

<b>Report to:</b>	<b>Trust Board</b>	<b>Agenda item:</b>	<b>11</b>
<b>Date of Meeting:</b>	<b>9 November 2011</b>		

<b>Title of Report:</b>	<b>Bribery Act 2010</b>
<b>Status:</b>	<b>For Approval</b>
<b>Board Sponsor:</b>	<b>James Scott, Chief Executive</b>
<b>Author:</b>	<b>Eric Sanders, Trust Board Secretary Hugh Webb, Local Counter Fraud Specialist</b>
<b>Appendices</b>	<b>Appendix 1 – Bribery Act 2010 – Initial Risk Assessment Appendix 2 - Statement from the Chief Executive</b>

<b>1. Purpose of Report (Including link to objectives)</b>
This report gives an overview of the requirements of the Bribery Act 2010 and subsequent actions required by the Trust Board.

<b>2. Summary of Key Issues for Discussion</b>
<ul style="list-style-type: none"> <li>• The Bribery Act 2010 came into force on 1 July 2011;</li> <li>• The Trust is required to abide by the Bribery Act 2010 and in doing so undertake a risk assessment to determine the exposure to the organisation from bribery and corruption. This risk assessment should be reviewed periodically;</li> <li>• A preliminary risk assessment has been undertaken and identifies a number of areas where further work is required to strengthen the current systems and processes. This includes updating a number of policies including the Procurement Policy and the Code of Conduct of Employees Policy;</li> <li>• The Trust is required to nominate an individual to ensure that procedures are in place. It is proposed that this is the Trust Board Secretary.</li> </ul>

<b>3. Recommendations (Note, Approve, Discuss etc)</b>
<p>The Trust Board is asked to:</p> <ul style="list-style-type: none"> <li>• Note the implications of the Bribery Act 2010 on the Trust;</li> <li>• Approve the Trust Board Secretary as the nominated officer in relation to the Bribery Act 2010;</li> <li>• Approve the statement from the Chief Executive in relation to the top level commitment to prevent bribery and corruption.</li> </ul>

<b>4. Care Quality Commission Outcomes (which apply)</b>
The requirements of the Bribery Act 2010 link to the requirements of Outcome 26: Financial position. The Trust is required to have the financial resources needed to provide the services as described in the statement of purpose to the required standards. If the Trust was subject to corruption or bribery the consequences may impact on the Trust being able to fulfil this obligation.

<b>5. Legal / Regulatory Implications (NHSLA / Value for Money Conclusion etc)</b>
This report details the requirements on the Trust following the implementation of the

Bribery Act 2010.

**6. NHS Constitution**

This report links to Principle 6 of the NHS Constitution which states - The NHS is committed to providing best value for taxpayers' money and the most effective, fair and sustainable use of finite resources.

**7. Risk (Threats or opportunities link to risk on register etc)**

The report contains a risk assessment of the implications of the Bribery Act 2010 and the required mitigations.

**8. Resources Implications (Financial / staffing)**

There are no identified additional costs associated with implementing the requirements of the Bribery Act 2010.

**9. Equality and Diversity**

The associated review of policies and procedures to ensure that they meet the requirements of the Bribery Act 2010 will include an assessment to ensure that they do not discriminate against any members of staff or the public.

**10. Communication**

The Trust Board is required to communicate its commitment to preventing Bribery to its staff and stakeholders. If agreed by the Trust Board the statement from the Chief Executive will be communicated to all staff via the email broadcast system, copies will be attached to payslips and the statement will be posted onto the Trust website.

**11. References to previous reports**

The Audit Committee considered a paper from the Local Counter Fraud Specialist on 10 October 2011.

**12. Freedom of Information**

This report is not exempt under the Freedom of Information Act.

