

WIRRAL COUNCIL

AUDIT AND RISK MANAGEMENT COMMITTEE

30 JUNE 2011

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| SUBJECT: | BRIBERY ACT 2010 |
| WARD/S AFFECTED: | ALL |
| REPORT OF: | DIRECTOR OF FINANCE |
| RESPONSIBLE PORTFOLIO HOLDER: | COUNCILLOR ADRIAN JONES |
| KEY DECISION? | YES |

1.0 EXECUTIVE SUMMARY

- 1.1 This report outlines the Bribery Act 2010, and sets out the actions required to ensure compliance. The report also sets out the sanctions which are applicable to the Council, in the event of a prosecution under the Act.
- 1.2. A period of consultation preceded the implementation of the Act which was initially planned for 1 April 2011. Following the period of consultation the implementation date was delayed. On 30 March 2011 the Ministry of Justice published long awaited Guidance relating to the Act and announced that the implementation date will be 1 July 2011.
- 1.3. A draft Anti Bribery Policy is attached which has been prepared in accordance with CIPFA best practice and which was agreed by the Cabinet on 2 June 2011.
- 1.4. Following discussions with the Head of Legal and Member Services, an action plan has been prepared to ensure that the Council implements appropriate actions to comply with the requirements of the Act. This is attached at Appendix 2: section 1 of this identifies the current situation within the Council and section 2 identifies those actions required.

2.0 RECOMMENDATIONS

- 2.1. That the Council takes appropriate steps to ensure compliance with the legislation as identified in the attached action plan.
- 2.2. That the Anti-Bribery Policy be noted.
- 2.3. That Members endorse the promotion of the policy across the Council.

3.0 REASONS FOR RECOMMENDATIONS

- 3.1 The sanctions introduced by the Act are severe and offences include the corporate offence of 'failing to prevent an act of bribery.' There is however a defence available to the Council of having 'Adequate Procedures' in place. Appropriate actions will have to be taken in order that the Council can rely on the defence of having 'Adequate Procedures.'

- 3.2. This Committee on 17 January 2011 resolved that future counter fraud developments should be reported to this Committee.

4.0 BACKGROUND AND KEY ISSUES

- 4.1. Whilst most of the offences occur through the offering or acceptance of bribes there is also an offence under which an organisation can be prosecuted for failing to prevent bribery (section 7) The Act includes specific details about the type of functions and activities covered by the Act. Included amongst the list is 'any Function of a Public Nature'
- 4.2. The maximum sanctions for "other persons" (this includes Wirral Council) could be an unlimited fine if the case goes to the Crown Court. In addition if the Council was successfully prosecuted under the Act, the Council could be prevented from tendering for any dealings with other councils. Senior Officers can also be convicted of an offence where they are deemed to have given their consent, or connivance to giving or receiving a bribe or bribing a foreign official.
- 4.3. There is a defence available to the Council. The defence is that of having adequate procedures in place. To successfully rely on this defence the Serious Fraud Office would have to be satisfied that the anti bribery philosophy is embedded in the culture of Wirral. In order to prove that the Council has adequate procedures in place the Ministry of Justice has advocated a list of actions which the Council should undertake. The list includes:
- Completion of a risk assessment to identify all areas of the organisation potentially susceptible to Bribery
 - Ensuring that there is top level commitment to a culture of zero tolerance to bribery
 - Putting in place proportionate due diligence procedures
 - Ensuring that all pertinent policies are practical and accessible and understood by all employees
 - Ensuring that there is a system in place to monitor and review the effectiveness of actions.
- 4.4. The Council already has a governance framework which essentially includes all strategies, codes, policies, plans, rules, arrangements, terms and procedures which not only detail necessary responsibilities and practices to ensure the effective discharge of Council duties and functions in a lawful, transparent, and accountable manner but also assist the Council to mitigate against the risks to which it is exposed, including many of those now falling within the remit of the Bribery Act 2010.

- 4.5. However there remain a number of actions which the Council should take to ensure full compliance with the Act. Areas to be addressed are:
- a. The main areas which are likely to be susceptible to bribery need to be identified and the Council must be satisfied that all those whom we deal with are aware of and endorse the Council's zero tolerance stance. The relevant people who must be informed are suppliers, employees, Members, charities, partnerships, agencies and consultants.
 - b. All documentation needs to be scrutinised to ensure that it reflects the Council's zero tolerance approach. These documents will include, but not be limited to, new supplier forms and tender documents.
 - c. The Council has to be satisfied that it has adequate policies and procedures in place to prevent bribery and that these policies are appropriately publicised and communicated to all stakeholders.
 - d. A statement on penalties and sanctions should be prepared to inform internal and external stakeholders of the consequences of non compliance.
 - e. A review mechanism needs to be put in place to monitor compliance and ensure that any changes to the bribery risk are identified.
- 4.6. Details of how these aims will be achieved are set out in the attached action plan.

5.0 RELEVANT RISKS

- 5.1 Failure of the Council to have a fully embedded culture of zero tolerance to bribery which could lead to the prosecution of the Council under section 7 of the Act with the potential sanction of an unlimited fine, prohibition from certain trading opportunities and consequential adverse publicity.

6.0 OTHER OPTIONS CONSIDERED

- 6.1 No other options considered. Wirral Council must comply with the requirements of the Bribery Act

7.0 CONSULTATION

- 7.1 CIPFA, especially the Better Governance Forum, has been consulted throughout the process regarding current best practice.

8.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

- 8.1 There are none arising directly from this report.

9.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

- 9.1 There are none arising directly from this report.

10.0 LEGAL IMPLICATIONS

- 10.1 There are none arising from this report.

11.0 EQUALITIES IMPLICATIONS

11.1 There are none arising from this report.

12.0 CARBON REDUCTION IMPLICATIONS

12.1 There are none arising from this report.

13.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

13.1 There are none arising from this report.

FNCE/109/11

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APPENDICES

1. Anti Bribery Policy
2. Bribery Act Compliance Action Plan

REFERENCE MATERIAL

The Bribery Act Guidance - Ministry of Justice, March 2011

SUBJECT HISTORY (last 3 years)

| Council Meeting | Date |
|------------------------|-------------|
| Cabinet | 2 June 2011 |