economy and Business Improvement (E&BI)
Ward(s) affected	None
Key Decision	No
Executive summary	The Bribery Act 2010 comes into force 1 st July 2011 the main purpose of which is to prevent bribery and corruption by commercial organisations.
Recommendations	That the Audit Committee take account of the changes effected by the Bribery Act 2010 and the proposals to review and update any necessary changes to the Council's procurement procedures, anti-fraud and anti-corruption documents.

Financial implications	None arising out of this report Contact officer: Mark Sheldon Email mark.sheldon@cheltenham.gov.uk, Tel no; 01242 264123
Legal implications	As contained in the report Contact officer: Martin Aylett martin.aylett@teWKesbury.gov.uk Tel; 01684 295010
HR implications (including learning and organisational development)	Para 3.4 outlines the main HR implications. Employment policy and guidance will be reviewed where required, however there are measures in place, for example the Code of Conduct has been recently reviewed and refreshed and awareness planned. The Council also has an annual declaration of interest procedure in place for employees. Contact officer: Amanda Attfield Email: amanda.attfield@cheltenham.gov.uk Tel. no; 01242 264186

Key risks	If the council does not have adequate procedures to prevent bribery and corruption then it could lead to ill-informed decisions, increased costs and the loss of reputation.
Corporate and community plan Implications	The effective prevention and detection of bribery and corruption helps protect resources allocated for the councils corporate and community objectives.
Environmental and climate change implications	There are no specific environmental or climate change implications arising from the report.

1. Background

- 1.1 The Bribery Act 2010, which overhauls the anti-corruption laws, will come into force 1st July 2011. It is mainly aimed at commercial organisations but there are some implications for local authorities.
- 1.2 Councils will be expected to demonstrate they have implemented “adequate procedures” in order to prevent bribery. The Ministry of Justice has just published guidance on what steps can be taken by organisations to show that they have “adequate procedures” in place. These steps include:
- Carrying out risk assessments to identify and prioritise the risks faced by the organisation
 - Implementing policies to mitigate the risk of bribery
 - Reviewing arrangements with contractors and sub-contractors to ensure that they reflect a commitment to anti-bribery measures
 - Communicating anti-bribery policy and procedure across the organisation and arranging anti-bribery training, where necessary.

2. What is the the Bribery Act 2010

- 2.1 The Bribery Act applies in England and Wales and simplifies the existing law on bribery, enabling the courts to deal with it more effectively.
- 2.2 The Act creates offences of, amongst others, bribing another person/company/public body or accepting a bribe in return for giving an advantage to the briber.
- 2.3 Of particular interest to the Council, however, is the offence under section 2 in which a person “requests, agrees to receive or accepts” an advantage of some kind in return for improperly performing, or allowing the improper performance of, a “function or activity” where that function/activity is ether of a public nature or done in the course of a business.
- 2.4 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 (a) to perform it in good faith, (b) to perform it impartially or (c) 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 would expect in relation to the function/activity.
- 2.5 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.
- 2.6 Penalties under the Act include fines and/or imprisonment for up to ten years.

3. What are the implications for the council?

- 3.1** The Council could therefore be guilty of bribery if, for example, it agrees to “fix” a procurement evaluation process in the briber’s favour in return for some advantage. It would also be possible for the Council to be guilty of bribing a supplier if it offers some sort of advantage to a supplier in return for the supplier agreeing to improperly perform an activity connected with the running of its business (e.g. bribing the supplier to submit a lower-priced bid than it would otherwise have done).
- 3.2** The Office of the Government Commerce is likely to publish updated standard clauses on the prevention of corruption, which take into account the Act’s provisions and which we will need to consider including in our contracts. It will also be necessary to address in our contracts the consequences of a supplier being found guilty of a Bribery Act offence. For example, the prosecution of a major supplier for negligent failure to prevent bribery is likely to be embarrassing to the Council, which may wish to have the option of immediately terminating the contract in these circumstances.
- 3.3** It establishes among its key provisions distinct general criminal offences for those “offering” and those “accepting” bribes. There is guidance to relevant commercial organisations on a defence of having “adequate procedures in place designed to prevent” bribery and there is broad agreement that in order to qualify for the defence the Council must be able to demonstrate that its procedures work in practice.
- 3.4** Policies will need to be reviewed and training needs documented, records of auditing and assurance measures will be required, gift and external interests registers must be kept and a zero tolerance to bribery and corruption policy publicised both internally and externally to identify but a few of the recommended steps.
- 3.5** During 2011 officers will be reviewing a number of their policies and procedures as well as providing a summary of the Bribery Act and its implications to members and staff through the council’s intranet.

4. Reasons for recommendations

- 4.1** Audit Committee need to be aware of the new legislation, its effect on the administration of the council’s business and what is being done to ensure that there are adequate procedures in place to prevent bribery.

5. Alternative options considered

- 5.1** None

6. Consultation and feedback

- 6.1** None

7. Performance management –monitoring and review

- 7.1** None

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Appendices	None