

Audit Committee

30th June 2011



Bribery Act 2010

Don McLure, Corporate Director Resources

Purpose of the Report

- 1 To provide a briefing to Members in relation to The Bribery Act 2010.

Background

- 2 The Bribery Act 2010 ("the Act"), which comes into force in July 2011, reforms the criminal law to provide a new, modern and comprehensive scheme of bribery offences that will enable courts and prosecutors to respond more effectively to bribery at home or abroad.
- 3 The Act aims to provide a more effective legal framework to combat bribery in the public or private sector and replaces the fragmented and complex offences at common law and in the Prevention of Corruption Act 1889-1916.
- 4 The Act creates two general offences in relation to individuals, covering the offering, promising or giving of an advantage (bribing another person) and requesting, agreeing to receive or accepting of an advantage (being bribed).
- 5 The Act also creates a discreet offence of the bribery of a foreign public official and creates a new offence of failure by a commercial organisation to prevent a bribe being paid for on its behalf (it would be a defence if the organisation had adequate procedures in place to prevent the bribery).
- 6 The Act will have the biggest impact on the commercial sector as it extends the old offences of bribery, which only related to public officials or employees taking or being given incentives or bribes, to the private sector.
- 7 The offence of failure by a commercial organisation to prevent a bribe being paid for on its behalf will not apply to the Council as a public

body, however this will apply to the Council's wholly owned companies (County Durham Development Company, Service Direct New Co Ltd, Premier Waste, East Durham Homes and Dale Valley Homes). Contact has therefore been made with these companies to remind them of their obligations under the new Act to ensure that adequate procedures are put in place prior to the implementation of the Act.

- 8 Although the old bribery and corruption offences relating to the public sector have now been replaced by those in the Bribery Act, they amount to much the same thing. Bribery is generally giving someone an advantage, be it financial or otherwise, to persuade or encourage them to perform their functions or activities improperly or to reward a person for having already done so. A Ministry of Justice guidance produced under the Act is urging commercial organisations of all sizes and sectors to understand the sorts of procedures they can put in place to prevent bribery.
- 9 As this Council has needed to have such procedures in place because of pre-existing legislation, the risk to the Council as a result of this new legislation is considered to be low. Arrangements already in place include:
 - Counter Fraud Strategy
 - Whistle Blowing (Confidential reporting Code)
 - Code of Conduct for employees – provided on induction and recent training with extended management team
 - Code of Conduct for Members
 - Contract Procedure Rules and procurement regulations which ensure fairness and a level playing field in relation to award of contracts
 - Disciplinary Procedures
 - Counter Fraud Strategy
 - Scheme of delegations which requires significant decisions to be recorded with reasons given
- 10 Consequently, although the old bribery and corruption offences relating to the public sector have now been replaced by the Bribery Act, the Council is well placed to address the requirements of the Act. Existing policies and procedures will however need to be reviewed and updated to make reference to the Act.
- 11 The Members' Code of Conduct will go once the Localism Bill comes into force. However, the Bill creates offences of not recording personal interests and of participation in business when such interest exists. Once the regulations relating to the Localism Bill are known, training and protocols for member conduct, including the implications of the Bribery Act will need to be developed and implemented.

Recommendations

12 Members are asked to note the report.

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Appendix 1: Implications

Finance

None

Staffing

None

Equality and Diversity

None

Accommodation

None

Crime and disorder

None

Human rights

None

Consultation

None

Procurement

None

Disability

None

Legal Implications

Bribery Act 2010