

Non-Executive Report of the: Audit Committee 31 st January 2017	 TOWER HAMLETS
Report of: Zena Cooke – Corporate Director Resources	Classification: Unrestricted
Bribery Risk Assessment 2016/17	

Originating Officer(s)	Minesh Jani
Wards affected	All wards

Summary

The purpose of this report is to present an assessment of bribery risks carried out by the risk management team. It highlights the heightened risk transactions identifying the sorts of transactions by which a bribe might be effected and activities and / or relationships which might give rise to risk.

Recommendations:

The Audit Committee is recommended to:

1. Agree actions in this report;
2. Seek assurances as necessary that service areas have a reasonable risk rating for bribery risks;
3. Communicate assessment to relevant stakeholders and
4. Recommend any further actions as necessary.

1. DETAILS OF REPORT

- 1.1 The Bribery Act 2010 came fully into force on 1 July 2011 and provides a legal framework to combat bribery in the public and private sectors. Appendix A.
- 1.2 Audit Committee endorse the Anti-Bribery Policy Statement, which has been rolled out across the Council and policies, procedures and processes to manage bribery related risks.
- 1.3 The report identified a number of services with potential risk areas for the council.

2. Bribery Risk Assessment Methodology

2.1 The methodology was based upon the Council's own risk management process although customised for this purpose. Its aim is to provide an objective bribery risk score for functions within the Council with a bribery risk.

Using the methodology: -

- a. Functional areas within services were identified;
- b. Each area of activity was assessed for the likelihood that bribery could occur;
- c. Assessment for each services area of activity the impact on the Council of the occurrence of bribery.
- d. Based on steps (b) and (c) above, calculate an overall bribery risk assessment score for each bribery risk category using a risk scoring matrix (see 3 below);
- e. Independently assess the bribery risk scores to ensure they are accurate and complete;
- f. Based on the bribery risk assessment score, consider what proportionate action needs to be taken by management to address any issues arising.

3. The scores were based on a Red, Amber and Green rating system as set out below:

Score	Definition
1 to 6	Low risk of bribery
7 to 14	Medium risk of bribery
15 to 24	High risk of bribery

Key Findings

The high risks identified in the following directorates and functional areas are: -

Adults Services

1. MH care practice
2. LD/CLDS mile end hospital

3. Direct Payments
4. Commissioning
5. Brokerage

Comment: Risk of bribery if procedures are not followed and appropriate sanctions invoked. Detailed assessment of each area will be undertaken in March.

Children's Services

1. Social Care ICT
2. Building Development
3. Youth Offending Service
4. Youth Service

Comment: Risk of bribery if procedures are not followed and appropriate sanctions invoked. Detailed assessment of each area will be undertaken in March.

CLC

1. Safer Communities - Licencing
2. Safer communities – Environmental Health and trading Standards

Comment: All front line officers are involved in enforcement and regulation. If non-compliance is discovered this may end in some sort of penalty for the business involved. There is a risk of bribery in all cases where non-compliance occurs.

D&R

3. Planning & Building control

Comment: Risk of bribery if procedures are not followed and appropriate sanctions invoked. A case is currently under investigation.

Resources

4. Finance, Risk and Accountancy Service

Comment: There is a risk that Anti-Fraud officers are bribed to circumvent their investigation. A system is in place to oversee the work of the investigators by managers and declarations of interests are

sought from all members of the team.

5. Procurement, Risk and Accountancy Service

Comment: There is a risk that the Council's procurement process is subverted by bribery internally with staff or externally (collusion between suppliers). There are systems in place to mitigate the risk including the need to declare any interests and the requirement to highlight any actual or potential conflicts of interests.

7. Third Sector & External Funding

Comment: Our role as a main funding partner/stakeholder in the provision of grants to external organisations can create financial risks which could include acts of bribery.

8. Human Resources and Workforces Development

Comment: There is a risk that officers are bribed in the recruitment process. Controls are in place to ensure appropriate segregation of duties is in place.

The methodology recommended that where functions had been identified as High or Medium risk, this should be reflected in respective directorate risk registers. This provides for additional controls to be put in place to reduce the likelihood of bribery occurring in these areas.

The overall picture from this assessment is that the council does have a small number of services that may be susceptible to bribery risk.

Audit Committee attention is drawn to Appendix B, which highlights possible significant bribery risks raised by the Head of Audit and Risk Management and the Head of Legal Services (Community) and reported to CMT previously. It is noted some high risk areas originally identified have been assessed as "Low" risk by services, Audit Committee may want to seek assurances this is correct.

