

ITEM NO: 8

REPORT TO:	STANDARDS COMMITTEE
DATE:	4 October 2011
REPORT OF:	Sandra Stewart - Borough Solicitor (Monitoring Officer)
SUBJECT MATTER:	THE BRIBERY ACT 2010 – AWARENESS GUIDANCE
REPORT SUMMARY:	The Bribery Act 2010, which overhauls the country's outdated anti-corruption laws, came into force on the 1 July 2011. This report provides updated guidance to be issued to elected members, employees and schools following recommendations made at the last Standards Committee
RECOMMENDATION(S):	Subject to any comments the advice be communicated to members, staff, schools and employees through usual mechanisms including through an article in employee magazine - the Wire.
FINANCIAL IMPLICATIONS: (Authorised by Borough Treasurer)	There are no significant financial issues arising from this Report.
LEGAL IMPLICATIONS: (Authorised by Borough Solicitor)	Compliance with the Bribery Act 2010 and the guidance issued by the Secretary of State (Ministry of Justice) under Section 9 of the Act relating to the procedures to be put in place to prevent persons within an organisation from bribing.
RISK MANAGEMENT:	In addition to individuals being prosecuted for bribery offences, organisations failing to introduce proper procedures to prevent bribery can be fined under the Act.
LINKS TO COMMUNITY PLAN:	Support the current arrangements for ethical and corporate governance of the authority to ensure that the public can have confidence in local government.
ACCESS TO INFORMATION:	NON-CONFIDENTIAL This report does not contain information, which warrants its consideration in the absence of the Press or members of the public.
REFERENCE DOCUMENTS:	The background papers relating to this report can be inspected by contacting the report author, Wendy Poole, the Council's Head of Risk Management and Audit Services by: Telephone: 0161 342 3846 e-mail: wendy.poole@tameside.gov.uk

1. INTRODUCTION

1.1 The Bribery Act 2010 received Royal Assent on the 9 April 2010 and came into force on the 1 July 2011. The Act introduces four offences:-

- Bribing another person;
- Being bribed;
- Bribery of foreign public officials; and
- Failure of commercial organisations to prevent bribery.

1.2 The Bribery Act creates a new offence under section 7 which can be committed by commercial organisations which fail to prevent persons associated with them from committing bribery on their behalf. It is a defence for an organisation to prove that despite a particular case of bribery it nevertheless had adequate procedures in place to prevent persons associated with it from bribing. Section 9 of the Act requires the Secretary of State to publish guidance about procedures which organisations can put in place to prevent persons associated with them from bribing.

2. PRINCIPLE 5 – COMMUNICATION (INCLUDING TRAINING)

“The commercial organisation sees to ensure that its bribery prevention policies and procedures are embedded and understood throughout the organisation through internal and external communication, including training that is proportionate to the risks it faces.”

2.1 One of the Principles in the Guidance requires communication and training to deter bribery by associated persons by enhancing awareness and understanding of a commercial organisation’s procedures, and to the organisations commitment to their proper application. Making information available assists in more effective monitoring, evaluation and review of the bribery prevention procedures. Training provides the knowledge and skills needed to employ the organisations procedures and deal with any bribery related problems or issues that may arise.

2.2 The guidance states that internal communications should convey the tone from the top but are also likely to focus on the implementation of the organisations policies and procedures and the implications for employees.

2.3 At the last meeting, the Committee approved the following actions to address this element of the council’s strategy being undertaken:-

- Present a report to the Executive Team/Senior Management Team outlining the requirements of the new Act and updating them on actions taken to ensure the Council has preventative measures in place;
- Raise awareness by rolling out an E-Tutorial for staff (with computer access) on Fraud, Bribery and Corruption;
- Develop an awareness sessions for staff without computer access;
- Place an article in the Wire and on the staff portal;
- Use the Chief Executive’s Brief to launch the awareness training;
- Review Member Awareness Training;
- Develop/Intranet information pages;
- Issue a letter to all associated parties advising them of the organisations anti-bribery stance;
- Raise Managers awareness of the Bribery Act; and
- Raise Schools awareness of the Bribery Act.

