

Taunton Deane Borough Council

Corporate Governance Committee – 26 September 2011

Anti-Bribery Policy

Report of the Strategic Finance Officer

(This matter is the responsibility of Executive Councillor Stock-Williams)

1. Executive Summary

- The Bribery Act 2010 came into force on 1st July 2011
- Bribery is a criminal offence and the offences carry criminal penalties for individuals and organisations

2. Background

- 2.1 The Bribery Act 2010 received royal assent on the 8th April 2010 and came into force on 1st July 2011. The Act is designed to address bribery and corruption in the public and private sector, and will mean that any incorporated organisation, including councils, could be liable to severe penalties if they fail to implement adequate procedures to prevent bribes being paid or received on their behalf.
- 2.2 The Act includes two general offences involving, firstly, the offering or paying of bribes (“active” bribery) and secondly, the request or receipt of bribes (“passive” bribery). The Act also provides that a commercial organisation could be guilty of an offence if a person “associated with” the organisation commits a bribery offence. The definition of a commercial organisation includes public bodies. However, organisations will have a defence against prosecution if they can demonstrate that they had “adequate procedures” in place to prevent bribery.
- 2.3 Previously organisations were only likely to be guilty of a bribery offence if senior management was involved. Under the new Act the offence applies to all staff in the organisation and could even mean that an organisation may be guilty of an offence even if no-one within the organisation apart from the individual offender knew of the bribery.
- 2.4 Furthermore, organisations could be liable for the conduct of any person who performs services for or on behalf of the organisation, and this could include contractors and sub-contractors. There are serious penalties for offences committed under the Act, including a maximum jail term of 10 years for individuals engaging in bribery and potentially unlimited fines for organisations which fail to implement “adequate procedures” to prevent bribery.

3. The Bribery Act 2010

3.1 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)

The offences carry criminal penalties for individuals and organisations. For individuals, a maximum prison sentence of ten years and/or an unlimited fine can be imposed; for organisations, an unlimited fine can be imposed.

3.2 Councils will be expected to demonstrate they have implemented “adequate procedures” in order to prevent bribery. Having adequate procedures in place provides a defence to the corporate offence of failing to prevent bribery. The Ministry of Justice Guidance includes steps that can be taken by organisations to show that they have “adequate procedures” in place. The Guidance is based around six principals for bribery prevention, which are not prescriptive and are not intended to be “one size fits all”.

3.3 The six principals are summarised below;

1. Proportionate Procedures – The action taken should be proportionate to the risks faced by your business and the size of your business.
2. Top-level commitment – Those at the top of an organisation are in the best position to ensure their organisation conducts business without bribery
3. Risk Assessment – Think about the bribery risks you might face. For example do some research into the markets you operate in and the people you do business with.
4. Due diligence – knowing exactly who you are dealing with can help to protect your organisation from taking on people who may be less than trustworthy.
5. Communication – Communicating your policies and procedures to staff and to others who will perform services for you.
6. Monitoring and review – The risk you face and the effectiveness of your procedures may change over time.

3.4 In light of the six principals, it is essential that the Council’s policies are up to date, reflect the requirements of this new legislation and are sufficiently robust to prevent bribery and to mitigate the risk of committing a bribery offence.

3.5 The Guidance makes clear that if there is very little risk of bribery being committed on behalf of an organisation then there may not be the need for any procedures to prevent bribery. However where there is a risk of bribery then, if an organisation wants to rely on the defence (3.2), the procedures adopted should be appropriate to the risk faces. There are no requirements for extensive written documentation or policies, particularly

as it is acknowledged that an organisation may already have proportionate procedures through existing policies.

- 3.6 The Council has in place an Anti-Fraud and Corruption Policy along with a Whistleblowing policy and an employee code of conduct.
- 3.7 Given the above a new policy has been written. The policy is intended to allow “business as usual” whilst making officers, members and the public aware of the Bribery Act 2010.
- 3.8 If the policy is adopted then it will be loaded onto the intranet and a short article will be produced in the Core Brief to ensure all staff and members are aware of the new policy.
- 3.9 The policy is given in Appendix A.

4. Finance Comments

- 4.1 The Council has controls in place such as the Contract Procedure Rules that protect the Council against bribery and potential losses of this nature.

5. Legal Comments

- 5.1 The legal implications are fully set out in this report.

6. Links to Corporate Aims

- 6.1 There are no links to Corporate aims of this policy

7. Environmental Implications

- 7.1 There are no environmental implications of this policy

8. Community Safety Implications

- 8.1 There are no community safety implications of this policy

9. Equalities Impact

- 9.1 An initial equality impact assessment has been completed and has concluded that the policy does not have a direct impact on equality (see appendix B)

10. Risk Management

- 10.1 There is a risk that bribery will happen however these are managed through the controls and policies that Taunton Deane Borough Council have in place

11. Partnership Implications

- 11.1 As mentioned in 2.2 the Act provides that a commercial organisation could be guilty of an offence if a person “associated with” the organisation commits a bribery offence this includes our partners.

