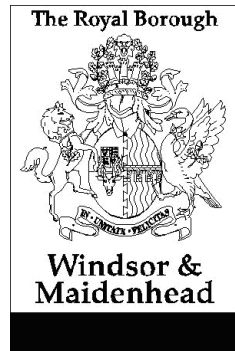


Report for: ACTION



<b>Contains Confidential or Exempt Information</b>	NO - Part I
<b>Title</b>	Resubmission of the Bribery Policy.
<b>Responsible Officer(s)</b>	Richard Bunn, Interim Head of Finance
<b>Contact officer, job title and phone number</b>	Catherine Hickman, Service Manager – Shared Audit and Investigation Service, 07917 265742
<b>Member reporting</b>	Cllr Paul Brimacombe
<b>For Consideration By</b>	Audit and Performance Review Panel
<b>Date to be Considered</b>	28 June 2016
<b>Implementation Date if Not Called In</b>	Immediately
<b>Affected Wards</b>	All

#### REPORT SUMMARY

This report presents the Corporate Anti-Fraud and Anti-Corruption Policy which aids the Panel to discharge their responsibilities as stated in its Terms of Reference

#### If recommendations are adopted, how will residents benefit?

Benefits to residents and reasons why they will benefit	Dates by which residents can expect to notice a difference
Anti-fraud and anti-corruption work undertaken by the council is supported by robust policies and procedures thereby protecting both the interests of the residents and the council.	Immediately

#### 1. DETAILS OF RECOMMENDATION

**RECOMMENDATION:** That Audit and Performance Review Panel consider and approve the Bribery Policy.

## **2. REASON FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED**

### **Background**

- 2.1 The Bribery Act 2010 received the Royal Assent on 8<sup>th</sup> April 2010. Whilst the Act's main focus is commercial organisations, the purpose of the Act is to provide a more modern, effective, specific and comprehensive scheme of bribery offences.
- 2.2 To facilitate this, the Bribery Act 2010:
- Replaces old and fragmented legislation with a modern and consolidated bribery law.
  - Creates offences of offering, promising or giving of a bribe and requesting, agreeing to receive or accepting of a bribe either in the UK or abroad, in the public or private sectors.
  - Creates a specific, discrete offence of bribery of a foreign public official.
  - Creates a new offence in relation to commercial organisations that fail to prevent a bribe being paid.
- 2.3 Historically, bribery has been seen as the offering, giving, receiving, or soliciting of something of value for the purpose of influencing the action of an official in the discharge of their public legal duties, and has been dealt with as corruption.

### **OFFENCES**

- 2.4 The Bribery Act 2010 has laid out more formally what could be considered bribery and introduces four offences:
- Bribing another person
  - Being bribed
  - Bribery of a foreign public official
  - A corporate offence of failure to prevent bribery
- 2.5 It will, however, be a defence if an organisation has "adequate procedures" in place to prevent bribery, although "adequacy" is not yet defined in the Act and guidance will be issued by the Secretary of State for Justice.

### **PENALTIES**

- 2.6. Individuals found guilty under the Bribery Act 2010 of bribing another person, being bribed or bribing foreign officials could face the following penalties:
- On summary conviction, imprisonment for not more than 12 months or a fine, or both.
  - On conviction of an indictment, to imprisonment for not more than 10 years or a fine, or both.

## **ACTIONS REQUIRED**

2.7 It is likely that the Council can already demonstrate “adequate procedures” designed to stop incidences of bribery. In as much as there are various existing policies, strategies, codes and guidance, these will all need to be updated to include reference to bribery as a specific offence.

2.8 This report presents the Policy, which is attached at Appendix A (one copy with tracked changes and one without for ease of reading).

<b>Option</b>	<b>Comments</b>
Approve the policy.  <b>Recommended</b>	This will ensure that activity undertaken on behalf of the council, complies with legislation.
Amend the policy.	May result in legal challenge through not complying with legislation or inefficiencies for the Council.
Not approve the policy.	May result in legal challenge through not complying with legislation or inefficiencies for the Council.