Existing organisational procedures/controls

Council's existing key bribery prevention procedures are contained within the following :

- Standard terms and conditions of employment
- Employees' Code of Conduct
- Member Code of Conduct
- Procurement procedure

The Council has the following related procedures:

- Anti-Fraud and Corruption policy

- Anti-money laundering policy
- Whistleblowing policy

The Council also has in place an Anti-Bribery Policy Statement. It sets out the council's commitment to take appropriate steps to reduce the likelihood of bribery as making clear the practices and behaviours that are unacceptable, for example "accept payment from a third party that you know or suspect is offered with the expectation that it will obtain an advantage for them". This Policy Statement has been published on the Council's intranet and made known to existing employees.

In addition to the organisation wide procedures in place to prevent bribery there are also a range of local operational controls that are put in place by manager's e.g. checking unexpected trends/events and where this happens, thoroughly investigating the information which may also include referral to Internal Audit, if necessary.

Appropriate management oversight and the application of the preventative procedures and processes as well as good system design is the key to minimising the likelihood of the council being exposed to bribery risk. Constant vigilance is required by all managers to minimise this risk.

Review of Bribery Risk Assessments

All directorate risk assessments will be reviewed regularly and this will next be done again by the end of March 2017.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

There are no specific financial implications arising from the recommendations within this report. However, the report highlights a number of risks, which if not managed effectively through robust systems and procedures detailed within this report, could expose staff to the risk of bribery and as a consequence have significant financial and reputational implications for the Council.

5. LEGAL COMMENTS

- 5.1 In order to avoid committing an offence contrary to section 7(1) of the Bribery Act 2010 ('the 2010 Act') it is important for commercial organisations, and which includes the Council, to have in place adequate procedures designed to prevent persons associated with it bribes another person.
- 5.2 Pursuant to section 9 of the 2010 Act, the Secretary of State has published Guidance for commercial organisations to follow and which pursuant to such the Government considers that procedures to put in place by commercial organisations wishing to prevent bribery being committed on their behalf should be informed by six principles. These are: Proportionate Procedures; Top-level Commitment; Risk Assessment; Due Diligence; Communication (including training); and Monitoring and Review.

- 5.3 In addition to the above, the Council has obligations pursuant to Regulation 3 of the Accounts and Audit Regulations 2015 ('the 2015 Regulations'), the Council is required to ensure that it has a sound system of internal control that facilitates the effective exercise of its functions and the achievement of its aims and objectives; ensures that the financial and operational management of the authority is effective; and includes effective arrangements for the management of risk
- 5.4 Further, the Council is also required by Regulation 5(1) of the 2015 Regulations to undertake an effective internal audit to evaluate the effectiveness of its risk management, control and governance processes, taking into account public sector internal auditing standards or guidance.
- 5.5 Overarching all this is the Council's Best Value Duty. Specifically, the Council has a duty to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness by virtue of section 3 of the Local Government Act 1999.
- 5.6 In bringing this report to highlight the assessment of risk in relation to bribery related risks, this is ensuring compliance with the above duties.

RECOMMENDATIONS AND NEXT STEPS

The Risk management team will ensure the anti-bribery management strategy is adequately maintained and being effectively monitored and reported.

Update and maintain procedures for anti-bribery management strategy.

Continue with the yearly risk assessments taking account of audit findings and whistleblowing information.

6. ONE TOWER HAMLETS CONSIDERATIONS

There are no specific one Tower Hamlets considerations arising from the recommendations in this report.

7. BEST VALUE (BV) IMPLICATIONS

The Council operates a risk management framework governed by a risk management policy to allow risk to be considered using a consistent model. The risk management cycle consists of the key steps for effective risk management which enables the Council to meet its best value duty to secure continuous improvement with regard to economy, efficiency and effectiveness.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

There are no specific proposals in the report contributing to a sustainable environmental action for a greener environment

9. RISK MANAGEMENT IMPLICATIONS

The report sets out arrangements for mitigating bribery risks to the Council and actions taken to treat and eliminate identified risks.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

There are no specific crime and disorder reduction implications arising from this report.

Linked Reports, Appendices and Background Documents

Linked Report

- NONE

Appendices

- Appendix A – The Bribery Act 2010
- Appendix B – List of possible Bribery Risks previously highlighted to the CMT

List any background documents not already in the public domain including officer contact information.