12. Recommendations

- 12.1 That the Anti-Bribery Policy be adopted

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Taunton Deane Borough Council Anti Bribery Policy & Procedures

Policy Statement – Anti Bribery

Bribery is a criminal offence. Taunton Deane Borough Council does not, and will not, pay bribes or offer improper inducements to anyone for any purpose, nor do we or will we, accept bribes or improper inducements.

To use a third-party as a conduit to channel bribes to others is a criminal offence. We do not, and will not, engage indirectly in or otherwise encourage bribery.

We are committed to the prevention, deterrence and detection of bribery. We have zero-tolerance towards bribery. We aim to maintain anti-bribery compliance as “business as usual”, rather than as a one-off exercise.

What is Bribery?

Bribery is an inducement or reward offered, promised or provided to gain personal, commercial, regulatory or contractual advantage.

The Bribery Act

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)

The Bribery Act 2010 (http://www.opsi.gov.uk/acts/acts/2010/ukpga_20100023_en_1) 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.

**For the purposes of the Act, Taunton Deane Borough Council is considered to be a commercial organisation.*

Objective of this policy

This policy provides a coherent and consistent framework to enable the organisation's employees and members to understand and implement arrangements enabling compliance. In conjunction with related policies and key documents it will also enable members/employees to identify and effectively report a potential breach.

TDBC requires that all members and staff, including those permanently employed, temporary agency staff and contractors:

- act honestly and with integrity at all times and to safeguard the Council's resources for which they are responsible and to safeguard the council's good reputation
- comply with the spirit, as well as the letter, of the laws and regulations of all jurisdictions in which TDBC operates, in respect of the lawful and responsible conduct of activities.

Scope of this policy

This policy applies to all of TDBC's activities. For partners, joint ventures and suppliers, we will seek to promote the adoption of policies consistent with the principles set out in this policy.

Within TDBC, the responsibility to control the risk of bribery occurring resides with all members and officers. It does not rest solely within assurance functions, but in all service areas, business units and corporate functions.

This policy covers all personnel, including all levels and grades, those permanently employed, temporary agency staff, contractors, non-executives, agents, Members (including independent members), volunteers and consultants.

TDBC's Commitment to Action

TDBC commits to:

- setting out a clear anti-bribery policy and keeping it up to date
- making all employees aware of their responsibilities to adhere strictly to this policy at all times
- training key employees so that they can recognise and avoid the use of bribery by themselves and others
- encouraging its employees to be vigilant and to report any suspicions of bribery, providing them with suitable channels of communication and ensuring sensitive information is treated appropriately
- rigorously investigating instances of alleged bribery and assisting police and other appropriate authorities in any resultant prosecution
- taking firm and vigorous action against any individual(s), (employees, contractors, agents) involved in bribery
- provide information to all employees to report breaches and suspected breaches of this policy
- include appropriate clauses in contract documents to prevent bribery.

TDBC's Proportionate Procedures

TDBC's procedures to prevent bribery by persons associated with it are proportionate to the bribery risks it faces and to the nature, scale and complexity of its activities. They are intended to be clear, practical, accessible, effectively implemented and enforced.

Top level commitment

CMT and Executive are committed to preventing bribery by persons associated with it. They foster a culture within the organisation in which bribery is never acceptable.

Risk Assessment

TDBC assesses the nature and extent of its exposure to potential external and internal risks of bribery on its behalf by persons associated with it. The assessment is periodic, informed and documented. It includes financial risks but also other risks such as reputational damage.

Due Diligence

TDBC applies due diligence procedures, taking a proportionate and risk based approach, in respect of persons who perform or will perform services for or on behalf of the organisation, in order to mitigate identified bribery risks.

Communication (including training)

TDBC seeks 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.

Monitoring and review

TDBC monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary.

This organisation is committed to proportional implementation of these principles.

Penalties

An individual guilty of an offence under sections 1, 2 or 6 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

TDBC is liable for these fines and, if guilty of an offence under section 7, are liable to an unlimited fine.

