

**HAMPSHIRE COUNTY COUNCIL****Decision Report**

<b>Decision Maker:</b>	Audit Committee
<b>Date:</b>	29 September 2011
<b>Title:</b>	The Bribery Act 2010
<b>Reference:</b>	3289
<b>Report From:</b>	<i>County Treasurer</i>

**Contact name:** Neil Pitman

**Tel:** 01962 845139

**Email:** Neil.pitman@hants.gov.uk

## 1. Executive Summary

1.1. The purpose of this paper is to provide the Audit Committee with an overview of the implications of the 'The Bribery Act 2010' and of the County Council's current arrangements and proposed actions to satisfy the requirements of the Act.

## 2. Contextual information

2.1. The Bribery Act 2010 ("the Act") came into force on 1 July 2011. The Act creates 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.

### **The Section 7 Offence**

2.2. 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.'*

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.

### **3. County Council response to the Bribery Act**

3.1. The need for procedures to avoid bribery and corruption is not entirely new to public authorities, and the County Council already operate a variety of policies and procedures that apply to the Bribery Act 2010. However, the introduction of the Bribery Act, and the creation of new offences with potentially serious penalties provides a suitable opportunity to review existing policy and procedure to ensure that they remain sufficiently robust to protect the interests of the County Council, its Members and officers.

3.2. An initial risk assessment has been carried out in accordance with 'Principle 3' of the guidance and it is considered that the wide range of policies and procedures currently adopted by the County Council provide a proportionate response to the Act. Such policies and mitigation include:

- Members Code of Conduct
- Officers Code of Conduct
- Member / Officer Protocol
- Constitution – Decision Making Protocol
- Complaints Procedure
- Anti Fraud and corruption policy & Whistleblowing policy
- Standing Orders – governing the conduct of the Council's business
- Contract Standing Orders
- Financial Regulations
- Disciplinary Procedures
- Contract of Employment (terms and conditions)
- Internal Audit
- External Audit
- Standards Committee
- e-learning package – Good Governance

3.3. Work is currently in progress to gain further assurance that existing policies and procedures adequately conform to the remaining 'principles' detailed within the Act (see paragraph 2.2).

3.4. A position statement will be brought back to Audit Committee in December 2011 detailing any further actions necessary to maintain compliance with the Act.

#### **4. Conclusions**

- 4.1. The County Council is committed to the highest ethical standards and has adopted a wide range of policies and procedures to re-enforce this philosophy as well as procedures to investigate them should the need arise.
- 4.2. These policies and procedures, the Standards Committee of the County Council, the statutory roles of the Monitoring Officer and the County Treasurer and the work of the County Council's internal audit function ensures that the County Council maintain prevention procedures proportionate to the risks detailed within the Bribery Act 2010

#### **5. Recommendation(s)**

- 5.1. That the implications of the provisions of the Bribery Act 2010 are noted and that the Audit Committee endorse the action being taken to:
  - Further review established County Council policies and procedures and determine what, if any, additional actions are necessary to maintain compliance with the 'principles' of the act; and
  - To report back to the December Audit Committee with an updated position statement

**CORPORATE OR LEGAL INFORMATION:****Links to the Corporate Strategy**

<b>Hampshire safer and more secure for all:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	
<b>Maximising well-being:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	
<b>Enhancing our quality of place:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	
<b>OR</b>	
<b>This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because:</b>	
Compliance with legislation ( <u>The Bribery Act 2010</u> ) and the Council continued commitment to the highest ethical standards	

*NB: If the 'Other significant links' section below is not applicable, please delete it.*

**Other Significant Links**

<b>Links to previous Member decisions:</b>		
<u>Title</u>	<u>Reference</u>	<u>Date</u>
<b>Direct links to specific legislation or Government Directives</b>		
<u>Title</u> <u>The Bribery Act 2010</u>		<u>Date</u> <u>1 July 2011</u>

**Section 100 D - Local Government Act 1972 - background documents**

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

DocumentLocation

None

## **IMPACT ASSESSMENTS:**

### **1. Equalities Impact Assessment:**

1.1. Equality objectives are not considered to be adversely affected by the proposals within this report.

### **2. Impact on Crime and Disorder:**

2.1. The County Council already operate a variety of policies and procedures that apply to the Bribery Act 2010. However, the introduction of the Bribery Act, and the creation of new offences with potentially serious penalties provides a suitable opportunity to review existing policy and procedure to ensure that they remain sufficiently robust to protect the interests of the County Council, its Members and officers

### **3. Climate Change:**

a) How does what is being proposed impact on our carbon footprint / energy consumption?

No specific changes

b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

No specific proposals affecting adaptation to climate change