

Wolverhampton City Council

OPEN DECISION ITEM

Audit Committee

Date **29 September 2011**

Originating Service Group(s) **DELIVERY / OCE**

Contact Officer(s)/ **B BURGESS** **R MORGAN**
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Title/Subject Matter **ANTI-BRIBERY POLICY**

RECOMMENDATION

That Members of the Audit Committee approve the Council's new Anti-Bribery Policy.

1. PURPOSE AND BACKGROUND

- 1.1 The Bribery Act 2010 came into force on 1 July 2011. This Act modernises the law on Bribery and creates a new corporate offence of 'Failure to prevent bribery' whereby a commercial organisation may be prosecuted under the Act if it fails to prevent bribery by persons associated with it. Commercial organisations will have a defence if they show that they have put in place 'adequate procedures' to prevent bribery. The Council needs therefore, to put appropriate arrangements in place to ensure compliance with the new statutory requirements.
- 1.2 The offence of failing to prevent bribery can be committed by 'relevant commercial organisations'. Commercial organisations include bodies incorporated and partnerships formed in the UK, which carry on business in the UK or overseas. The Act does not set out what constitutes incorporation or what constitutes carrying on business.
- 1.3 As local authorities have not been expressly excluded from the definition of a 'relevant commercial organisation' it is entirely possible that they may be caught and found liable if they fail to prevent bribery by their associates.

2. DETAILS

- 2.1 Bribery is defined as the offer, promise or giving of financial or other advantage to another with the intent of inducing that person to perform improperly, or rewarding that person for the improper performance of a relevant function or activity.
- 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. 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. 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.
- 2.3 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)
- 2.4 As part of the Act, the Ministry of Justice has issued Guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing. This is to help organisations develop procedures which will defend them from the corporate offence of failing to prevent bribery.

2.5 The Guidance provides six principles which, when followed, will provide evidence of anti-bribery activities within an organisation. Whether the procedures are adequate will ultimately be a matter for the courts to decide on a case-by-case basis. Adequate procedures need to be applied proportionately, based on the level of risk of bribery in the organisation. It is for individual organisations to determine proportionate procedures in the recommended areas of six principals.

The principles are:-

- Proportionality – are the measures in place proportionate to the size and scope of the organisation
- Top level commitment – an undertaking from the top levels of the organisation to address the risks of bribery
- Risk Assessment – an assessment should be made of the organisations exposure to bribery
- Due Diligence – steps are taken to ensure that anyone who provides services for the Council will do so without resorting to bribery
- An anti-bribery culture is communicated through the whole organisation
- Anti-bribery measures are monitored and reviewed at an appropriate frequency.

The Council's anti-bribery policy is shown at Appendix 1.

3. FINANCIAL IMPLICATIONS

3.1 There are no direct financial implications arising from this report.
[GE/31082011/T]

4. LEGAL IMPLICATIONS

4.1 This policy forms part of the evidence of the anti-bribery culture within the Council for the purposes of the Bribery Act 2010.
[MW/26082011/P]

5. EQUAL OPPORTUNITIES IMPLICATIONS

5.1 There are no direct equal opportunities implications arising from this report.

6. ENVIRONMENTAL IMPLICATIONS

6.1 There are no direct environmental implications arising from this report.

7. SCHEDULE OF BACKGROUND PAPERS

Anti-Bribery Act 2010

WOLVERHAMPTON CITY COUNCIL

ANTI-BRIBERY POLICY

September 2011

1. Introduction

- 1.1 The Bribery Act 2010 has updated the legislation on bribery and extended the law to cover bribery in the international business community. It has also created a corporate offence of failing to prevent bribery.
- 1.2 Although Local Authorities are unlikely to be involved in areas where bribery is prevalent in terms of either scale or frequency, it is good practice to comply with the Guidance issued by the Ministry of Justice to evidence an anti-bribery culture across the organisation. As such, Wolverhampton City Council has established this policy to ensure compliance.
- 1.3 To limit the risk of exposure to bribery the Council will:
 - publish a clear anti-bribery policy and review other associated policies
 - train all staff so that they can recognise and avoid the use of bribery by themselves and others
 - ensure that all business partners are aware of the anti-bribery policy and that their staff must abide by it
 - encourage employees to be vigilant and to report any suspicion of bribery
 - ensure that policies and control systems are audited regularly to ensure they are fit for purpose
 - address conflicts of interests and the risks created through acceptance of gifts and hospitality through corporate policies
 - investigate instances of alleged bribery and assist the police and other appropriate enforcement agencies in any resultant action
 - take appropriate action against any member of staff who engages in bribery.

2. Scope of the Policy

- 2.1 This policy applies to all of the organisation's activities. For partners, joint ventures and suppliers, the Council will seek to promote the adoption of policies consistent with the principles set out in this policy. Within the organisation, the responsibility to control the risk of bribery occurring resides at all levels of the organisation. It does not rest solely within assurance functions, but in all business units and corporate functions.

- 2.2 This policy applies to all employees, including permanent and temporary employees, temporary agency staff, contractors, volunteers, consultants and members of the Council and aims to maintain the high standards of conduct, which currently exist within the Council by preventing criminal activity through bribery. The Policy sets out the procedures that must be followed (for example the reporting of offers or invitations to bribe) to enable the Council, its members and employees to comply with its intention to establish an anti-bribery culture within the organisation.
- 2.3 The policy sits alongside the Council's Anti-Fraud and Corruption Policy, Whistleblowing Policy and Anti-Money Laundering Policy.
- 2.4 Failure by a member of staff to comply with the procedures set out in this policy may lead to disciplinary action being taken against them. Any disciplinary action will be dealt with in accordance with the Council's Disciplinary Policy. Failure by a Member to comply with the procedures set out in this policy may be referred to the Standards Committee.