## 1. Background

- 1.1. The Bribery Act 2010 (“the Act”) came into effect on 1<sup>st</sup> July 2011 and reformed the criminal law concerning bribery and corruption, making it easier to tackle these offences proactively in the public and private sector. It introduces a corporate offence which means that commercial organisations will be exposed to criminal liability, punishable by an unlimited fine, for failing to prevent bribery. This legislation repeals the UK’s existing anti-corruption legislation.
- 1.2. In its simplest terms Bribery is the practice of offering a gift in exchange for benefits. Whilst money is a classic bribe, bribes can also be more intangible, and they might include things like offers of property, valuable objects, or a promise to perform a particular service in the future. In order to be considered a bribe, the object of value must be offered and accepted with the understanding that the person who accepts the bribe will be doing something in return. This differentiates bribes from gifts offered in genuine good will, and also distinguishes bribery from tipping, a practice in which gifts are offered in return for good service.

## 2. Summary of the Act

- 2.1. A number of offences are created in the Act and these can be summarised as follows:
  - The Act makes it a criminal offence to give or offer a bribe, or to request, offer to receive or accept a bribe, whether in the UK or abroad; and
  - The Act makes it an offence for a director, senior manager or officer of a business to allow or turn a blind eye to bribery within the organisation; and
  - The Act introduces a corporate offence of failure to prevent bribery by persons working for or on behalf of a commercial organisation (the section 7 offence).
- 2.2. An organisation may avoid prosecution for the section 7 offence (bullet point 3 above) if it can show that it had adequate procedures and protocols in place to prevent bribery. The corporate offence is not a stand-alone offence, but always follows on from an act of bribery committed by an individual associated with the company or organisation in question.
- 2.3. NHS Protect and the Department of Health have advised that health bodies should take steps toward compliance with the Act and official guidance. Sections 4 and 5 of this document outline the actions that organisations should take to ensure compliance. This document draws on advice and guidance issued by NHS Protect, the Department of Health and the Ministry of Justice.

## 3. Remit of the Act

- 3.1. The Department of Health Legal Service has advised that if a body is incorporated under the law in the United Kingdom, then that is sufficient for it to fall under

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section 7 of the Act. Consequently, NHS bodies such as PCTs, NHS trusts, NHS Foundation Trusts, Strategic Health Authorities, Special Health Authorities and the proposed NHS Commissioning Board will all be bodies corporate because they are established by order of the Secretary of State under statute. As such, they will be corporately liable unless they put in place, adequate preventative procedures, for acts of bribery committed by persons employed by them or acting on their behalf.

#### 4. The Risks of Breaching the Bribery Act

4.1. There are a number of risks to both NHS bodies and their staff from breaching the Act.

4.2. Criminal sanctions for breach of the Act are potentially very severe and can be brought against directors, board members and other senior staff. There is no upper limit on the level of fines that can be imposed. An individual convicted of an offence will face a prison sentence of up to 10 years. If a bribery offence by a staff member is proved to have been committed with the consent or connivance of a director, manager or other senior person, that person is also guilty of the offence and liable for prosecution.

4.3. Other risks include:

- Reputational damage through investigation and prosecution;
- Being precluded from future procurement contracts;
- Loss of resources;
- The cost of investigation and/or defence of any legal action.

#### 5. Risk and Proportionality

5.1. The Ministry of Justice guidance states:

“Organisations should adopt a *risk-based approach* to managing bribery risks...[and] an initial assessment of risk across the organisation is therefore a necessary first step.”

5.2. Hugh Webb, Local Counter Fraud Specialist, has completed a Fraud Risk Assessment which was presented to, and accepted by, the Audit Committee on 10 October 2011. This included the requirements of the Bribery Act and identified a number of actions required to address the identified gaps.

5.3. Following the Audit Committee, the Trust Board Secretary and the Local Counter Fraud Specialist, undertook a further more in-depth review of the requirements of the Act and completed the Risk Assessment Tool, designed by the Dorset and Somerset Counter Fraud and Security Management Service, to measure the effectiveness of the Trust's high-level arrangements to prevent bribery and corruption. This identified that on the whole the Trust will be compliant with the requirements of the Act subject to the approval of a number of areas by the Trust

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Board on 9 November 2011. These are outlined in the risk assessment Tool presented in Appendix 1.

5.4. It is recommended that this risk assessment is reviewed on a periodic basis and therefore this will be completed annually in line with the refresh of the Fraud Risk Assessment.