## **3. KEY IMPLICATIONS**

<b>Defined Outcomes</b>	<b>Unmet</b>	<b>Met</b>	<b>Exceeded</b>	<b>Significantly Exceeded</b>	<b>Date they should be delivered by</b>
Residents have confidence that public funds are being used economically, efficiently and effectively and that Council assets and interests are being safeguarded from misappropriation / loss.	Significant financial losses to the Council.  Loss of residents confidence.  Council reputation may be affected.	Financial losses are identified and recovered.  Gain residents confidence.  Council reputation protected.	N/A	N/A	31 March 2017

## **4. FINANCIAL DETAILS**

### **Financial impact on the budget**

There are no financial implications.

	<b>2015/16</b>	<b>2016/17</b>	<b>2017/18</b>
	Revenue £'000	Revenue £'000	Revenue £'000
Addition	£0	£0	£0
Reduction	£0	£0	£0

	<b>2015/16</b>	<b>2016/17</b>	<b>2017/18</b>
	Capital £'000	Capital £'000	Capital £'000
Addition	£0	£0	£0
Reduction	£0	£0	£0

## 5. LEGAL IMPLICATIONS

5.1 Relevant legislation includes the Bribery Act 2010

## 6. VALUE FOR MONEY

6.1 Investigation work is planned to assist the Council in ensuring that its assets are used efficiently and effectively and that they are being properly safeguarded against misappropriation, loss and fraud.

## 7. SUSTAINABILITY IMPACT APPRAISAL

7.1 N/a

## 8. RISK MANAGEMENT

<b>Risks</b>	<b>Uncontrolled Risk</b>	<b>Controls</b>	<b>Controlled Risk</b>
1. Failure to have and follow appropriate fraud policies leads to breach of legislation resulting in fines, investigation and reputation damage.	High	Appropriate fraud policies are in place, have been approved and are followed.	Low
2. Failure to provide an investigation service leads to major event, fraud and/or mismanagement of monies.	High	An appropriate investigations service is in place.	Low

<b>Risks</b>	<b>Uncontrolled Risk</b>	<b>Controls</b>	<b>Controlled Risk</b>
3. Failure to have an investigation service in place to investigate potential losses.	High	An appropriate investigations service is in place.	Low

## **9. LINKS TO STRATEGIC OBJECTIVES**

9.1 Helps the Council accomplish its objectives by undertaking investigations into misappropriation, loss or fraud.

## **10. EQUALITIES, HUMAN RIGHTS AND COMMUNITY COHESION**

10.1 N/A

## **11. STAFFING/WORKFORCE AND ACCOMMODATION IMPLICATIONS**

11.1 N/A

## **12. PROPERTY AND ASSETS**

12.1 N/A

## **13. ANY OTHER IMPLICATIONS**

13.1 N/A

## **14. CONSULTATION**

14.1 Consultation has taken place with the Corporate Management Team and S151 Officer.

## **15. TIMETABLE FOR IMPLEMENTATION**

<b>Date</b>	<b>Details</b>
29/06/16	Policy will be implemented with immediate effect.

## **16. APPENDIX**

16.1 Appendix A – Bribery Policy

## **17. BACKGROUND INFORMATION**

17.1 Previous versions of the above mentioned policy.

## 18. CONSULTATION (MANDATORY)

Name of consultee	Post held and Department	Date sent	Date received	See comments in paragraph:
<b>Internal</b>				
Corporate Management Team (CMT)	Managing Director, All Strategic Directors, Interim Head of Finance	02/06/16	09/06/16	MD - Updates to Policy approved.
Legal Services				
Human Resources				
Cllr Brimacombe	Chair of the Audit and Performance Review Panel			

## REPORT HISTORY

Decision type:	Urgency item?
Non-key decision	No

Full name of report author	Job title	Full contact no:
Catherine Hickman	Service Manager, Shared Audit and Investigation Service	07917 265742

**ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD  
ANTI-BRIBERY POLICY**

**1. POLICY STATEMENT**

Bribery is a criminal offence. We do not, and will not, pay bribes or offer improper inducements to anyone for any purpose, nor do we or will we, accept bribes.

