



AGENDA ITEM: 7

**STANDARDS COMMITTEE:
14 JULY 2011**

Report of: Director of People and Places

Relevant Head of Service: Acting Borough Solicitor

**Contact for further information: Mr T. Broderick
(E-mail: terry.broderick@westlancs.gov.uk)**

SUBJECT: BRIBERY ACT 2010

Wards affected: Borough Wide

1.0 PURPOSE OF THE REPORT

1.1 To advise of the impact of the Bribery Act 2010 (the Act) and propose procedures to give effect to its requirements within the Council.

2.0 RECOMMENDATION

2.1 That the contents of the report be noted.

3.0 BACKGROUND

3.1 The Act received Royal assent on the 8th April 2010 and is due to come into force on the 1st July 2011.

3.2 The Act makes significant changes to the law on bribery aiming to provide a more effective legal framework to combat bribery in the public or private sectors. The Act essentially creates four offences.

- Offering/promising/giving of a bribe
- Agreeing to/receiving/accepting a financial or other bribe
- Bribery of a foreign public official.
- Failure of an organisation⁽¹⁾ to prevent a bribe being paid for or on its behalf.

3.3 The introduction of the “corporate offence” is significant. A “reverse burden of proof” applies, meaning that the organisation will be liable to criminal prosecution for the actions of employees involved in bribery, whether or not they were aware of it, unless it can show it had “adequate procedures” in place to

prevent bribery occurring. This obligation would extend to employees, contractors and agents.

3.4 Conviction in the Crown Court of any of the offences carries the punishment of an unlimited fine and/or up to ten years imprisonment. The corporate offence is subject to a penalty of an unlimited fine. In addition the court can impose confiscation and recovery orders under the Proceeds of Crime Act 2002.

3.5 The establishing of an adequate procedures defence (to the corporate offence) is problematical, although Guidance issued by the Secretary of State sets out six guiding principles to assist organisations in ensuring adequate procedures are in place. The principles are:

- There must be a corruption risk assessment carried out
- Top level commitment must be proved and an organisation must make a clear and unambiguous commitment to establishing a culture in which bribery is unacceptable.
- Good due diligence should be carried out – the organisation must be able to demonstrate it knows who it does business with.
- Clear practical and accessible policies and procedures need to be in place
- Policies and procedures must be effectively implemented
- Monitoring and review of the effectiveness of anti-bribery controls with the consideration of the need for external audit.

⁽¹⁾ Although aimed at commercial organisations it is apparent that the definitions in the Act are sufficiently broad to cover the Council.

3.6 The Council can take comfort from the comprehensive measures it already has in place. These include the matters mentioned at both paragraphs 5.4 and 5.5 below. That said, there is no room for complacency.

4.0 ISSUES

4.1 The principal issue facing the Council is to avoid bribery occurring. Where such activity cannot reasonably be prevented by the contracts and procedures in place, the Council is to ensure that it has done all it reasonably can in terms of addressing the requirements of the six principles set out above and, therefore, may rely upon the defence highlighted.

5.0 ACTION TO BE TAKEN

5.1 In accordance with the guiding principles the Council needs to take some action, as detailed below.

5.2 Corruption Risk Assessment – A corruption risk assessment is/to be maintained and updated on an annual basis. The Borough Treasurer would settle the Corruption Risk Assessment, involving colleagues through the Risk Coordinators as appropriate. The document will be reviewed as part of the risk management processes the council has in place. This will be picked up in terms of any

necessary audit activity by the Internal Audit Manager's anti- fraud work in the Audit Plan.

- 5.3 Top level commitment – this is demonstrated by the Council's Anti-Fraud and Corruption Policy, updated earlier this year. The Anti Fraud and Corruption Policy caters for not only officers but other persons who may be covered by a potential offence under the Act, i.e. contractors, agents and partners.
- 5.4 The Council applies due diligence procedures, taking a proportionate and risk based approach in respect of those persons who perform or are to perform services for or on behalf of the Council, in order to mitigate identified bribery risks. The controls the Council has in place include:
- Contracts Register
 - Public reporting all payments over £500
 - Internal/External audit work
 - Contract Procedure Rules
 - Financial regulations
 - Management reports
 - Procurement Practice Notes for officers
- 5.5 Proportionate procedures – the Council has in place procedures to prevent bribery by persons associated with it. These are proportionate to the bribery risks it faces and to the nature, scale and complexity of the Council's activities. These are contained within various documents which include:-
- The Anti Fraud and Corruption Policy
 - The Anti Money Laundering Policy
 - Officer Code of Conduct – including declarations of interest and hospitality
- and the policies and procedures referred to in the previous paragraph. These various policies have or will be updated upon review to accord with the Act.
- 5.6 In order to address the risk of contractors, agents or partners creating a risk for the Council, suitable contract or other documentation (e.g. Service Level Agreement's, terms of reference) will specifically identify the issues created by the Act.
- 5.7 A model contract clause has been developed and can be suitably adapted for use in future documents engaging agents/partners etc.
- 5.8 The Anti Fraud and Corruption Policy is the best fit for incorporating the necessary changes to reflect the Act's requirements. The Borough Treasurer has delegated authority in place to amend this Policy in consultation with the relevant Portfolio Holder. Relatively minor changes are necessary to achieve compliance, which will be submitted to the Audit and Governance Committee as the body charged with responsibility for monitoring the Policy.
- 5.9 Contract Procedure Rules (CPR) will also be updated and be submitted to Cabinet for approval, however most aspects of the Act have already been

anticipated within the current version. In the interim a guidance note will be prepared and circulated to staff to clarify any potential areas of misunderstanding.

- 5.10 Communication – the Council’s policies and procedures are embedded and understood throughout the Council by internal and external communication measures, including training proportionate to the risks faced. Regular reminders will be sent to staff and Members from the Acting Borough Solicitor about responsibilities and ensuring that they declare interests, gifts and hospitality both offered and received. An annual reminder to staff to complete the declarations would be a useful development. The implications of the Act and responsibilities of staff and Members will be highlighted both through email communications and the use of the Intranet facilities.
- 5.11 Monitoring and Review – in accordance with arrangements in place via the Audit and Governance Committee, the review and monitoring of the Council’s activity in relation to prevention of bribery can sufficiently be monitored by both the activities of the Audit Manager and the overseeing of this via Audit and Governance’s review of the Anti Fraud and Corruption Policy. The Anti Fraud and Corruption Policy will be updated to include further bribery provisions as detailed above in paragraph 5.8. This will be considered each year in accordance with practice for review of the Anti Fraud and Corruption Policy.

6.0 FINANCIAL AND RESOURCE IMPLICATIONS

- 6.1 There are no significant financial and resource implications arising from the implementation of measures arising out of the Act. None adherence to the requirements of the Act would give rise to a potential of an unlimited fine for the Council along with considerable reputational loss.

7.0 RISK ASSESSMENT

- 7.1 The Council has in place appropriate policies and procedures to meet the obligations under the Act which only require minor amendments to ensure it has sufficient protection as an organisation to defend any claim against it of bribery, including proceedings. The consequences of not maintaining those procedures or falling short on their implementation could result in the penalties mentioned in the paragraph immediately above.

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

The decision does not have any direct impact on members of the public, employees, elected members and/or stakeholders. Therefore no Equality Impact Assessment is required.

Appendices

None.