



ANTI-BRIBERY POLICY

SUMMARY

- 1.1 The Bribery Act 2010 came into force on 1 July 2011. This Act modernises the law on Bribery and creates a new corporate offence of "Failure to prevent bribery". The Council needs to put appropriate arrangements in place to ensure compliance with the new statutory requirements.

RECOMMENDATIONS

- 2.1 To approve the new Anti-Bribery Policy.
- 2.2 To request that the Committee receives a report annually, on any issues notified under the Policy.

REASONS FOR RECOMMENDATIONS

- 3.1 The Audit and Accounts Committee is responsible for monitoring council policies on whistleblowing (Confidential Reporting Code), counter fraud measures (including anti-money laundering measures) and the council's complaints process.

SUPPORTING INFORMATION

- 4.1 Bribery is defined as the offer, promise or giving of financial or other advantage to another with the intent of inducing that person to perform improperly, or rewarding that person for the improper performance of a relevant function or activity.
- 4.2 The Bribery Act 2010 makes it an offence to offer a bribe, or to invite the payment of a bribe.
- 4.3 The Act also introduces two new offences:
- The bribery of a foreign public official, and
 - The failure of commercial organisations to prevent bribery.
- 4.4 As part of the Act, the Ministry of Justice has issued Guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing. This is to help organisations develop procedures which will defend them from the corporate offence of failing to prevent bribery.

- 4.5 The Guidance provides six principles which, when followed, will provide evidence of anti-bribery activities within an organisation. The principles are:-
- Proportionality – are the measures in place proportionate to the size and scope of the organisation
 - Top level commitment – an undertaking from the top levels of the organisation to address the risks of bribery
 - Risk Assessment – an assessment should be made of the organisations exposure to bribery
 - Due Diligence – steps are taken to ensure that anyone who provides services for the Council will do so without resorting to bribery
 - An anti-bribery culture is communicated through the whole organisation
 - Anti-bribery measures are monitored and reviewed at an appropriate frequency.
- 4.6 In accordance with good practice, and Equalities Impact Assessment has been carried out to ensure that this Policy does not disadvantage any groups or individuals within equality groups within the community.
- 4.7 Following Committee's approval of the Anti-Fraud Policy and the Fraud Response Plan and the subsequent reviews of the Confidential Reporting Code and the Anti-Money Laundering Policy and procedures, the Head of Governance and Assurance will be providing briefings for Members and delivering awareness sessions to all Directorates which will cover all of these important documents. The Anti-Bribery Policy will be added to this list of briefing topics. Managers will be expected to cascade the information to their staff.
- 4.8 The policy will be reviewed every 3 years, unless there is any change to legislation which affects this policy.

OTHER OPTIONS CONSIDERED

5.1 N/A

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Service Director(s) Other(s)	Olu Idowu, Head of Legal Services (General) 01332 643615 n/a n/a n/a Governance Working Group, Anti-Fraud Working Group
For more information contact: Background papers: List of appendices:	Richard Boneham, Head of Governance & Assurance 01332 643280 e-mail richard.boneham@derby.gov.uk None Appendix 1 – Implications Appendix 2 – Anti-Bribery Policy

IMPLICATIONS

Financial and Value for Money

- 1.1 None directly arising

Legal

- 2.1 The existence of the policy forms part of the evidence of an anti-bribery culture within the Council for the purposes of the Bribery Act 2010.

Personnel

- 3.1 None directly arising

Equalities Impact

- 4.1 An Equalities Impact Assessment has been completed, however, no issues are directly arising.

Health and Safety

- 5.1 None directly arising.

Environmental Sustainability

- 6.1 None directly arising.

Asset Management

- 7.1 None directly arising.

Risk Management

- 8.1 The effective management of fraud related issues is a core principle of good governance.

Corporate objectives and priorities for change

- 9.1 The functions of the Committee have been established to support delivery of corporate objectives by enhancing scrutiny of various aspects of the Council's controls and governance arrangements.

DERBY CITY COUNCIL

ANTI-BRIBERY POLICY

November 2011

1. Introduction

- 1.1 The Bribery Act 2010 has updated the legislation on bribery and extended the law to cover bribery in the international business community. It has also created a corporate offence of failing to prevent bribery.
- 1.2 Although Local Authorities are unlikely to be involved in areas where bribery is prevalent in terms of either scale or frequency, it is good practice to comply with the Guidance issued by the Ministry of Justice to evidence an anti-bribery culture across the organisation. As such, Derby City Council has established this policy to ensure compliance.

2. Scope of the Policy

- 2.1 This policy applies to all employees and members of the Council and aims to maintain the high standards of conduct, which currently exist within the Council by preventing criminal activity through bribery. The Policy sets out the procedures that must be followed (for example the reporting of offers or invitations to bribe) to enable the Council, its members and employees to comply with its intention to establish an anti-bribery culture within the organisation.
- 2.2 The policy sits alongside the Council's the Anti-Fraud and Corruption Policy, Confidential Reporting Code, the Anti-Money Laundering Policy and the Codes of Conduct for Members and for Employees.