2.4 It is recommended that the attached briefing notes (**Appendix 8A**) are approved by the Committee to raise awareness amongst elected members, employees and schools.

APPENDIX 8A

Bribery Act Guidance for Members/Employees

Introduction

The Bribery Act 2010 received Royal Assent on the 9th April 2010 and came into force on the 1st July 2011.

The Act introduces four offences:

- Bribing another person;
- Being bribed;
- Bribery of foreign public officials; and
- Failure of commercial organisations to prevent bribery.

Bribery offences have existed for many years under the UK's prevention of corruption legislations. These are broadly the acts of being bribed and bribing.

However, the Bribery Act 2010 introduces a further and wider offence of failing to prevent bribery. The offence of failing to prevent bribery can be committed where the act of bribery or being bribed has been carried out and that act was not prevented by the organisation.

This guidance is being issued to all Members to raise awareness of the Act and ensure that there is full commitment to preventing bribery in the organisation.

What is Bribery?

The legislative definition for bribery is the offering, giving, receiving or soliciting of something of value for the purpose of influencing the action of an official in the discharge of his or her public or legal duties.

Facilitation Payments/Benefits in Kind

Facilitation payments/benefits in kind are also referred to within the Act.

Facilitation payments/benefits in kind are small payments or benefits demanded by officials to provide a service that they are already obligated to perform/provide e.g. processing a planning application. Facilitation payments/benefits in kind are often used to 'jump the queue' to obtain the service more promptly. These payments/benefits in kind are also sometime known as 'grease payments'.

These differ from the payments made to upgrade a service, where the price is clearly advertised, open to everyone and payment is receipted.

These types of payment/benefits in kind are unlawful under the Bribery Act 2010.

Why is it important to prevent Bribery?

Bribery blights lives. Its immediate victims include firms and organisations that lose out unfairly. The wider victims are the Government and Society as a result of damaged social and economic development.

The consequences of bribery affect all employees, service users and council tax payers as every pound lost results in fewer jobs, reduced services and higher council tax bills and can impact upon the Council's reputation and its ability to achieve its corporate objectives. Also, at stake is the principle of free and fair competition, which stands diminished by each bribe which is offered or accepted.

Also, with an estimated £1,000 billion paid in bribes worldwide per year the effect on economic growth is crippling.

Consequences of the Offences

An individual guilty of an offence is liable:

- On conviction in a magistrates court, to imprisonment for a maximum term of 12 months, or to a fine not exceeding £5,000, or to both.
- On conviction in a crown court, to imprisonment for a maximum term of ten years, or to an unlimited fine, or both.

An organisation guilty of an offence can receive:

- Debarment from public contracts;
- An unlimited fine to the organisation; and
- Reputational damage.

Tameside's Values

Tameside has a commitment to zero tolerance towards bribery.

The Council's aim is to foster a culture where fraud, bribery and corruption within our organisation are never acceptable, it therefore has formally decided that:

We will not tolerate any malpractice or wrongdoing. We are determined that all instances of malpractice will be fully investigated and will ensure that appropriate action is taken against all those concerned.

We believe that members of the public, councillors, employees, contractors or any other interested party should feel able to report any cases of malpractice or wrongdoing without fear of recrimination.

All Members are asked to support our commitment to zero tolerance towards bribery, exercise proper stewardship of public money and carry out all business fairly, honestly and openly.

Tameside's Procedures to Prevent Bribery

At Tameside we are all committed to the highest possible standards of openness, probity and accountability and external assessment has continued to recognise that we have high ethical standards underpinned by transparent and robust governance arrangements.

Whilst we believe as an organisation we have robust practices already in place, the Bribery Act has required us to revisit these arrangements to ensure that we have proportionate procedures in place to prevent bribery within our organisation.