5.5. The guidance goes onto state that once risks have been assessed, organisations should put in place procedures that are *proportionate* to the bribery risks that have been identified. The greater the bribery risks identified by the organisation, the more comprehensive it's preventative procedures should be. Conversely, an organisation that has identified fewer and lesser risks will need less comprehensive procedures.

## 6. Top Level Commitment

6.1. Those at the top of an organisation are in the best position to ensure that their organisation conducts its activities transparently and protects itself against bribery. Therefore, the Chief Executive Officer (or equivalent) should make a statement concerning the Trust's position on corruption and bribery and this statement should be communicated to its staff and business partners. A draft statement is presented in Appendix 2 for review and approval.

6.2. The Trust Board should take overall responsibility for the implementation of effective anti-bribery measures. The Trust Board should ensure that these measures are embedded in the culture of the organisation.

6.3. The Ministry of Justice guidance refers to the following six principles governing the implementation of Adequate Procedures:

- Proportionate procedures;
- Top level commitment;
- Risk assessment;
- Due diligence;
- Communication & training;
- Monitoring & review;

6.4. The Ministry of Justice guidance recommends that a Senior Manager with access to the Trust Board, ideally a Director, should be nominated to ensure that procedures are in place. The Counter Fraud Service also recommends that the nominated manager maintains an evidence file. This will form the basis of any defence under section 7 of the Act. An annual report should be sent to the Trust Board by the nominated individual, detailing the work undertaken and the measures taken to provide assurance to the Trust Board. It is proposed that the Trust Board Secretary is the nominated individual as the requirements of the Bribery Act are closely linked

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to other aspects of the Trust Board Secretary's role, including oversight of the register of interests, gifts and hospitality.

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### Appendix 1 – Bribery Act 2010 – Initial Risk Assessment

This Risk Assessment Tool below was designed by the Dorset and Somerset Counter Fraud and Security Management Service, to measure the effectiveness of the Trust's high-level arrangements to prevent bribery and corruption. This has been completed with comments to describe current compliance and/or further actions to improve compliance.

Bribery Act Requirement	Compliant?	Comment/Action <i>(Action lead in brackets)</i>
1. Have Board members received any briefing on the Bribery Act?	Yes (after 9 November 2011)	Update provided to the Audit Committee on 10 October 2011 and Trust Board on 9 November 2011
2. Has the Health Body's Board stated a clear zero tolerance to Bribery and Corruption to its staff?	Yes (after 9 November 2011)	Draft statement presented to the Trust Board for approval on 9 November 2011. This will be communicated to all staff as well as being published on the Trust website <i>(Trust Board Secretary)</i>
3. Does the Trust have a nominated officer responsible for anti-bribery arrangements?	Yes (after 9 November 2011)	The Trust Board Secretary has been proposed as the nominated officer
4. Does the Health Body clearly portray a zero tolerance to Bribery and Corruption and expect a similar approach from those with which they do business?	Yes (after 9 November 2011)	Draft statement presented to the Trust Board for approval on 9 November 2011. This will be communicated to all staff and partner organisations, as well as being published on the Trust website. <i>(Trust Board Secretary)</i>  The procurement policy is also being revised to ensure adherence to the Bribery Act. This will include a requirement for those with whom the Trust is contracting to have stated a zero tolerance to Bribery and Corruption. <i>(Head of Procurement)</i>
5. Does the Health Body have effective mechanisms for reporting suspicions and allegations of bribery and corruption?	Yes	Staff within the Trust, have access to the Local Counter Fraud Service and the Security Management Service, through which concerns can be raised. In addition a communication to staff after the Trust Board