Bribery is not tolerated

It is unacceptable to:

- give, promise to give, or offer a payment, gift or hospitality with an expectation or hope that a business advantage will be received, or to reward a business advantage already given
- give, promise to give, or offer a payment, gift or hospitality to a government official, agent or representative to “facilitate” or expedite a routine procedure
- accept payment from a third party that you know or suspect is offered with the expectation that it will obtain a business advantage for them
- accept a gift or hospitality from a third party if you know or suspect that it is offered or provided with an expectation that a business advantage will be provided by us in return
- retaliate against or threaten a person who has refused to commit a bribery offence or who has raised concerns under this policy
- engage in activity in breach of this policy

Facilitation payments

Facilitation payments are not tolerated and are illegal. Facilitation payments are unofficial payments made to public officials in order to secure or expedite actions. This, for example, includes customs officers.

Gifts and hospitality

This policy is not meant to change the requirements of our gifts and hospitality policy

This makes it clear that all offers of gifts and hospitality of a value of £25 or over should be registered whether they are accepted or not.

Public contracts and failure to prevent bribery

Under the Public Contracts Regulations 2006 (which gives effect to EU law in the UK), TDBC is automatically and perpetually debarred from competing for public contracts where it is convicted of a corruption offence. Organisations that are convicted of failing to prevent bribery are not automatically barred from participating in tenders for public contracts. TDBC has the discretion to exclude organisations convicted of this offence.

Your responsibility as a member or officer

The prevention, detection and reporting of bribery and other forms of corruption are the responsibility of all those working for the organisation or under its control. All staff and members are required to avoid activity that breaches this policy.

You must:

- ensure that you read, understand and comply with this policy
- raise concerns as soon as possible if you believe or suspect that a conflict with this policy has occurred, or may occur in the future.

As well as the possibility of civil and criminal prosecution, staff and members that breach this policy will face disciplinary action, which could result in dismissal for gross misconduct.

Raising a concern

TDBC is committed to ensuring that all of us have a safe, reliable and confidential way of reporting any suspicious activity. We want each and every member of staff/member to know how they can raise concerns.

We all have a responsibility to help detect, prevent and report instances of bribery. If you have a concern regarding a suspected instance of bribery or corruption, please speak up – your information and assistance will help. The sooner you act, the sooner it can be resolved.

There are multiple channels to help you raise concerns. Please refer to the Whistleblowing Policy and determine your favoured course of action. Preferably the disclosure will be made and resolved internally (eg to your head of department/on line reporting/telephone hotline). Secondly, where internal disclosure proves inappropriate, concerns can be raised with the external auditor. Raising concerns in these ways may be more likely to be considered reasonable than making disclosures publicly (eg to the media).

Concerns can be anonymous. In the event that an incident of bribery, corruption, or wrong-doing is reported, TDBC will act as soon as possible to evaluate the situation. TDBC has clearly defined procedures for investigating fraud, misconduct and non-compliance issues and these will be followed in any investigation of this kind. This is easier and quicker if concerns raised are not anonymous.

Staff/members who refuse to accept or offer a bribe, or those who raise concerns or report wrong-doing can understandably be worried about the repercussions. TDBC aims to encourage openness and will support anyone who raises a genuine concern in good faith under this policy, even if they turn out to be mistaken.

TDBC is committed to ensuring nobody suffers detrimental treatment through refusing to take part in bribery or corruption, or because of reporting a concern in good faith.

Equality Impact Assessment – pro-forma

Responsible person	Maggie Hammond	Job Title Strategic Finance Officer
Why are you completing the Equality Impact Assessment? (Please mark as appropriate)	Proposed new policy or service	x
	Change to Policy or Service	
	Budget/Financial decision – MTFP	
	Part of timetable	
What are you completing the Equality Impact Assessment on (which policy, service, MTFP proposal)	Anti-Bribery Policy	
Section One – Scope of the assessment		
What are the main purposes/aims of the policy?	To ensure that Taunton Deane Borough Council's meets its statutory obligations	
Which protected groups are targeted by the policy?	No one group is targeted by the policy. The policy is for all Council employees, councillors and gives clarity for any person or organisation likely to have dealings with the Council.	
What evidence has been used in the assessment - data, engagement undertaken – please list each source that has been used The information can be found on....	The policy is not making proposals that will have a direct impact on any protected group so no further evidence has been sort.	
Section two – Conclusion drawn about the impact of service/policy/function/change on different groups highlighting negative impact, unequal outcomes or missed opportunities for promoting equality		

I have concluded that there is/should be:	
No major change - no adverse equality impact identified	x
Adjust the policy	
Continue with the policy	x
Stop and remove the policy	
Reasons and documentation to support conclusions The engagement activity has shown that there will be no change in impact of the new debt management policy.	
Section four – Implementation – timescale for implementation	
September – Corporate Governance September – Implement New Policy	
Section Five – Sign off	
Responsible officer Date	Management Team Date
Section six – Publication and monitoring	
Published on	
Next review date	Date logged on Covalent