

**WEST BERKSHIRE COUNCIL**

**BRIBERY ACT POLICY EXAMPLES**

## **Appendix C**

### **1 Introduction**

- 1.1 This document presents examples relating to the Bribery Act 2010 in the context of a local authority's operations. It should be noted that the examples given are to some extent 'extreme' in order to show the potential impact but Officers and Members need to approach the provisions of the Act in terms of other 'gifts and hospitality' the receipt of which may now need to be looked at in a different light

### **2 Example 1**

A local authority has put a large outsourcing contract out to tender and it is the subject of separate negotiations with several commercial partners. During the course of this tender process, the company that had previously been awarded the contract offers the managing officer a corporate hospitality outing for the entire tender team. This includes an invitation to a prestigious sporting event and a lavish dinner afterwards. It is accompanied by a note thanking the officer and the team for the work they had "done together in the past and to cement our future relationship".

This could easily be interpreted as an attempt by the company to influence the tender process and procure an improper outcome to the negotiations by way of a bribe, contrary to s.1 of the Bribery Act 2010. It might, if accepted, lead to the officer acting otherwise than in good faith and constitute the offence of receiving a bribe, contrary to s.2 of the Bribery Act 2010. In order to be a bribe the gift or other type of gain has to be intended to cause the recipient to act improperly in his or her duties. The offer ought to be refused. It is possible that if this was offered at a time when a tender process was not ongoing, it might not be inappropriate under the Bribery Act 2010 to accept the offer.

### **3 Example 2**

A local authority is engaged in the procurement of a large quantity of IT equipment in order to upgrade its systems. It wants to arrange for a number of UK, EU and overseas companies to provide competitive quotes for supply of bespoke software to run the new system. In order to arrange quotes from overseas companies, the local authority uses an international procurement agent based abroad. This agent regularly has to furnish cash payments to corrupt local officials in order to remain licensed to operate.

If the local authority failed to have 'adequate procedures' in place to

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prevent the payment of these cash sums, it may well be that it would be guilty of an offence under s.7 of the Bribery Act 2010 of failing to prevent bribery. This is on the basis that it has not yet been tested whether public bodies are 'commercial organisations' for the purpose of the Bribery Act 2010. The offence is committed when an 'associated person' commits bribery on behalf of a commercial organisation. If the bribery was offered with the knowledge of the local authority, it may be that it is also guilty of an offence under s.6 Bribery Act 2010 of bribing a foreign public official, if the connection between the agent and the local authority is sufficiently close.

### 4 Example 3

A local authority's Chairman's annual charity fundraising event is sponsored by a major food retailer (T) and has been for several years. Similarly, some of the local authority's councillors are regularly invited by T to hospitality events, such as sport and black tie dinners. It happens that a large brown-field site is promoted for re-development by the local authority and T and a competitor (S) submit rival planning applications. S's proposed development is objectively superior to T's when judged by material planning considerations. In light of the long-standing relationship, a local authority planning officer informally intimates to T that a fresh large donation to the local authority's charitable fund would ensure that both applications would be re-examined "with great care". T's application is recommended to the Planning Committee as preferable by the planning department but S's is approved instead.

This would almost certainly be considered to be an offence under s.2 Bribery Act 2010 of requesting a bribe. It does not matter that the solicited bribe would go to charitable causes and not to the local authority itself, as it could be demonstrated that the increase in the local authority's charitable fund could constitute 'some other advantage' under the Act. Similarly, it does not matter that the local authority preferred the application of the non-bribing applicant. Because the bribe was requested with the intention of carrying out improper performance of relevant duties, it is still inappropriate. This should be contrasted with perfectly proper negotiation over proposed s.106 Agreements, which ensure developers provide some form of benefit to the local community as part of major planning applications.

### 5 Conclusion

All of these examples are preventable incidents where the risk can be minimised in advance by the adoption of the Ministry of Justice's guidance on principles to prevent bribery and demonstrate that it is an issue that officers and members should remain alert to.