

Report of	Meeting	Date
Head of Governance / Monitoring Officer	Audit Committee	29 September 2011

THE BRIBERY ACT 2010

PURPOSE OF REPORT

1. To advise members of the impact and requirements of the Bribery Act 2010.

RECOMMENDATION(S)

2. To note the content of the report.

EXECUTIVE SUMMARY OF REPORT

3. The Bribery Act 2010 came into force on 1 July 2011. It's purpose is to simplify the law concerning bribery and to enable the Courts to deal with corruption more effectively.
4. The Act confirms what conduct will be treated as unlawful both in providing and receiving a bribe. It also creates 2 new specific offences, the first of bribing a foreign official and the second a failure by a commercial organisation to prevent bribery
5. It is the offence of failure of a commercial organisation to prevent bribery which is of relevance to this authority. The Act also provides for a defence to this offence. In order to avail themselves of the defence the organisation should demonstrate adherence to 6 principles:-
 - a. Proportionality; the acts taken to prevent bribery needs to be proportionate to the size of the business and the risk of bribery taking place.
 - b. Top Level Commitment; create an environment which does not tolerate bribery.
 - c. Risk Assessment; demonstrate consideration of potential bribery risks.
 - d. Due Diligence; know who you are dealing with.
 - e. Communication; communicating your policies and procedures to staff.
 - f. Monitoring and Review;
6. Chorley BC have a number of policies and procedures and codes of practice which enable the authority to claim the benefit of the defence.
7. As a result it is not envisaged that the Council are required to have a separate policy to address the requirements of the Bribery Act 2010.

REASONS FOR RECOMMENDATION(S)

(If the recommendations are accepted)

8. The Bribery Act imposes new responsibilities on commercial organisations to prevent bribery being undertaken by employees or associated persons. The Council's existing policies, procedures and codes of practice satisfy the principles which if complied with provide a defence to any prosecution.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

9. None

CORPORATE PRIORITIES

10. This report relates to the following Strategic Objectives:

Strong Family Support		Education and Jobs	
Being Healthy		Pride in Quality Homes and Clean Neighbourhoods	
Safe Respectful Communities		Quality Community Services and Spaces	
Vibrant Local Economy		Thriving Town Centre, Local Attractions and Villages	
A Council that is a consistently Top Performing Organisation and Delivers Excellent Value for Money			X

BACKGROUND

11. The Bribery Act 2010 was enacted on 8 April that year, but its terms came into force on 1 July 2011. The Act modernises existing anti-corruption laws. It creates general offences of bribing another person and in turn of being bribed. For each, the Act provides examples or “Cases” of how the offences can be committed. There is no need for the bribe to be paid only that it has been offered or the improper performance has been undertaken in expectation of an offer. Neither is the recipient required to have improperly performed the relevant function, only that the inappropriate agreement has been reached.
12. The Act also provides for the particular offence of bribing a foreign public official. This is unlikely to have any relevance to this Authority and is not considered in any detail.
13. The offences mentioned above are personal to the individuals involved. They can not be committed by an organisation. However, another individual usually more senior in the organisation can be prosecuted for colluding in the offence where it is committed with their knowledge.
14. Section 7 of the Act introduces an offence of failure by a commercial organisation to prevent bribery. Bribery in this context includes the offences within the Act to the benefit of the organisation.
15. It is arguable that Local Authorities do not fit comfortably within the definitions of commercial organisations as provided by the Act. However, there are 2 very good reasons why these issues should be addressed:-
 - a. Section 3 of the Act specifically refers to a relevant function, ie a function that can be influenced by a bribe, as being a function of a public nature. It is conceivable that guidance will be issued to ensure that Council’s are subject to this legislation; and
 - b. It is good practice to ensure that the Council have a culture that makes it clear that bribery is not acceptable and by following the principles set down by the Act and guidance, this type of behaviour will be discouraged.
16. The Act does provide for a defence to the corporate offence of failing to prevent bribery. The organisation is required to demonstrate that they have adequate procedures designed to prevent associated persons from undertaking such conduct. The Ministry of Justice has issued guidance confirming 6 Principles which would demonstrate such compliance.

