

DECISION-MAKER:	GOVERNANCE COMMITTEE
SUBJECT:	BRIBERY ACT POLICY
DATE OF DECISION:	02 JULY 2012
REPORT OF:	CHIEF INTERNAL AUDITOR
STATEMENT OF CONFIDENTIALITY	
None	

BRIEF SUMMARY

The Bribery Act 2010 modernises the law on bribery and came into force on 1 July 2011.

The Act defines bribery as, 'giving someone a financial or other advantage to encourage that person to perform their functions or activities improperly or to reward that person for having already done so'.

The Act is not concerned with fraud, theft, books and record offences, money laundering offences or competition law.

The policy (Annex 1) has been drafted to maintain compliance with the Bribery Act 2010. It consolidates the Council's approach in meeting the requirements of the Act and explains the process through which the Council intends to maintain its high standards and to protect the organisation, employees, Members and business partners against allegations of bribery and corruption.

RECOMMENDATIONS:

- (i) That the Audit Committee approve the Bribery Act Policy.

REASONS FOR REPORT RECOMMENDATIONS

1. To comply with the legislative requirements of the Bribery Act 2010

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

2. None

DETAIL (Including consultation carried out)

3. 'The Act' came into force on 1 July 2011 and created a number of new offences:

- Section 1 (Offences of bribing another person):

An offence is committed if a person offers, promises or gives a financial or other advantage to another intending the advantage to induce or reward the improper performance of a function or activity. It is also an offence where a person knows or believes that the acceptance of the advantage offered, promised or given in itself constitutes the improper performance of a relevant function or activity

- Section 2 (Offences relating to being bribed):

An offence is committed if a person requests, agrees to receive or

accepts a financial or other advantage from another, intending the advantage to be rewarded by the improper performance of a function or activity

- Section 6 (Bribery of foreign public officials):

A specific offence of directly or indirectly offering, promising or giving a bribe to a foreign public official. To commit this offence a person must intend the bribe to influence the actions of the foreign public official

- Section 7 (failure of commercial organisations to prevent bribery):

This offence is based on the failure by a commercial organisation to prevent bribery by people acting on its behalf. The Act includes a defence if the organisation can demonstrate (a reverse burden of proof) on the balance of probabilities that despite a particular case of bribery it nevertheless had adequate procedures in place to prevent the bribe.

4. The Section 7 Offence

The Bribery Act 2010 'Guidance' published by the Ministry of Justice considers that procedures put in place by commercial organisations wishing to prevent bribery being committed on their behalf should be informed by six principles. The principles are not prescriptive and are intended to be flexible with bribery prevention procedures proportionate to risk. The six principles are as follows:

- Proportionate procedures – 'A commercial organisation'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 the commercial organisation's activities. They are also clear, practical, accessible, effectively implemented and enforced.'
- Top-level Commitment – 'The top level management of a commercial organisation (be it a board of directors, the owners or any other equivalent body or person) 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 – 'The commercial organisation 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.'
- Due diligence - 'The commercial organisation 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) – 'The commercial organisation 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 - 'The commercial organisation monitors and

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

5. The 'Guidance' states that although commercial organisations with entirely domestic operations may require bribery prevention procedures, the government believes that as a general proposition they will face lower risks of bribery on their behalf by associated persons than those that operate in foreign markets.

The need for procedures to avoid bribery and corruption is not entirely new to public authorities, and the Council already operate a variety of policies and procedures that apply to the Bribery Act 2010. Such policies and mitigation include:

- Members Code of Conduct
- Officer Code of Conduct
- Officer Member Protocol
- Constitution –
 - Officer scheme of delegation
 - Recording officers decisions
- Complaints Procedure
- Anti fraud and anti corruption policy
- Whistleblowing policy
- Council procedure rules
- Contract procedure rules
- Financial procedure rules
- Disciplinary procedures
- Contract of Employment (terms and conditions)
- Internal Audit
- External Audit
- Standards and Governance Committee

6. The Bribery Act Policy consolidates the Council's approach in meeting the requirements of the Bribery Act and makes reference to existing key policies, procedures and codes of conduct.

In accordance with Section 7 of the Act, following approval we will seek to effectively communicate the policy across the organisation as a whole and assess training needs as appropriate.

The Bribery Act Policy has been reviewed and approved the Management Board of Directors

RESOURCE IMPLICATIONS

Capital/Revenue

None

Property/Other

None

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

The Bribery Act 2010

Other Legal Implications:

None

POLICY FRAMEWORK IMPLICATIONS

None

AUTHOR:	Name:	Neil Pitman	Tel:	01962 845139
	E-mail:	Neil.pitman@hants.gov.uk		

KEY DECISION? Yes/No No

WARDS/COMMUNITIES AFFECTED:	
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SUPPORTING DOCUMENTATION

Non-confidential appendices are in the Members' Rooms and can be accessed on-line

Appendices

1.	Bribery Act Policy
2.	

Documents In Members' Rooms

1.	None
2.	

Integrated Impact Assessment

Do the implications/subject of the report require an Integrated Impact Assessment (IIA) to be carried out.	No
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Other Background Documents

Integrated Impact Assessment and Other Background documents available for inspection at:

Title of Background Paper(s)

Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)

1.		
2.		