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

- NONE

Officer contact details for documents:

- N/A

1 The Bribery Act 2010

1.1 The Bribery Act 2010 creates 4 new offences. These are:

- a) Bribing another person. A person is guilty of this offence where they offer, promise or give a financial or other advantage to another and they intend the advantage to induce a person to perform improperly a relevant activity or to reward a person for the improper performance of such an activity.
- b) Being bribed. A person is guilty of this offence where they request, agree to receive or accept a financial or other advantage intending that a relevant activity should be performed improperly whether by them or another person.
- c) Bribing a foreign public official. A person is guilty of this offence if they intend to influence a foreign public official in their capacity as a foreign public official and the person intends to obtain or retain business or a business advantage.
- d) Failing to prevent bribery. An organisation is guilty of this offence if a person associated with the organisation bribes another person intending to obtain or retain business for the organisation or to obtain or retain an advantage in the conduct of the business for the organisation, unless the organisation can prove that it had in place 'adequate procedures' to prevent such bribery.

1.2 The offence described in paragraph 1.1(d) above is a new and wide ranging offence. The Act differs from most forms of legislation because it can render an organisation, e.g. the Council, liable to prosecution as a consequence of the behaviour of its employees or other persons associated with it even if the organisation had no knowledge of such behaviour. It should also be noted that persons associated with an organisation could be an agent or supplier or other body or individual who represents or acts on behalf of the organisation, not just an employee.

1.3 Although the Act itself does not define what constitutes 'adequate procedures' the Act requires the Secretary of State to publish guidance regarding the arrangements that can be put in place to prevent bribery being undertaken on its behalf by a person associated with the organisation. By complying with this guidance it is considered that an organisation would be deemed to have in place 'adequate procedures.'

1.4 In April 2011 the government issued guidance as to what constitutes 'adequate procedures'. Rather than give specific procedures, the guidance made reference to 6 principles which any organisation could apply to its own

situation to ensure it has adequate procedures to prevent bribery and to manage the risk of bribery. These principles are:

- a) Proportionality. The action taken by an organisation to prevent bribery should be proportionate to the risks it faces and to the size of the organisation.
- b) Top level commitment – the culture within all levels of an organisation, including senior officers, should ensure that bribery is unacceptable.
- c) Risk assessment – an organisation should know and be aware of the bribery risks it faces and the level to which it may be susceptible.
- d) Due diligence – an organisation should know about those organisations and individuals it does business with.
- e) Communication – The organisation should have clear processes and procedures which should be understandable, accessible and communicated to both the employees, to organisations acting on behalf of the organisations, and the organisations and individuals it does business with. They should be comprehensive covering all relevant bribery risks, e.g. gifts and hospitality, overseas expenses etc. The anti-bribery arrangements should be embedded within the organisations processes. Employees and those working with an organisation should be made aware of the policies and procedures regarding bribery. Responsibility for anti-corruption compliance within the organisation should be placed in the hands of a senior manager with appropriate expertise and resource.
- f) Monitoring and review – the organisation should monitor the effectiveness of its anti-corruption arrangements to ensure it continues to appropriately manage the risk of bribery faced.

1.5 The aim of this document is to outline the process as to how the Council will assess the potential risk of bribery within the activities of the Council it faces and how it will keep the level of risk under review. By assessing the risk of bribery the Council will:

- a) Have a clear view of the level of risk it faces and where in the organisation;
- b) Be able to identify actions proportionate to the risk the Council faces;
- c) Aid the Council in minimising the risk of committing the offence of failing to prevent bribery by complying with the principles which constitute 'adequate procedures'.

List of possible bribery risks previously highlighted to the CMT

- Property disposals (including use of community assets). For example, incentives may be offered to dispose of properties for less than full value.
- Housing tenancies. For example, incentives may be offered to falsify records showing a higher level for accommodation than may be the case.
- Contract award and contract monitoring. For example, incentives may be offered to subvert the Council's procurement procedures such that contracts are unfairly awarded and then not properly enforced.
- Sponsorship. For example, a business may sponsor a Council programme and then be awarded an unrelated contract.
- Grant decisions. For example, gifts may be offered to ensure favourable evaluation of a grant application.
- Regulatory and enforcement activity, including grants of licences and all action taken under the enforcement policy. For example, payments may be made to persuade officers not to take enforcement action in respect of premises operating in contravention of a license under the Licensing Act 2003.