3. Disciplinary Action

- 3.1 Failure by a member of staff to comply with the procedures set out in this policy may lead to disciplinary action being taken against them. Any disciplinary action will be dealt with in accordance with the Council's Disciplinary and Dismissal Procedure Policy. Failure by a Member to comply with the procedures set out in this policy may be referred to the Standards Committee.

4. What Is Bribery?

- 4.1 Bribery is defined as the offer, promise or giving of financial or other advantage to another with the intent of inducing that person to perform improperly, or rewarding that person for the improper performance of a relevant function or activity.
- 4.2 The term bribery can be applied to both the act of offering or giving a bribe (active bribery), or the request for or acceptance of a bribe (passive bribery).
- 4.3 Any Member or employee who, in the course of Council business, becomes aware that a bribe has been requested, offered, given or accepted should report their suspicions promptly, in accordance with the Policy set out in this document. Failure to do this may inadvertently result in an offence under the Bribery Act 2010.
- 4.4 The risk of the Council contravening the legislation is, however, relatively low but preventative measures need to be in place to prevent the Council becoming liable under the new provision of failure by a relevant commercial organisation to prevent bribery.

- 4.5 The statutory provisions relating to bribery are summarised in Appendix A to this policy, together with references to further information.

5. The policy

- 5.1 The aims of the Policy are to:
- assist the staff and Members of Derby City Council to understand bribery and their personal legal obligations and responsibilities arising from the requirements of the legal and regulatory provisions
 - prevent the Council from the corporate offence of failure to prevent bribery, and
 - set out the procedures which must be followed to enable the Council and its staff to comply with their legal obligations.
- 5.2 Derby City Council will do all it can to:
- prevent the Council, its members and its staff being exposed to bribery;
 - identify the potential areas where it may occur; and
 - comply with all legal and regulatory requirements, especially with regard to the reporting of actual or suspected cases of bribery.

6. The procedure

- 6.1 All members and employees are required to:
- report promptly all reasonable suspicions¹ of bribery, whether active (the offer or giving of a bribe) or passive (the request for or receipt of a bribe), to the Head of Governance and Assurance
- 6.2 The Head of Governance and Assurance must promptly:
- evaluate all concerns to determine whether it is appropriate to make a report to the Police
 - if appropriate, ensure that an internal report is completed
- 6.3 Although there is no legal requirement for the Council to have formal procedures for evidencing the identity of those they do business with, staff and members should be alert to potentially suspicious circumstances. Where there may be doubt and in particular, when forming a new business relationship or considering a significant one-off transaction, the identification procedures in the Council's Anti-Money Laundering Procedures should be followed.
- 6.4. The Council will:
- make all staff and members aware of the obligations placed on the Council, and on themselves as individuals, by the anti-bribery legislation
 - give targeted training, with periodic refreshers, to those most likely to encounter bribery
 - Include a review of the need for corporate training in the Annual Governance Statement presented to the Audit and Accounts Committee.

¹ There is no definition of what constitutes reasonable suspicion. There must be genuine reasons or grounds for the suspicion: it is more than speculation or hunch and common sense will be needed.

Bribery: Legal and Regulatory Framework

The Bribery Act 2010

This Act defines four principal bribery offences, only three of which are likely to apply to the Council:

- a) the giving or offering of a bribe
- b) the request for, or acceptance of a bribe
- c) bribing a foreign public official
- d) the failure by a relevant commercial organisation to prevent bribery

The offence of failing to prevent bribery will not apply so long as the Council has appropriate procedures in place to act as a deterrent.

Statutory Definitions

- “Bribe” is defined as “giving a financial or other advantage to another person” It is clear that a bribe is not restricted to only financial payment.
- The intention of the bribe is “to induce them to perform improperly a relevant function or activity, or to reward them for having improperly performed a relevant function or activity”.
 - The term “relevant function or activity” includes all functions of a public nature and all activities connected with a business, trade or profession.
 - The term “improper performance” is defines as being in breach of a relevant expectation, including the failure to perform that function or activity when it would be reasonable to expect it to be performed.
- “Relevant commercial organisation” is defined as
 - A body incorporated under the law of any part of the UK and which carries on business whether there or elsewhere
 - A partnership that is formed under the law of any part of the UK and which carries on business there or elsewhere, or
 - Any other body corporate or partnership wherever incorporated or formed which carries on business in any part of the UK.
- “Failure to prevent bribery” relates only to active bribery on the part of a person with the intent to obtain or retain business, or to obtain or retain an advantage in the conduct of business for the organisation. It does not include preventing passive bribery, (ie .the invitation to a third party to give a bribe, or the acceptance of such a bribe).