There are a number of documents/policies/procedures that we would like to draw to your attention and ask you to ensure that you comply with them at all times whilst performing public duties.

Members code of conduct - <http://www.tameside.gov.uk/constitution/part5a>

Gifts and Hospitality Policy - <http://intranet2.tameside.gov.uk/corpserv/solicitor/gifts/index.htm>

The Council's Constitution - <http://www.tameside.gov.uk/constitution>

Whistle blowing

The Council has a well established Whistle Blowing Policy which has been developed to encourage and enable elected Members and staff to raise any concerns in a safe and confidential way. Therefore, if you ever have any serious concerns relating to Bribery, or any other issues, there is a responsibility on you to do the right thing and raise concerns in order that we can put these matters right.

You can find out more about our Whistle Blowing Policy by following the link at <http://intranet2.tameside.gov.uk/misc/whistle1.htm>

Further Guidance

Further guidance in relation to Bribery can be found at:

<http://www.legislation.gov.uk/ukpga/2010/23/contents> - Bribery Act Legislations

<http://www.justice.gov.uk/downloads/guidance/making-reviewing-law/bribery-act-2010-guidance.pdf> - Bribery Act Guidance

Also by contacting the Borough Solicitor on 342 3028 or Internal Audit on 342 3846.

Bribery Act Guidance for Schools

Introduction

The Bribery Act 2010 received Royal Assent on the 9th April 2010 and came into force on the 1st July 2011.

The Act introduces four offences

- Bribing another person;
- Being bribed;
- Bribery of foreign public officials; and
- Failure of commercial organisations to prevent bribery.

Bribery offences have existed for many years under the UK's corruption legislations. These are broadly the acts of being bribed and bribing.

However, the Bribery Act 2010 introduces a further and wider offence of failing to prevent bribery. The offence of failing to prevent bribery can be committed where the act of bribery or being bribed has been carried out and that act was not prevented by the organisation.

This guidance is being issued to raise awareness of the Act and ensure that Schools put proportionate procedures in place to ensure that they are appropriately protected against the risks surrounding bribery.

What is Bribery?

The legislative definition for bribery is the offering, giving, receiving or soliciting of something of value for the purpose of influencing the action of an official in the discharge of his or her public or legal duties.

Facilitation Payments/Benefits in Kind

Facilitation payments/benefits in kind are also referred to within the Act.

Facilitation payments/benefits in kind are small payments or benefits demanded by officials to provide a service that they are already obligated to perform/provide e.g. processing a planning application. Facilitation payments/benefits in kind are often used to 'jump the queue' to obtain the service more promptly. These payments/benefits in kind are also sometime known as 'grease payments'.

These differ from the payments made to upgrade a service, where the price is clearly advertised, open to everyone and payment is receipted.

These types of payment/benefits in kind are unlawful under the Bribery Act 2010.

Why is it important to prevent Bribery?

Bribery blights lives. Its immediate victims include firms and organisations that lose out unfairly. The wider victims are the Government and Society as a result of damaged social and economic development.

The consequences of bribery affect all employees, service users and council tax payers as every pound lost results in fewer jobs, reduced services and higher council tax bills and can impact upon the Council's reputation and its ability to achieve its corporate objectives. Also, at stake is the principle of free and fair competition, which stands diminished by each bribe which is offered or accepted.

With an estimated £1,000 billion paid in bribes worldwide per year the effect on economic growth is crippling.

Consequences of the Offences

An individual guilty of an offence is liable:

- On conviction in a magistrates court, to imprisonment for a maximum term of 12 months, or to a fine not exceeding £5,000, or to both.
- On conviction in a crown court, to imprisonment for a maximum term of ten years, or to an unlimited fine, or both.

An organisation guilty of an offence can receive:

- Debarment from public contracts;
- An unlimited fine to the organisation; and
- Reputational damage.