To use a third party as a conduit to channel bribes to others is a criminal offence. We do not, and will not, engage indirectly in or otherwise encourage bribery.

We are committed to the prevention, deterrence and detection of bribery. We have zero tolerance towards bribery. We aim to maintain anti-bribery compliance “business as usual”, rather than as a one-off exercise.

**2. OBJECTIVE**

This policy provides a coherent and consistent framework to enable the Council's employees to understand and implement arrangements enabling compliance. In conjunction with related policies and key documents it will also enable employees to identify and effectively report a potential breach.

We require that all personnel including those permanently employed, temporary agency staff and contractors:

- a) act honestly and with integrity at all times and to safeguard the Council's resources for which they are responsible; and
- b) comply with the spirit, as well as the letter, of the laws and regulations of all jurisdictions in which the Council operates, in respect of the lawful and responsible conduct of activities.

**3. SCOPE**

This policy applies to all of the Council's activities. For partners, joint ventures and suppliers, we will seek to promote the adoption of policies consistent with the principles set out in this policy.

Within the Council, the responsibility to control the risk of bribery occurring resides at all levels, in every service.

This policy covers all personnel, including all levels and grades, those permanently employed, temporary agency staff, contractors, non-executives, agents, Members (including independent members), volunteers and consultants.

#### **4. COMMITMENT**

The Council commits to:

- a) setting out a clear anti-bribery policy and keeping it up to date;
- b) making all employees aware of their responsibilities to adhere strictly to this policy at all times;
- c) training all employees so that they can recognise and avoid the use of bribery by themselves and others;
- d) encouraging its employees to be vigilant and to report any suspicions of bribery, providing them with suitable channels of communication and ensuring sensitive information is treated appropriately;
- e) rigorously investigating instances of alleged bribery and assisting police and other appropriate authorities in any resultant prosecution;
- f) taking firm and vigorous action against any individual(s) involved in bribery;
- g) provide information to all employees to report breaches and suspected breaches of this policy;
- h) include appropriate clauses in contacts to prevent bribery.

#### **5. THE BRIBERY ACT**

The Bribery Act defines bribery as ‘an inducement or reward offered, promised or provided to gain personal, commercial, regulatory or contractual advantage’.

There are four key offences under the Act:

- a) bribery of another person (section 1);
- b) accepting a bribe (section 2);
- c) bribing a foreign official (section 6); and
- d) failing to prevent bribery (section 7).

The Bribery Act 2010 ([http://www.opsi.gov.uk/acts/acts2010/ukpga\\_20100023\\_en\\_1](http://www.opsi.gov.uk/acts/acts2010/ukpga_20100023_en_1)) makes it an offence to offer, promise or give a bribe (Section 1). It also makes it an offence to request, agree to receive, or accept a bribe (Section 2). Section 6 of the Act creates a separate offence of bribing a foreign public official with the intention of obtaining or retaining business or an advantage in the conduct of business. There is also a corporate offence under Section 7 of failure by a commercial organisation to prevent bribery that is intended to obtain or retain business, or an advantage in the conduct of business, for the organisation. An organisation will have a defence to this corporate offence if it can show that it had in place adequate procedures designed to prevent bribery by or of persons associated with the organisation.



The guidance states that a “commercial organisation” is any body formed in the United Kingdom and “...it does not matter if it pursues primarily charitable or educational aims or purely public functions. It will be caught if it engages in commercial activities, irrespective of the purpose for which profits are made.” Therefore, we are a “commercial organisation”.

## **6. ADEQUATE PROCEDURES**

Whether the procedures are adequate will ultimately be a matter for the courts to decide on a case-by-case basis. Adequate procedures need to be applied proportionately, based on the level of risk of bribery in the organisation. It is for individual organisations to determine proportionate procedures in the recommended areas of six principals. These principles are not prescriptive. They are intended to be flexible and outcome focussed, allowing for the different circumstances of organisations. Small organisations will, for example, face different challenges to those faced by large multi-national enterprises. The detail of how organisations apply these principles will vary, but the outcome should always be robust and effective anti-bribery procedures.

