

TITLE OF REPORT: ANTI-BRIBERY POLICY REVIEW 2015/16

REPORT OF THE ACTING SENIOR LAWYER

1. SUMMARY

- 1.1 The purpose of the report is to provide the Finance, Audit & Risk ('FAR') Committee with an opportunity to comment on the attached draft amendments to the Anti-Bribery Policy prior to consideration by Cabinet on 30 March.

2. RECOMMENDATIONS

- 2.1 That FAR Committee provides any comments on the draft changes to the Policy (**Appendix B**) and that these (and any further suggested amendments) be recommended to Cabinet for consideration and (where relevant) incorporation into the Policy.

*[NB as a number of amendments have been made as tracked changes a **clean version of the Policy (with amendments accepted) is at Appendix A**, as well as the **tracked version with the proposed changes at Appendix B**]*

3. REASONS FOR RECOMMENDATIONS

- 3.1. The amendments have been made following the publication of the National Crime Agency (NCA) and CIPFA Local Authorities and the UK Bribery Act 2010 alert (September 2015), review of legal bribery updates, templates and know how.
- 3.2. In respect of training, monitoring and reporting the suggested changes are for good practice reasons and to provide a degree of uniformity within the SAFS authorities.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 None.

5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND RELEVANT MEMBERS

- 5.1 As part of the review, comments on the draft changes were sought from: the Corporate Human Resources Manager and Senior HR & Contracts Manager, SAFS' Counter Fraud Manager and the Leader.
- 5.2 Comments/ changes have been incorporated where possible. An issue raised again with HR and SAFS is training (the need to provide and level) and this is dealt with below.
- 5.3 Following SMT consideration on 23 February, the report and Policy documents were referred to Unison and the Staff Consultation Forum for comment. None were received.

6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan.

7. BACKGROUND

7.1. The Bribery Act 2010 ('the Act') came into force on 1 July 2011. Failure to prevent bribery is a corporate offence under section 7 of the Act. A local authority could be liable to prosecution if an employee, agent or subsidiary bribes another person intending to obtain an advantage for the local authority. There is a defence against section 7 if an organisation can prove that it has in place 'adequate procedures' designed to prevent corruption.

7.2. The Council's Policy was approved prior to the implementation date of the Act by Cabinet in June 2011 and is now due for a review.

7.3. Since the Policy's approval in June 2011:

- The UK government published a national plan for the UK's anti-corruption efforts (on 18 December 2014) with 66 specific action points.

Those relevant to local authorities include consideration by the Cabinet Office of what steps are required to make information available on suppliers' excluded from public contracts; a new central bribery and corruption unit within the NCA; and the Department for Business, Industry and Science seeking to implement a central register of UK companies beneficial ownership information (as well as those cited as anti-fraud measures, eg the Transparency Code and Standards regime - and requirements under the Localism Act 2011 for Members to register disclosable pecuniary interests).

- The aforementioned 'NCA and CIPFA Local Authorities and the UK Bribery Act 2010' alert – September 2015.

7.4. There have been a small number of prosecutions brought under the Act since 2011 and anecdotally it is believed that this relates to the complexity of matters, focus on foreign bribery and the fact that prosecutions have continued to be brought under the Prevention of Corruption Acts 1889-1916 (which still apply to conduct that occurred before 1 July 2011). The main UK related prosecution matters have been: of the printing company Smith & Ouzman and two of its employees who were convicted in 2014 for agreeing to make corrupt payments (of almost £400,000) to public officials in Kenya and Mauritania; a deferred prosecution agreement between the SFO and ICBC Standard Bank (previously Standard Bank plc); and a civil settlement disposal announced in 2015 by Scottish prosecutor for £212,800 for copper cable-maker Brand Rex (for a self reported section 7 offence).

7.5. Despite the low level of prosecutions it is nevertheless important that the Policy and procedures are kept under review, that these are publicised for the protection of the authority and employees.

8. ISSUES

8.1. The Policy has been amended to include a greater level of description and guidance on what bribery is and indicators of it. The Policy is applicable to all employees, agency workers, contractors and Members.

8.2. What the Council still needs to consider is the necessity for:

- a) training provided to employees (and level); and
- b) the reporting and monitoring arrangements we have in place (and whether these can be improved).

Training/ retrain/ support:

- 8.3 There is a cross-over on this issue with other governance related training (such as Whistleblowing), review of employee training (by HR) and the assessment of how this should fit within the corporate approach.
- 8.4 However, given the fact that the Council is part of SAFS, then it would be useful to adopt a similar method to other partners. The SAFS Counter Fraud Manager has suggested the use of an I-Learn training module (developed and delivered for County) on the E-platform. He has stated that it:
- is designed at a level where anyone can access/understand/use it.
 - has the advantage of being adaptable to two versions - one very generic but good enough to use as a 'defence' and the other which is much more detailed and perhaps aimed at Managers.
 - allows the Council to monitor which employees have used it, and if they have not then this can be promoted by Managers individually (if identified as part of an employee's training requirements) or more generally through, for example, Team Talk campaigns.
 - therefore gives the Council control over where this is published, who accesses it and how effective it is. This will assist with monitoring.
- 8.5 It is also understood that training and awareness training on other corruption issues has been identified in the current draft copy of the NHDC Anti-Fraud Action Plan for 2016/2017. The Anti-Bribery module is now been made available to NHDC.
- 8.6 SMT intend to review corporate training and are committed to providing appropriate Anti-Bribery awareness and training.

Monitoring/ reporting:

- 8.7 It has been suggested by the SAFS Counter Fraud Manager, that a good way to improve monitoring and reporting would be the introduction of an annual corporate employee declaration (and that record can be held on their HR file).
- 8.8 Following SMT, the current annual declaration requirements will be reviewed and the potential for one form or procedure will be considered.

9. LEGAL IMPLICATIONS

- 9.1 As outlined above, there are requirements to have adequate procedures in place to prevent bribery and failure to do so could result in an offence under the Act. This amended Policy and the proposed changes re training and employee declaration would form part of those procedures and bolster any potential defence under section 7 of the Act.

10. FINANCIAL IMPLICATIONS

- 10.1 There are no capital or revenue implications arising from the content of this report.

11. RISK IMPLICATIONS

- 11.1 Appropriate Policy frameworks help to ensure good governance of the Council and therefore reduce risk of poor practice or unsafe decision making.

12. EQUALITIES IMPLICATIONS

- 12.1 The Equality Act 2010 came into force on the 1st October 2010, a major piece of legislation. The Act also created a Public Sector Equality Duty, which came into force on the 5th April 2011. There is a General duty, described in 12.2, that public bodies

must meet, underpinned by more specific duties which are designed to help meet them.

- 12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give **due regard** to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not. The contents of this report do not directly impact on equality, in that it is not making proposals that will have a direct impact on equality of access or outcomes for diverse groups.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 As the recommendations made in this report do not constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need not be applied, although equalities implications and opportunities are identified in the relevant section at paragraph 12.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 Whilst the Policy falls within the remit of the Monitoring officer, employee support and training falls within the remit of Human Resources. As indicated above, further training/ level of training for employees is an issue for consideration for SMT.

15. APPENDICES

- 15.1 Appendix A – Clean version of the amended Policy.
- 15.2 Appendix B – *tracked version of the amended Policy.*

16. CONTACT OFFICERS

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17. BACKGROUND PAPERS

- 17.1 None.