

## PLYMOUTH CITY COUNCIL

**Subject:** The Bribery Act 2010  
**Committee:** Audit Committee  
**Date:** 23 September 2011  
**Cabinet Member:** Councillor Ricketts  
**CMT Member:** Director for Corporate Support  
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**Ref:** AUD/DM  
**Key Decision:** No  
**Part:** 1

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### **Executive Summary:**

This report summarises the key issues arising from the Bribery Act 2010 which came into force on 1 July 2011.

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### **Corporate Plan 2011 – 2014:**

The work of the Audit Service assists the Authority in maintaining high standards of public accountability and probity in the use of public funds. The Authority currently has an Anti-Fraud and Corruption Policy and a Whistleblowing Policy. The introduction of legislation specific to bribery and corruption will strengthen and support these policies.

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### **Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land**

None

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### **Other Implications: e.g. Community Safety, Health and Safety, Risk Management and Equality, Diversity and Community Cohesion:**

None

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### **Recommendations & Reasons for recommended action:**

It is recommended that the report be noted.

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### **Alternative options considered and reasons for recommended action:**

None

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**Background papers:**

The Bribery Act 2010  
Ministry of Justice Guidance

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**Sign off:**

Fin	DJN 1112.013	Leg	DS 12833	HR		Corp Prop		IT		Strat Proc	
Originating SMT Member: Sue Watts, Assistant Head of Devon Audit Partnership											

## **1.0 Introduction**

- 1.1 The Bribery Act 2010 became effective on 1<sup>st</sup> July 2011 and makes receiving or giving a bribe a criminal offence.
- 1.2 The Act defines bribery as giving someone a financial or other advantage to encourage that person to perform their functions or activities improperly or to reward that person for having already done so.
- 1.3 Genuine hospitality or similar business expenditure that is reasonable and proportionate is allowable and not covered by the Act. However, facilitation payments (payments to induce officials to perform routine functions they are otherwise obligated to perform) are considered bribes.
- 1.4 Organisations will have a defence and could avoid prosecution if they have adequate procedures in place to prevent bribery.
- 1.5 There are four key offences under the Act:
  - Bribery of another person (Section 1)
  - Accepting a bribe (Section 2)
  - Bribing a foreign public official (Section 6)
  - Failure of a commercial organisation to prevent bribery (Section 7)
- 1.6 Offences carry the risk of a prison sentence up to 10 years. The Council also risks unlimited fines, blacklisting from EU contracts and the forfeiture of the value of illegal deals under related Proceeds of Crime and money laundering laws.

## **2.0 Implications for Plymouth City Council**

- 2.1 Section 7 of the Act introduces an offence by “commercial organisations” if they fail to prevent bribery. The Council is clearly capable of falling within the definition of commercial organisation and therefore it could be liable if:
  - A very senior person in the organisation commits a bribery offence. This person’s activities could be attributed to the Council.
  - A person associated with it, e.g. an employee or someone acting on behalf of the Council bribes another person (under Section 1 or Section 6) to gain a business advantage for the Council.
- 2.2 Council officers and Members are clearly caught by the offences of bribery of another person and accepting a bribe as contained in Sections 1 and 2 of the Act respectively as these offences are concerned with performance of a relevant function or activity.
- 2.3 The Council is involved in business sectors which are more susceptible to bribery and areas where officers are more at risk of being offered inducements, for example:
  - Procurement and awarding of contracts;
  - Awarding of licences and permits;
  - Planning applications and building regulations;
  - Allocation of educational places;
  - Assessment of entitlement to grants, benefits etc

- Partnership and commissioning of services

### **3.0 Procedural Arrangements to Reduce the Risk of Bribery**

3.1 As noted above, it is a defence to have in place “adequate procedures” to prevent bribery.

3.2 Government guidance has been published on the procedures that organisations can put in place to prevent bribery and suggests six principles of good procedures. Each of these areas will be reviewed to ensure that the Council meets expected standards and embrace best practice.

- Proportionate procedures to risks – the Council should have procedures proportionate to the bribery risks it faces and to the nature, scale and complexity of our activities. These procedures will be clear, practical, accessible, effectively implemented and enforced.
- Top-Level commitment – those at the top of the organisation are in the best position to foster a culture of integrity in which any type of bribery is unacceptable. This commitment is reflected and communicated in the Council’s Anti-Fraud and Whistle-blowing policies and these are being reviewed to ensure that they contain the correct messages regarding the Council’s approach to bribery and ensure that they protect employees and members from potential acts of bribery. Any allegations of bribery will be investigated in a robust manner.
- Risk Assessment – in order to gain a fuller understanding of the bribery risks the Council faces, the nature and extent of the Council’s exposure to potential external and internal bribery risks will be carried out. The assessment will be periodic, informed and documented.
- Due Diligence – procedures will be applied, taking a proportionate and risk based approach, in respect of persons who perform or will perform services for or on behalf of the Council, in order to mitigate identified bribery risks. A review of employee vetting procedures may be required to ensure that they are sufficiently robust in light of the bribery risks faced.
- Communications – Following the review of the Council’s fraud and corruption policies, to ensure that offences under the Bribery Act are adequately covered, bribery prevention policies and procedures will be embedded and understood throughout the organisation through internal and external communications, including training that is proportionate to the risks faced. Consideration should be given to the need for targeted release of information to high risk officers (those in a position to be bribed) regarding the provisions of the Bribery Act and giving a clear message that such activity will not be tolerated.
- Monitoring and Review – The procedures in place to prevent bribery by persons associated with it will be monitored and reviewed and improvements made where necessary to reflect, for instance, changes to the risks faced and the nature and scale of the Council’s activities. Comparisons with other local authorities can be carried out to ensure that the Council’s risk assessment and approach to bribery is in line with other councils’ arrangements. In addition, Devon Audit Partnership can review compliance with policies and procedures to ensure adherence.

### **4.0 Recommendation**

4.1 It is recommended that the report be noted.