What Schools need to do

Headteachers and Governors need to assess the risk of bribery within their School, evidence their commitment to anti-bribery and put appropriate procedures in place to prevent bribery within the School environment. As part of this, Schools need to take into consideration their relationship with Contractors and any partner organisations.

As an organisation we are committed to the highest possible standards of openness, probity and accountability to ensure that we have high ethical standards underpinned by transparent and robust governance arrangements and we expect Schools to adopt the same ethos.

Schools may already have robust practices in place, however, the Bribery Act requires us to revisit these arrangements to ensure that we have proportionate procedures in place to prevent bribery within our organisation.

There are a number of documents, policies/procedures that Schools need to ensure that they have in place and are appropriately communicated to all relevant staff:-

A Gifts and Hospitality Policy

Model Financial Guidelines (these are to be updated to include reference to the Bribery Act)

Pecuniary Interest Declarations

Whistle blowing

It is also important for all Schools to have a Whistle Blowing Policy which is available to all Governors, employees, parents and associated parties. Tameside's policy can be found at <http://www.tameside.gov.uk/whistleblowing>.

This policy should enable any concerned party to raise any serious concerns/wrongdoing in a safe and confidential way.

Further Guidance

Further guidance in relation to this can be found at:

<http://www.legislation.gov.uk/ukpga/2010/23/contents> - Bribery Act Legislation

<http://www.justice.gov.uk/downloads/guidance/making-reviewing-law/bribery-act-2010-guidance.pdf> -

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Bribery Act Guidance for Managers

Introduction

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This guidance is being issued to all Managers to raise awareness of the Act and ensure that all Managers are fully committed to preventing bribery in the workplace and communicate this appropriately to all staff under their direction.

What is Bribery?

The legislative definition for bribery is the offering, giving, receiving or soliciting of something of value for the purpose of influencing the action of an official in the discharge of his or her public or legal duties.

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We believe that members of the public, councillors, employees, contractors or any other interested party should feel able to report any cases of malpractice or wrongdoing without fear of recrimination.

All councillors and employees are asked to exercise proper stewardship of public money, carry out all business fairly, honestly and openly, and put in place appropriate system and procedures, incorporating efficient and effective internal controls, to prevent and detect fraud, bribery and corruption.

Tameside's Procedures to Prevent Bribery

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Whilst we believe as an organisation we have robust practices already in place, the Bribery Act has required us to revisit these arrangements to ensure that we have proportionate procedures in place to prevent bribery within our organisation.

There are a number of documents, policies/procedures that we would like to draw to your attention and ask you to ensure that you and your staff are fully aware of these and comply with them at all times whilst performing public duties.

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Gifts and Hospitality Policy - <http://intranet2.tameside.gov.uk/corpserv/solicitor/gifts/index.htm>

The Council's Constitution - <http://www.tameside.gov.uk/constitution>

Tameside MBC Fraud, Bribery and Corruption Response Plan (to be uploaded onto the Intranet shortly)

What we expect from our Managers

We expect all our Managers to support our commitment to zero tolerance towards bribery and ensure that this theme is clearly communicated to all staff within the organisation.

We need managers to assess the risk of bribery within their Service Area to determine the potential level of risk and whether this risk is appropriately mitigated with the controls in operation.

A new bribery risk has been added to the Core Performance System to enable managers to do this and we need managers to think carefully about this in relation to the services provided. Managers also need to assess the risks surrounding bribery in relation to partnerships, contractors and any associated parties that they do business with. The potential for facilitation payments/benefits in kind will also need to be assessed. Risk workshops will be provided to assist Managers in this.

We need to embed bribery risk into our processes and ensure that as an Authority we are appropriately protected from this. Therefore, we ask all Managers to review the procedures that they have in place to ensure that they are fit for purpose and ensure that effective controls are in place to minimise the occurrence/risk of bribery within this organisation.

Whistle blowing

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