## **7. PROPORTIONATE PROCEDURES**

An organisation’s procedures to prevent bribery by persons associated with it are proportionate to the bribery risks it faces and to the nature, scale and complexity of the organisation’s activities. They are also clear, practical, accessible, effectively implemented and enforced.

## **8. TOP LEVEL COMMITMENT**

The Managing Director, Strategic Directors and Members are committed to preventing bribery by persons associated with it. Bribery is never acceptable.

## **9. RISK ASSESSMENT**

The Council will assess the nature and extent of its exposure to potential external and internal risks of bribery on its behalf by persons associated with it. The assessment is periodic, informed and documented. It includes financial risks but also other risks such as reputational damage.

## **10. DUE DILIGENCE**

The Council applies due diligence procedures, taking a proportionate and risk-based approach, in respect of persons who perform or will perform services for or on behalf of the organisation, in order to mitigate identified bribery risks.

## **11. COMMUNICATION**

The Council seeks to ensure that its bribery prevention policies and procedures are embedded and understood throughout the organisation through internal and external communication, including training that is proportionate to the risks it faces.

## **12. MONITORING AND REVIEW**

The Council monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary. The Council is committed to proportional implementation of these principles.

## **13. PENALTIES**

An individual guilty of an offence under sections 1, 2 or 6 is liable:

- a) on conviction in a magistrates court, to imprisonment for a maximum term of 12 months (six months in Northern Ireland), or to a fine not exceeding £5,000, or to both;
- b) on conviction in a crown court, to imprisonment for a maximum term of ten years, or to an unlimited fine, or both.

Organisations are liable for these fines and if guilty of an offence under section 7 are liable to an unlimited fine.

## **14. BRIBERY IS NOT TOLERATED**

It is unacceptable to:

- a) give, promise to give, or offer a payment, gift or hospitality with the expectation or hope that a business advantage will be received, or to reward a business advantage already given;
- b) give, promise to give, or offer a payment, gift or hospitality to a government official, agent or representative to "facilitate" or expedite a routine procedure;
- c) accept payment from a third party that you know or suspect is offered with the expectation that it will obtain a business advantage for them;
- d) accept a gift or hospitality from a third party if you know or suspect that it is offered or provided with an expectation that a business advantage will be provided by us in return;
- e) retaliate against or threaten a person who has refused to commit a bribery offence or who has raised concerns under this policy;
- f) engage in activity in breach of this policy.

## **15. FACILITATION PAYMENTS**

Facilitation payments are unofficial payments made to public officials in order to secure or expedite actions. Facilitation payments are not tolerated and are illegal.

## 16. GIFTS AND HOSPITALITY

The Council's Gifts and Hospitality guidance notes are held on the 'Declaration of the Offer/Receipt of Gifts and Hospitalities Guidance Notes' form. Additional guidance is held in the Anti-Fraud and Anti-Corruption Guidance Notes for Employees. In determining whether to accept a gift or hospitality employees should consider the following:

- Whether the company or individual is seeking a contract;
- Whether the company or individual regularly submits, has submitted, is likely to or is in the process of submitting a planning application, or has been granted planning permission;
- Whether a contract with the company/individual is under negotiation;
- Whether the final contract sum has been agreed;
- Whether the hospitality is genuinely instructive or constitutes more of a social function;
- The level and location of the hospitality;
- The frequency of the hospitality;
- Whether it is directed at you or to a group.

Officers are required to make a declaration within 28 days of receiving or being offered any gift or hospitality over the value of £25.00.

It is wise to err on the side of caution. Any gift that is clearly expensive should raise questions with you and should be declined. The offer, however, should still be recorded. You should always consider how such a gift or hospitality could be perceived by others. If you are in any doubt, and for your own protection, you should seek advice from your Service Manager or ultimately from your Strategic Director. There are some instances where gifts and hospitality must not be accepted. These are when dealing with planning applications, negotiating a contract and before a final contract sum is agreed. The overriding guidance to take account of is 'when in doubt, opt out'.

