

Appendix 1

Summary Risk Assessment - Bribery Act 2010 Section 1

Section 1 Bribery Act 2010

This section defines the offence of bribery as it applies to the person who offers, promises or gives financial or other advantage to another. The meaning of financial or other advantage is left to be determined as a matter of common sense.

The section distinguishes two scenarios:

The first scenario concerns cases in which the advantage is intended to bring about an improper performance by another person of a relevant function or activity, or to reward such improper performance.

(The Act defines functions and activities to include all functions of a public nature and all activities connected with a business, trade or profession. Included in this definition are all activities performed either in the course of employment or on behalf of any body of persons. The two categories straddle the public/private divide. For the action to constitute bribery, there must be an expectation that the functions be carried out in good faith or impartially, or the person performing it must be in a position of trust.)

(The Act defines improper performance as performance which breaches a relevant expectation, in that the person performing the function or activity is expected to perform it in good faith and that the person performing the function or activity is expected to perform it impartially.)

It is sufficient for the purposes of the offence that the person in question intended to induce or reward impropriety in relation to a function or activity. It is not necessary that the person to whom the advantage is offered promised or is to be provided is the same person as the person who is to engage in the improper performance of an activity or function, or who has already done so

The second scenario concerns cases in which the person knows or believes that acceptance of an advantage offered, promised or given in itself constitutes an improper performance a function or activity as defined above. The advantage can be offered, promised or given by the person directly or through someone else.

Risk Assessment Approach

The assessment was carried out in two stage process. The first stage involved the gathering of information by way of interviews of senior officers in various Council departments. The purpose of this exercise was to obtain a reasonably comprehensive overview of the business and the bribery risk profile of the Council.

The information gathered was then used to evaluate the risk.

Risk and Risk Factor

The assessment distinguishes between the terms "risk" and "risk factor". A risk is defined under the Committee of Sponsoring Organizations of the Treadway Commission (COSO) Framework definition as "the possibility that an event will occur and adversely affect the achievement of the Council's objectives".

A "risk factor" is not the adverse event itself, but rather the circumstance (internal or external to the organisation) which tends to increase the likelihood of the adverse event occurring.

Categories of Risk

There is no universally agreed categorisation of bribery risk.

The UK's MoJ Guidance provides a set of risk categories, identifying five categories of risk-

- Country Risk
- Sectoral Risk
- Transactional Risk
- Business Opportunities Risk
- Business Partnership Risk

Country Risk

This category covers risks derived from the location of business activities and the propensity for bribery to take place in that country.

Sectoral Risk

The relevance of this category is to ascertain whether the sector in which a specific department or business operates is typically associated with higher levels of bribery risk than others.

Sectoral risk factors which may directly or indirectly elevate the level of bribery risk include:-

- A high degree of interaction with government
- High levels of regulation
- Prevalence of high value, complex and/or long term contracts
- Business activities involving multiple business partners, stakeholders and/or complex contractual or corporate structures.

Transactional Risk

The term transaction in the MoJ Guidance refers to any activity involving some form of economic exchange between counterparties.

Transactions may be more or less risky, depending on matters including, the subject matter of the transaction, the identity of the counterparties, e.g. whether they are connected to government in some way, the degree of transparency of the transaction or related dealings, and how critical a particular service or supply is to the procuring party- for example, its importance to the business and/or the level of urgency required.

Examples of transactions typically seen as carrying heightened risk include:

- Sales to government customers
- Gifts, hospitality and travel expenditure, especially for government officials
- The use of company assets for the benefit of third parties for non-business purposes Charitable and political donations and other corporate relations activities Sponsorships
- Giving employment to persons connected with government officials
- Obtaining licenses, permits and regulatory clearances of any kind Movement of goods across borders and related activities Lobbying government on policy, legislation and/or regulation
- Others that affect a specific company or business circumstance.