PRINCIPLE 1: PROPORTIONATE PROCEDURES

17. The guidance states that the organisations procedures should be proportionate to the bribery risks it faces. They should also be clear, practical, accessible, effectively implemented and enforced.
18. In order to assess whether the Council has proportionate procedures in place it is necessary to assess the areas of risk (risk assessments themselves will be dealt with below). There are 2 significant areas of business which may be influenced by third parties:-

- a. Firstly, decisions of the Council as discharged by members;
 - b. Secondly, decisions of officers particularly as regards contracting with third parties.
19. To address risks around decisions made by members the Council has the following policies and procedures:-
- a. The Code of Conduct for Councillors; upon taking office all Councillors are required to sign up to the provisions of the Code. In addition, Councillors at Chorley Council have adopted the 10 General Principles of Public Life. Councillors agree to act with Honesty and Integrity, Accountability, Openness and confirm their Duty to Uphold the Law. Although the Code is self-regulatory in that Councillors are responsible for their own conduct, failure to comply with it can lead to reporting of Members and investigation by the Standards Committee. It is a requirement of the Code that members should declare and register all gifts or hospitality received over the value of £25.00.
 - b. Article 11 of Chorley Council's Constitution; provides for the principles in which members should make a decision generally and has specific provisions for full council and the executive.
 - c. Decisions by Full Council; Councillors are often asked to make decisions in principle about Council business rather than to decide specific issues. The Council's Constitution requires such decisions to be made on a simple majority and would require a number of members to have been bribed or influenced to affect any decision.
 - d. Decisions by the Executive Cabinet; Such decisions are to be made within the framework of the Councils Strategic Policy and Budget. Decisions are based upon reports received which contain relevant information to assist members. Decisions made are publicised (subject to reporting provisions) and are capable of challenge generally by Judicial Review. Overview and Scrutiny Committee review decisions of the Executive and can recommend reconsideration of the decision.
 - e. Decisions by Executive Members; Executive Member Decisions must be made in writing and comments of the Council's section 151 Officer and Monitoring Officer are required. They will generally be made on the recommendation of an Officer and can only be made on issues prescribed within the constitution. Subject to reporting restrictions all Executive Member Decisions are publicised and can be called in and reviewed by the Overview and Scrutiny Committee.
20. Officers can make decisions on behalf of the Council only in so far as they are allowed under the scheme of delegation or in accordance with parameters set by Council or the Executive. Contract awards must be in accordance with the Council Contract Procedure Rules or for higher value contracts the European Procurement Regulations may operate. The procedure for award must be transparent, and for anything other than the lowest value of contract can only be awarded by Member Decision.
21. The Council also has an Anti-Fraud and Corruption Strategy that deals provides a structure for both Members and Officers to work within. Further as part of that strategy there is a Whistle-blowing Policy.
22. Parties who are partner organisations of the Council or contractors are also now required to comply with the Council's Whistle-blowing Policy of have their own equivalent policy.

PRINCIPLE 2: TOP-LEVEL COMMITMENT

23. It is a requirement that those at the top of the organisation foster a culture of integrity where bribery is unacceptable. Chorley Council take the issue of corruption very seriously. The Council have implemented an Anti-Fraud and Corruption Strategy which sets out the Councils position on fraud and corruption and their approach to any allegations. The policy is made available to staff through the Need to Know section of the Loop.

PRINCIPLE 3: RISK ASSESSMENT

24. Commercial organisations are required to assess the nature and extent of its exposure to potential internal and external risks of bribery. The Council have a system of audit and undertake a general risk assessment in relation to its strategic objectives.

PRINCIPLE 4: DUE DILLIGENCE

25. The Council are expected to assess persons who will be discharging council functions in order to mitigate identified bribery risks. This has to be approached in a proportionate manner and it is unlikely that this requirement will be onerous for the Council to discharge.

PRINCIPLE 5: COMMUNICATION AND TRAINING

26. This goes to the embedding of corporate policies and procedures within the organisation. The Council are currently reviewing the training programme for the authority (this was confirmed at a previous meeting). The recent staff survey demonstrated good officer awareness of the existence and location of the Whistle-blowing Policy although not necessarily of its content. This is an area that needs some attention in order to comply with the Principle, however, it should be stressed that there is so little opportunity for individuals to be involved in bribery that this risk is minimal.

PRINCIPLE 6: MONITORING AND REVIEW

27. All Council policies are regularly reviewed as is the Council's Constitution. There is a programme of review and the impact of national guidance, policy changes or legislation are assessed and where necessary implemented. This is evidenced by the version control system adopted.

CONCLUSION

28. It is not envisaged that Chorley Council will be required to undertake significant works to be compliant with the Bribery Act 2010. The policies, strategies, procedures and codes of practice adopted by the Council limit significantly the risk of bribery taking place by a person associated with the Authority. The Council could promote through training the existence and content of the policies in place and this will be addressed.

IMPLICATIONS OF REPORT

29. This report has implications in the following areas and the relevant Directors' comments are included:

Finance		Customer Services	
Human Resources		Equality and Diversity	
Legal	X	No significant implications in this area	

30. The comments are contained within the report.

CHRIS MOISTER
HEAD OF GOVERNANCE / MONITORING OFFICER

There are no background papers to this report.

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