Examples of 'gifts and hospitality'

- Lunches;
- Presents e.g. drink, food, diaries, calendars, stationery, tickets for events;
- Cash, cheques or any other form of reward;
- Being paid or paid for to go anywhere (inside and outside of working hours)
- Visits abroad
- Hospitality tents

The general procedures to be followed in considering whether or not to accept or offer gifts and hospitality are as follows:

- All gifts and hospitality offered, whether received or not, must be recorded and entered in your Directorate's 'Register of Gifts and Hospitality' held by your Strategic Director.
- All hospitality, wherever possible, should be agreed beforehand by your Strategic Director.
- If you find yourself stuck in an awkward situation and unable to get authorisation beforehand, register the acceptance of the gift or hospitality if at all possible, pay for yourself, and then discuss with your Strategic Director whether it is appropriate for the Council to reimburse these expenses.
- Only modest gifts including gifts of a promotional nature e.g. calendars, diaries etc, and gifts of a sort normally given out by that company are acceptable.
- Fees and rewards, whether cash, cheques or air miles, other than as part of your proper remuneration are not acceptable. Gifts offered but not received should be returned with a polite and courteous explanation. The same applies to when hospitality has to be declined. In this instance the company should be courteously informed of our procedures and standards. All gifts and hospitality given must be registered in the 'Register of Gifts and Hospitality' held by your Strategic Director.
- No cash or cheques should be given.
- It is not normal for gifts to be given, except as part of a promotion or marketing initiative, therefore if you wish to express your gratitude by the way of a gift you must seek prior approval from your Strategic Director.
- Any hospitality to be given out, beyond normal working lunch, should also be agreed beforehand by your Strategic Director. If you are in any doubt you should seek advice from your Strategic Director.

## **17. PUBLIC CONTRACTS AND FAILURE TO PREVENT BRIBERY**

Under the Public Contracts Regulations 2006 (which gives effect to EU law in the UK), a company is automatically and perpetually debarred from competing for public contracts where it is convicted of a corruption offence. There are no plans to amend the 2006 Regulations for this to include the crime of failure to prevent bribery. Organisations that are convicted of failing to prevent bribery are not automatically barred from participating in tenders for public contracts. This organisation has the discretion to exclude organisations convicted of this offence.

## **18. STAFF RESPONSIBILITIES**

The prevention, detection and reporting of bribery and other forms of corruption are the responsibility of all those working for the Council or under its control. All staff are required to avoid activity that breaches this policy.

Staff must:

- a) ensure that you read, understand and comply with this policy; and
- b) raise concerns as soon as possible if you believe or suspect that a conflict with this policy has occurred, or may occur in the future.
- c) As well as the possibility of civil and criminal prosecution, staff that breach this policy will face disciplinary action, which could result in dismissal for gross misconduct.

## **19. RAISING A CONCERN**

The Council is committed to ensuring that we all have a safe, reliable, and confidential way of reporting any suspicious activity. We want each and every member of staff to know how they can raise concerns. We all have a responsibility to help detect, prevent and report instances of bribery. If you have a concern regarding a suspected instance of bribery or corruption, please speak up – your information and assistance will help. The sooner you act, the sooner it can be resolved.

There are multiple channels to help you raise concerns – these are explained in the Raising Concerns at Work (Whistleblowing) Policy. Staff who refuse to accept or offer a bribe, or those who raise concerns or report wrongdoing can understandably be worried about the repercussions. We aim to encourage openness and will support anyone who raises a genuine concern in good faith under this policy, even if they turn out to be mistaken.

We are committed to ensuring nobody suffers detrimental treatment through refusing to take part in bribery or corruption, or because of reporting a concern in good faith. If you have any questions about these procedures, please contact the Service Manager, Shared Audit and Investigation Service, Catherine Hickman.

## **20. OTHER RELEVANT RBWM POLICIES**

Anti-Fraud and Anti-Corruption Policy, Anti-Money Laundering Policy, Raising Concerns at Work (Whistleblowing) Policy, Codes of Conduct, Contract Procedure Rules and Finance Procedure Rules.