Business Opportunity Risk

The MoJ defines this risk as follows:-

“such risks might arise in high value projects or with projects involving many contractors or intermediaries; or with projects which are not apparently undertaken at market prices, or which do not have a clear legitimate objective”

This risk relates to the actual characteristics of a transaction such as the value, complexity and commercial rationale of the transaction.

Business Partnership Risk

Under the Bribery Act 2010, the Council may be held liable for the acts or omissions of a third party operating on its behalf. The extent to which the organisation may be held liable depends on the facts of each case, such as whether the organisation is aware of a particular party in the supply chain and if so, the degree of control the organisation has over the conduct of that party. These fall into a number of categories, including intermediaries, joint ventures and consortia.

Intermediaries come in many forms and may include:-

- Sales agents
- Distributors
- Contractors and sub-contractors
- Customs agents Lobbyists Lawyers
- Tax advisors
- Advertising agents Event organisers Visa agents' Introducers Consultants

Risk Evaluation

Risk Management models generally identify two key variables which play a role in evaluating risk:-

- Likelihood (or probability) of occurrence
- Impact.

The more significant and/or numerous the risk factors associated with a particular activity the higher the likelihood that an adverse event might occur in the content of that activity.

It is worth noting that generally speaking council officers do not obtain any personal benefit from contracts awarded to the council or income received by the council, other than potentially increased job security for themselves and their colleagues.

Assessment

The following officers were interviewed:-

- Head of Strategic Procurement
- Group Leader – Strategic Procurement
- Assistant Director of Public Health
- Director Digital Services and Transformation
- Director of Housing Property Services
- Head of Property Services
- Third Sector Partnerships Manager
- Corporate Policy for Employment Commission and the NRPF Team
- Head of Revenues and Technical Services
- Service Director planning and Development
- Head of Service Highways Services and Diorector of Islington Company Ltd (iCo)
- Home Ownership Manager
- Service Director –Housing Operations

These interviewees were selected because the services for which they are responsible operate fully or partially on a commercial basis and they receive income from outside the council or they pay money out to individuals.

Based on the criteria identified by the MoJ and set out above, an assessment form was compiled to assess the risk in these servcies.

Assessment outcomes

This section summarises findings in respect of the few areas of the council where the risk of Section 1 bribery was not considered negligible.

Highways Services and other E&R trading services:

The team, and other teams in Environment and Regeneration, trade at a profit with other public bodies using powers available under the Local Goods and Services Act 1970.

The potential exists for staff to offer bribes to potential customers but this is currently considered highly unlikely, although there may be some incentive as increased activity within the relevant services may mean increased job security in the affected teams.

Islington Company (iCo):

iCo is a limited trading company wholly owned by the council that was incorporated in April 2015. It is about to start trading and all profits will be paid back to Islington Council. iCo has not as yet considered adoption of a Bribery Policy.

Housing Operations:

The division also has overall management responsibility for Islington Residential, which is an in-house service which manages private leaseholder's properties for a fee. It acts as agent and carries out repairs for clients as part of the contract. The possibility, albeit a small one, exists that bribes could be offered to potential clients to obtain their properties to manage. It is highly unlikely that this would occur. There is no obvious incentive for individuals to do so and the fees that the Council charges are below the market rate.

All services:

In all services there is the risk of a rogue employee offering someone a payment or an advantage in return a backhand or for some other personal advantage. This is akin to accepting a bribe.

General:

Overall the risk assessment indicated that the risk to the council of an officer offering someone a bribe or offering someone an advantage in return for some kickback (Section 1 bribery), is low.

The services involved in the review were found to have proportionate procedures in place to ensure that the likelihood of Section 1 bribery occurring, is low.

A number of those interviewed indicated that their division or service would benefit from training on bribery and their responsibilities in relation thereto. .

The Council does not have a written Bribery Policy and one should be prepared.

Conclusion

The risk of Section 1 bribery by council officers is low. There is little to incentivise such behaviour and arrangement in place to mitigate such risk as there is. Training , perhaps combine with training on the risk of officers being bribed, would be useful and the council should adopt a Bribery Policy.