

Southend-on-Sea Borough Council

Agenda
Item No.

Report of Chief Executive and Town Clerk

to

Audit Committee

on

22 June 2011

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Anti Fraud & Corruption Update Report

A Part 1 Public Agenda Item

1. Purpose of Report

- 1.1 To present a progress report to the Audit Committee on delivering the Council's ongoing Anti Fraud & Corruption, Whistleblowing and Anti Money Laundering Strategies.

2. Recommendation

2.1 The Committee:

- **agrees the updated Anti Fraud and Corruption, Whistleblowing and Money Laundering Policies and Strategies;**
- **refer them to Cabinet for approval**
- **approves the action plan for 2010/11.**

3. Policy Review

- 3.1 It is important to review and update these policies regularly to ensure that they continue to reflect current legislation and good practice guidance.
- 3.2 Following on from the creation of the Corporate Fraud Team (the Team), it has been necessary to update these policies to reflect its new role. The approach adopted has been to make the Team the sole reporting point for any concerns relating to these policies. They will keep a central record of any potential issues reported and then determine whether it is appropriate:
- for it to be referred on to somebody else to deal with; or
 - for the Team to undertake an investigation.

- 3.3 The Anti Fraud and Corruption (**Appendix 1**) and Whistleblowing Policies (**Appendix 2**) have been updated to reflect the requirements of the new Bribery Act 2010. The Money Laundering Policy (**Appendix 3**) has been amended to include the requirements of the Terrorism Act 2000.
- 3.4 The Anti Fraud and Corruption and Money Laundering Policies have been substantially rewritten although the substance of the documents has not changed significantly. Only minor amendments have been made to the Whistleblowing Policy so these have been **highlighted** so they are easy to identify.
- 3.5 Action is now required to undertake risk assessments to identify activities most vulnerable to money laundering and bribery and to provide targeted training for staff in those areas.
- 3.6 **Appendix 4** contains both the:
- core framework adopted by the Council to ensure that these policies are fit for purpose and operate as designed (progress reports to be produced twice a year); and
 - annual action plan, (progress reports to be produced quarterly).
- 3.7 It also highlights the current status of the proposed actions in both areas.

4. Bribery Act 2010

- 4.1 This new legislation comes into force from the 1 July 2011. It is important that staff are aware of the new requirements as failure to comply is a criminal offence that carries severe penalties i.e.:
- 4.2 The Bribery Act 2010 makes it an offence:
- to offer, promise or give a bribe (Section 1)
 - to request, agree to receive, or accept a bribe (Section 2).
 - to bribe a foreign public official with the intention of obtaining or retaining business or an advantage in the conduct of business (Section 6)
- 4.3 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.
- 4.4 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
- 4.5 An individual guilty of an offence under sections 1, 2 or 6 of the Act is liable:
- 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

- On conviction in a crown court, to imprisonment for a maximum term of ten years, or to an unlimited fine, or both

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

4.7 Senior officers can also be convicted of an offence where they are deemed to have given their consent or connivance to giving or receiving a bribe or bribing a foreign public official.

What are “adequate procedures”?

4.8 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.

4.9 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.

4.10 So although the recommendation is not to have a separate Bribery Policy, the principles outlined below have been taken into account when updating:

- the other policies, strategies and the action plan supporting their delivery
- relevant HR procedures
- contract documentation.

Proportionate procedures

4.11 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.

Top level commitment

4.12 The top-level management (be it a board of directors, the owners or any other equivalent body or person) are committed to preventing bribery by persons associated with it. They foster a culture within the organisation in which bribery is never acceptable.

Risk Assessment

4.13 The organisation assesses 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.

Due diligence

- 4.14 The organisation 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.

Communication (including training)

- 4.15 The organisation 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.

Monitoring and review

- 4.16 The organisation monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary.

5. Audit Commission's National Fraud Initiative

- 5.1 **Appendix 5** provides details of the data matches received in January 2011 from the most recent Audit Commission's National Fraud Initiative (NFI) exercise. These have been distributed to the relevant services to investigate, the results of which are updated on line. The Audit Commission then periodically produces monitoring reports from this information.

- 5.2 A number of areas are yet to start reviewing these data matches, although the Council has had the data for four months. Progress made in this will be periodically reported to the Audit Committee.

- 5.3 As in previous NFI exercises, the bulk of the matches relate to creditors data i.e. 11,030 out of 15,474. In the previous NFI exercise, most of these matches were written off as arising from issues with the quality of data in the creditors system.

6. Proactive Exercise

- 6.1 The Corporate Fraud Investigation Team recently launched itself with Operation 'Theft Prevention' following a spate of opportunist thefts within the Civic Centre. The objective of the exercise was to:

- highlight and raise awareness regarding poor levels of security of equipment, data and personal items belonging to staff; and
- put into place, adequate security measures to reduce the risk of loss to the Authority.

- 6.2 Floors 1 to 9 of the Civic Centre were visited and cards left according to levels of either areas of cause for concern or good practice. The findings were published to all staff highlighting the worst incidents, where security was lacking and identifying what these actual risks were.

- 6.3 Further pro-active exercises are planned to reinforce the need for security in the workplace.

7. Corporate Implications

7.1 Contribution to Council's Aims, Priorities and Outcomes

All work undertaken to reduce fraud and enhance the Council's anti fraud and corruption culture contributes to the delivery of all its aims, priorities and outcomes.

7.2 Financial Implications

Any financial implications arising from identifying and managing risk will be considered through the normal financial management processes.

Proactively managing risk can result in reduced costs to the Council by reducing exposure to potential loss and insurance claims.

Proactive fraud and corruption audit work acts as a deterrent against financial impropriety and it might identify financial loss and loss of assets.

7.3 Legal Implications

The Accounts and Audit Regulations 2003 require that:

The relevant body shall be responsible for ensuring that the financial management of the body is adequate and effective and that the body has a sound system of internal control which facilitates the effective exercise of that body's functions and which includes the arrangements for the management of risk.

Therefore failure to do so would be a breach of a statutory duty.

7.4 People and Property Implications

None

7.5 Consultation

This work has been undertaken in conjunction with the Head of HR & C7

7.6 Equalities Impact Assessment

None

7.7 Risk Assessment

Failure to implement the framework which supports the delivery of the risk management policy and strategy and these policies increases the risk that Council objective's will not be delivered.

Failure to operate a strong anti fraud and corruption culture puts the Council at risk of increased financial loss from fraudulent or other criminal activity

Although risk cannot be eliminated from its activities, implementing these strategies will enable the Council to manage this more effectively.

7.8 Value for Money and Community Safety Implications and Environmental Impact

None

8. Background Papers

- Chartered Institute of Public Finance and Accountancy (CIPFA) / Society of Local Authority Chief Executives and Senior Managers (SOLACE) publication: Delivering Good Governance in Local Government - Framework.
- Association of Local Authority Risk Managers (ALARM) Publication: Managing the Risk of Fraud
- CIPFA Publication: Managing the Risk of Fraud
- Audit Commission Publication: Protecting the Public Purse: Local Government Fighting Fraud

9. Appendices:

- Appendix 1: Anti Fraud & Corruption Policy, Strategy and Prosecution Policy
- Appendix 2: Whistleblowing Policy
- Appendix 3: Anti Money Laundering Policy
- Appendix 4: Anti Fraud and Corruption, Whistleblowing and Money Laundering, Core Framework and Action Plan for 2011/12
- Appendix 5: Audit Commission: National Fraud Initiative Update