3. What Is Bribery?

- 3.1 Bribery is defined as the offer, promise or giving of financial or other advantage to another with the intent of inducing that person to perform improperly, or rewarding that person for the improper performance of a relevant function or activity.
- 3.2 The term bribery can be applied to both the act of offering or giving a bribe (active bribery), or the request for or acceptance of a bribe (passive bribery).
- 3.3 Any Member or employee who, in the course of Council business, becomes aware that a bribe has been requested, offered, given or accepted should report their suspicions promptly, in accordance with the Policy set out in this document. Failure to do this may inadvertently result in an offence under the Bribery Act 2010.
- 3.4 The risk of the Council contravening the legislation is considered to be relatively low but preventative measures need to be in place to prevent the Council becoming liable under the new provision of failure by a relevant commercial organisation to prevent bribery.
- 3.5 The statutory provisions relating to bribery are summarised in Appendix A to this policy, together with references to further information.

4. Policy Statement

- 4.1 The Council forbids the offering, the giving, the solicitation or the acceptance of any bribe, whether in cash or by way of any other type of inducement, to or from any person or company, wherever they are situated and whether they are:
 - a public official or body
 - a private person
 - a company

- any individual employee, agent or other person or body acting on the council's or group's behalf

in order to gain any commercial, contractual or regulatory advantage for the council or group in a way which is unethical or in order to gain any personal advantage, financial or otherwise for the individual, the council, the group, or anyone connected with said parties. Staff members are forbidden from accepting any inducement which would result in a gain or advantage to the briber or any person(s) or third parties associated with them.

The inducement being intended to influence the member of staff to take any action, which may not be in the interests of the council. Any staff member found to be involved in bribery is liable to disciplinary action, dismissal and prosecution.

The Council is entitled to terminate the contract forthwith and to recover from a supplier the amount of any loss resulting from such termination if:

1. the supplier or any employee of the supplier shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not done any act in relation to the contract or
2. the like acts shall have been done by any person employed by the supplier or acting on his behalf (whether with or without the knowledge of the supplier) or
3. in relation to the contract the supplier or any person employed by the supplier has committed any offence under the Bribery Act 2010 or shall have given any fee or reward for the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

5. Policy Aims

5.1 The aims of the Policy are to:

- assist the staff and Members of Wolverhampton City Council to understand bribery and their personal legal obligations and responsibilities arising from the requirements of the legal and regulatory provisions
- protect the Council from the corporate offence of failure to prevent bribery, and
- set out the procedures which must be followed to enable the Council and its staff to comply with their legal obligations.

5.2 Wolverhampton City Council will do all it can to:

- prevent the Council, its members and its staff being exposed to bribery;
- identify the potential areas where it may occur; and
- comply with all legal and regulatory requirements, especially with regard to the reporting of actual or suspected cases of bribery.

6. Procedures

6.1 All members and employees are required to:

- report promptly all reasonable suspicions¹ of bribery, whether active (the offer or giving of a bribe) or passive (the request for or receipt of a bribe), to the Head of Audit Services

6.2 The Head of Audit Services must promptly:

- evaluate all concerns to determine whether it is appropriate to make a report to the Police
- if appropriate, ensure that an internal report is completed

6.3 Although there is no legal requirement for the Council to have formal procedures for evidencing the identity of those they do business with, staff and members should be alert to potentially suspicious circumstances. Where there may be doubt and in particular, when forming a new business relationship or considering a significant one-off transaction, the identification procedures in the Council's Anti-Money Laundering Procedures should be followed.

6.4. The Council will:

- make all staff and members aware of the obligations placed on the Council, and on themselves as individuals, by the anti-bribery legislation
- give targeted training, with periodic refreshers, to those most likely to encounter bribery

¹ There is no definition of what constitutes reasonable suspicion. There must be genuine reasons or grounds for the suspicion: it is more than speculation or hunch and common sense will be needed.

Bribery: Legal and Regulatory Framework

The Bribery Act 2010

This Act defines four principal bribery offences, only three of which are likely to apply to the Council:

- the giving or offering of a bribe
- the request for, or acceptance of a bribe
- bribing a foreign public official
- the failure by a relevant commercial organisation to prevent bribery

The offence of failing to prevent bribery will not apply so long as the Council has appropriate procedures in place to act as a deterrent.

Statutory Definitions

- “Bribe” is defined as “giving a financial or other advantage to another person” It is clear that a bribe is not restricted to only financial payment.
- The intention of the bribe is “to induce them to perform improperly a relevant function or activity, or to reward them for having improperly performed a relevant function or activity”.
 - The term “relevant function or activity” includes all functions of a public nature and all activities connected with a business, trade or profession.
 - The term “improper performance” is defined as being in breach of a relevant expectation, including the failure to perform that function or activity when it would be reasonable to expect it to be performed.
- “Relevant commercial organisation” is defined as
 - A body incorporated under the law of any part of the UK and which carries on business whether there or elsewhere
 - A partnership that is formed under the law of any part of the UK and which carries on business there or elsewhere, or
 - Any other body corporate or partnership wherever incorporated or formed which carries on business in any part of the UK.
- “Failure to prevent bribery” relates only to active bribery on the part of a person with the intent to obtain or retain business, or to obtain or retain an advantage in the conduct of business for the organisation. It does not include preventing passive bribery, (i.e. the invitation to a third party to give a bribe, or the acceptance of such a bribe).