

Ward: All

Portfolio: Governance, Assets and Public Spaces

FROM: Monitoring Officer **Date:** 9 May 2016

SUBJECT: Updates to Constitution in response to Bribery and Corruption Alert

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Report Sign off	Seen by:	Name	Date
	Legal	Donna Nolan	27.04.16
	Finance	Paul Deal	
	Chief Executive Officer	Stuart Brown	27.04.16
	Corporate Manager	Donna Nolan	27.04.16
Summary:	<p>In September 2015 the UK's National Crime Agency (NCA) and the Chartered Institute of Public Finance and Accountancy (CIPFA) jointly issued an Amber Alert concerning Local Authorities and the UK Bribery Act (2010). The Alert was based on assessed intelligence and warns of the dangers and threats from serious organised criminality. The purpose of the alert was to stimulate preventative or remedial action and a proposed action plan was endorsed by Full Council in February 2016. This paper presents the associated policy and constitutional amendments for approval by Council.</p>		
Recommendation:	<p>That Council approves the amendments to Appendices A, B, Q and R of the Constitution, as presented in the schedule to this report.</p>		
Direct and/or indirect impact on service delivery to our customers and communities:	<p>There are a number of the Council's services that have been highlighted as being under a constant threat of corruption by organised crime groups e.g. planning, licensing and procurement. However the implementation of the action plan should have limited or no impact upon service delivery.</p> <p>A robust constitution, strong ethical standards framework, and appropriate guidance ensure high standards of community leadership to our customers and communities.</p>		
Impact on Service Plans:	<p>There is no impact on service plans.</p>		
Financial Implications:	<p>Section 7 of the UK Bribery Act (2010) introduced corporate liability for "relevant commercial organisations". As such they can now be held accountable and prosecuted for the corrupt actions of their employees, agents or subsidiaries. Therefore failure to prevent bribery is now a corporate offence and carries a maximum penalty of an unlimited fine.</p>		

Legal Implications:	A potential defence against the liabilities introduced through the UK Bribery Act (2010) is for an organisation to prove that it has in place 'adequate procedures' that help to protect vulnerable employees against corrupting influences. The implementation of the proposed action plan produced in response to the alert would form part of any such defence.
Crime and Disorder Implications:	The Amber Alert highlights the dangers and threats faced by Councils from organised criminality. The implementation of the action plan seeks to mitigate those risks
Equalities Implications:	No equalities implications as a result of this report.
Risk Assessment and Adverse Impact on Corporate Actions:	<p>The implementation of the action plan seeks to ensure that the Council has adequate procedures in place to combat the threat of bribery and corruption and to protect vulnerable employees against such influences. These actions will help to protect the Council from the threat of bribery and corruption but also to address the risk of associated corporate liability.</p> <p>An up to date constitution ensures the Council's decision making framework is appropriate, thus mitigating the risk of change.</p>
Scrutiny Recommendation (if any)	Endorsed the action plan in December 2015.

INTRODUCTION

In September 2015 the UK's National Crime Agency (NCA) and the Chartered Institute of Public Finance and Accountancy (CIPFA) jointly issued an Amber Alert concerning Local Authorities and the UK Bribery Act (2010). The Alert was based on assessed intelligence and warns of the dangers and threats from serious organised criminality. The purpose of the alert was to stimulate preventative or remedial action. An action plan was produced that resulted in a number of policy and constitutional updates. These updates are presented to Council for approval.

BACKGROUND INFORMATION

Section 7 of the UK Bribery Act (2010) introduced corporate liability for "relevant commercial organisations". As such they can now be held accountable and prosecuted for the corrupt actions of their employees, agents or subsidiaries. Therefore failure to prevent bribery is now a corporate offence and a local authority could be liable to prosecution if an employee, agent or subsidiary bribes another person, intending to obtain an advantage for the local authority.

There is a defence against section 7 allegations available to the organisation if it can prove that it has in place 'adequate procedures' that help to protect vulnerable employees against corrupting influences. As such Mendip District Council must ensure that it has adequate procedures in place that are robust and proportionate to the perceived risk.

The Ministry of Justice quick start guide to the Bribery Act 2010 details six principles to inform what types of procedures commercial organisations (including local authorities) should have in place to combat the threat of bribery and corruption.

These are:

- Proportionate Procedures – Bribery prevention policies and procedures should be clear, practical and proportionate to the bribery risk the organisation faces
- Top-Level Commitment – Senior management should foster a zero tolerance culture towards bribery in a fair, open and honest environment
- Risk Assessment – Informed and documented assessments of the internal or external exposure and risk of bribery to the organisation should be completed
- Due Diligence – Risk based due diligence procedures should be in place with regards to persons who perform services for or on behalf of the organisation
- Communication and Training – Bribery prevention policies and procedures are clearly communicated throughout the organisation and anti-bribery awareness and education should be made available through training.
- Monitoring and Review – Anti-bribery procedures should be regularly monitored, reviewed and improved where necessary.

Due to the nature and variety of services that local authorities provide there is a constant threat of corruption by organised crime groups seeking to attack system weaknesses especially in relation to functions such as planning, licensing or procurement.