Bribery Act Requirement	Compliant?	Comment/Action <i>(Action lead in brackets)</i>
		meeting on 9 November 2011 will include contact details for the nominated officer and the Local Counter Fraud Service. <i>(Trust Board Secretary)</i> The Raising Concerns, Whistleblowing and Counter Fraud policies will also be amended to reflect the requirements of the Bribery Act. <i>(Local Counter Fraud Specialist)</i>
6. Are the provisions of the Bribery Act adequately addressed within Trust policies?	No	In addition to the policies identified in 5 above, the Code of Expectations of Employees and Standing Financial Instructions will be amended to reflect the requirements of the Bribery Act. <i>(Local Counter Fraud Specialist)</i>
7. Does the Health Body maintain a register of interests which is regularly reviewed?	Yes	The register of interests is managed by the Trust Board Secretary and is reviewed annually.
8. Does Trust maintain a register of gifts and hospitality which is regularly reviewed?	Yes	The register of gifts and hospitality is managed by the Trust Board Secretary and is reviewed annually.
9. Does the Health Body have adequate arrangements to consider offers of sponsorship?	Yes	The Code of Expectations of Employees outlines the approval process for offers of sponsorship and a clear statement that this will not impact on future purchasing decisions.
10. Does the Trust have adequate arrangements to ensure any intermediaries or agents abide by the provisions of the Bribery Act?	No	The current procurement process addresses this issue to an extent however the procurement policy will be revised to ensure full adherence to the Bribery Act, particularly in relation to pharmaceutical procurement which has been identified as an area for more in-depth review. <i>(Head of Procurement)</i>
11. Does the Health Body have adequate arrangements in place to prevent bribery and corruption within its procurement, capital planning and estates departments?	Yes	The current procurement process adequately addresses this issue however the procurement policy will be revised to ensure adherence to the Bribery Act. <i>(Head of Procurement)</i>

Other areas of risk which have been identified include:

Area of Risk	Assessment of Risk
<b>Country risk</b>	The Trust conducts little or no business with overseas companies. <b>Low risk</b> Mitigation – Procurement team to monitor levels of activity outside of UK and review with LCFS during 2012/13.
<b>Sector risk</b>	A 2008 survey by Transparency International found that Public Works and construction was the most likely area to experience bribery and pharmaceuticals the 6th. Provided adequate controls are in place and confirmed to be working this risk is mitigated. <b>Low risk</b> Mitigations: Procurement Policy to be refreshed to reflect the requirements of the Bribery Act 2010. Chief Pharmacist to review arrangements for the purchasing of pharmaceuticals to ensure adherence to the Bribery Act.
<b>Transaction Risk</b>	Government guidance suggests that the highest risks include charitable or political contributions, licences and permits, and transactions relating to public procurement. In this aspect, work should be undertaken to ensure that the Trust's larger projects have robust anti-bribery controls in place. <b>Low risk</b> Mitigations: Procurement Policy to be refreshed to reflect the requirements of the Bribery Act 2010. Charitable donation agreements to be reviewed in relation to the Act.
<b>Business Opportunity Risk</b>	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. In this aspect, work should be undertaken to ensure that the Trust's larger projects have robust anti-bribery controls in place. <b>Low risk</b> Mitigations: Procurement Policy to be refreshed to reflect the requirements of the Bribery Act 2010.

Area of Risk	Assessment of Risk
<b>Business Partnership Risk</b>	<p>Certain relationships may involve higher risk, for example, the use of intermediaries in transactions with foreign public officials; consortia or joint venture partners; and relationships with politically exposed persons where the proposed business relationship involves, or is linked to, a prominent public official.</p> <p>The Trust has very little or no dealings with foreign public officials or prominent or political figures. Services may be open to a market testing regime. <b>Low risk</b></p> <p>Mitigations: On-going monitoring of procurement process and activity.</p>

## Appendix 2 - Statement from the Chief Executive

The Bribery Act 2010

Statement from the Chief Executive

The Bribery Act 2010 came into force on 1 July 2011 to make it easier for bribery and corruption to be tackled proactively in the public and private sectors.

The Royal United Hospital Bath NHS Trust supports the Bribery Act and is committed to ensuring we comply with its standards and six core principles, one of which requires top level commitment to the prevention of bribery.

The Trust Board is committed to preventing bribery within the Trust and within organisations with whom the Trust contracts. We aim to foster a culture in which bribery is never acceptable. Work is underway to ensure our policies are updated and consistent, in line with the requirements in the Bribery Act, and to ensure that our staff and partner organisations understand their importance.

On behalf of the Board of Directors, I confirm our commitment to ensuring that Royal United Hospital Bath NHS Trust is free of bribery and corruption.

James Scott  
Chief Executive  
Royal United Hospital Bath NHS Trust