The Council already has a number of relevant policies and procedures in place that raise awareness and help to address the threat of bribery and corruption. The Council's Constitution, Codes of Conduct for Officers and Members, Financial Regulations, the Anti-Fraud and Corruption Policy and Procedure and the Whistleblowing Policy provide details of acceptable conduct, behaviour and actions.

Within the joint NCA and CIPFA Amber Alert there are a number of practical actions listed that they believe local authorities should have in place:

- Due to their risk profile local authorities may reasonably be expected to have sophisticated, anti-bribery and anti-corruption procedures
- A zero-tolerance commitment to bribery and corruption should be recorded and endorsed by senior management
- The authority should actively communicate and promote their zero tolerance commitment through training sessions
- Update all relevant policies to reflect senior management's commitment to tackling corruption. This should include all policies and procedures on gifts and hospitality, recruitment, procurement and whistleblowing.

PROPOSED ACTION PLAN

The following action plan was endorsed by Scrutiny in December 2015 and Cabinet and Full Council in February 2016. It has been updated to reflect the progress that has been made and the referenced amended policies, codes and procedures are presented to Council for approval as Constitutional updates. The amended policies, codes and procedures were endorsed by Audit Committee on 23 March 2016.

No.	Action	Progress
1	That CMT endorse and record their zero tolerance commitment to bribery and corruption	This endorsement was provided and recorded at their meeting on 23 November
2	The Anti-Fraud and Corruption policy is updated to note the Council's zero tolerance approach to bribery and corruption. The <i>Partners, Suppliers and Contractors</i> Section is updated to confirm that Partners, Suppliers and Contractors will be made aware of this approach and that there will be an expectation that they will have in place appropriate and robust anti-fraud and corruption policies.	Completed
3	Our standard Terms and Conditions for all contracts will include an appropriate clause on bribery and corruption	Changes incorporated
4	The Officers and Members Code of Conduct are reviewed to include a cross-reference to the MDC Anti-Fraud and Corruption policy.	Completed
5	The review of the Whistleblowing Policy is placed on the forward plan of the Audit Committee.	Completed – The initial review was undertaken by Corporate Support

		Manager and endorsed by the Audit Committee
6	Improper conduct relating to bribery and corruption will be added to the gross misconduct list contained within section 9 of the Disciplinary Procedure	Completed, although the procedure is subject to a more thorough review
7	Ensure the Council's approach to bribery and corruption and associated policies are highlighted through the induction process which also needs to apply to agency and temporary staff	Procedures updated accordingly
8	CIPFA have produced an e-learning package on anti-bribery and corruption. A single user licence costs £300 and includes an in-depth module for the appropriate anti-fraud and corruption lead in the authority as well as a 12 slide précis training package that can be delivered to all staff. MDC should purchase this package and roll out the summary training to all staff.	Training package purchased – roll out to all staff to commence shortly
9	Regular communications to all staff through My Mendip and mailshots will raise the profile of the Councils approach to bribery and corruption, highlighting risk areas and including links to the gift and hospitality register.	Issued 11.12.15
10	A similar communication to elected members will be issued by the member support officer	Issued 22.12.15
11	The risk posed by threats of bribery and corruption to be included and scored immediately on the corporate risk register which will be reviewed following the implementation of the above recommendations.	Scored on 19 th January 2016 at Corporate Risk Management Group and reassessed on 19 th April following implementation of action plan and subsequently removed from the Corporate Risk Register

The following policies, codes and procedures have been amended accordingly and the changes can be summarised as follows:

Members Code of Conduct

- Minor change to raise the profile of the Council's Anti-Fraud and Corruption Policy and Procedure

Officers Code of Conduct

- CMT's zero tolerance commitment to bribery and corruption is highlighted and its profile raised
- The profile of the Council's Anti-Fraud and Corruption Policy and Procedure and Whistleblowing Policy is raised and reinforced

Whistleblowing Policy

- Minor updates to references
- Corporate Support Manager rather than Audit Committee will lead on the review of this policy

Anti Fraud and Corruption Policy and Procedure

- CMT's zero tolerance commitment to bribery and corruption is highlighted and its profile raised
- Some further context of the Amber Alert is included
- The Council's expectations of partners and contractors regarding bribery and corruption is reinforced
- Housing benefit fraud investigations are now conducted by Department of Work and Pensions
- Corporate Support Manager rather than Audit Committee will lead on the review of this policy
- Various minor changes

Anti Fraud and Corruption Policy and Procedure Appendix B

- Minor changes to investigation plan

RECOMMENDATION

That Council approves the amendments to Appendices A, B, Q and R of the Constitution, as presented in the schedule to this report.

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Background Papers

Constitution Amended Appendix A:	MDC Code of Conduct for Members
Constitution Amended Appendix B:	MDC Code of Conduct for Officers'
Constitution Amended Appendix Q:	Whistleblowing Policy
Constitution Amended Appendix R:	Anti-Fraud and Corruption Policy and Strategy, Appendix A and Appendix B