

MEETING: Governing Body – Open Meeting

Item Number: 8.1

DATE: 25 February 2014

REPORT TITLE:	CCG Governing Body Advisory Paper - Anti-Bribery Compliance Strategy
REPORT AUTHOR:	Kerry Wheat – Local Counter Fraud Specialist [Mersey Internal Audit Agency]
PRESENTED BY:	Kerry Wheat – Local Counter Fraud Specialist [Mersey Internal Audit Agency]
RECOMMENDATIONS/DECISION REQUIRED:	Receive and Approve the Anti-Bribery Compliance Strategy
EXECUTIVE SUMMARY	
<p>The requirements and responsibility for the CCG’s anti-fraud and corruption activity is established within the financial regulations and in line with best practice and statutory requirements under the 2013/14 NHS Standards Contract. The CCG employ Mersey Internal Audit Agency (MIAA) to provide local internal audit and counter fraud provisions.</p> <p>In July 2011 new legislation was introduced to tackle bribery and corruption. Under the new Bribery Act, an organisation can be found guilty of a new corporate criminal offence of “failing to prevent bribery” if someone associated with the organisation is convicted of a bribery offence, unless it can demonstrate that it had introduced adequate corporate counter-measures. Bribery should be seen as another business risk to the CCG and should be treated accordingly. The Local Counter Fraud Specialist has developed the CCG’s Anti-Bribery Strategy to enable the organisation to demonstrate that it has introduced ‘adequate procedures’ to prevent bribery.</p> <p>The Anti Bribery Compliance Strategy identifies the core actions, key responsibilities and timescales for implementation. The core actions and significant counter measures are not exhaustive and the strategy is meant to be flexible and adaptive as it is periodically reviewed in light of experience, practice and any developments in legislative interpretation of the Bribery Act.</p> <p>The Governing Body is asked to receive and approve the Anti Bribery Compliance Strategy and to note the agreed and embedded actions by the CCG and Local Counter Fraud Specialist.</p>	
FURTHER ACTION REQUIRED:	

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Wigan Borough Clinical Commissioning Group
CCG Governing Body Advisory Paper: Anti-Bribery Compliance Strategy

To: Wigan Borough CCG Governing Body

From: Local Counter Fraud Specialist

Date: 6 February 2014

Re: CCG Governing Body Advisory Paper: Anti-Bribery Compliance Strategy

1. Introduction

- 1.1 The Bribery Act 2010 (http://www.opsi.gov.uk/acts/acts2010/ukpga_20100023_en_1) came into force on 1st July 2011, reforming the criminal law of bribery making it easier to tackle this offence proactively in the public and private sectors. In addition to personal offences under Sections 1, 2 and 6 of the Act, which carries custodial sentences of up to 10 years and potentially unlimited fines, it introduced a corporate offence (under Section 7) which means that commercial organisations will be exposed to criminal liability, punishable by an unlimited fine, for failing to prevent bribery.
- 1.2 The Act repealed the United Kingdom's existing anti-corruption legislation – the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Acts of 1906 and 1916 and the common law offence of bribery – and provides an updated and extended framework of offences to cover bribery both in the United Kingdom and abroad.
- 1.3 There have already been a small number of convictions of public officials under the Bribery Act <http://thebriberyact.com/2013/04/24/botched-bribery-attempt-results-in-bribery-act-conviction-no-3-for-son-of-chinese-foreign-public-official/>
- 1.4 The Department of Health Legal Service has advised that as long as a body is incorporated under the law in the United Kingdom, then that is sufficient for it to fall under Section 7 of the Act. Consequently, NHS bodies such as NHS Trusts, Foundation Trusts, Special Health Authorities and Clinical Commissioning Groups (CCG's) are all deemed to be relevant corporate bodies. NHS England (the NHS Commissioning Board) also falls under the provisions of the Act. All these organisations will become liable unless they put in place 'adequate preventative procedures', for acts of bribery and corruption committed by 'persons associated' with them, in the course of their work.

- 1.5 'Persons associated' can mean employees, temporary and agency personnel, contractors, agents, suppliers, partners and Joint Ventures, as well as other individuals or organisations (whether incorporated or not) that may provide a service.
- 1.6 For the purposes of the Bribery Act, a 'trade' or 'profession' is considered a business. This means that, whether individually or in partnership, GPs, pharmacists, dental practitioners, opticians, finance professionals etc will also be subject to, and personally liable under, the Bribery Act.

2. Definition

- 2.1 Bribery is generally defined as an inducement or reward offered, promised or provided to someone to perform their functions or activities improperly in order to gain a personal, commercial, regulatory and/or contractual advantage, on behalf of oneself or another.

3. Risks of Non Compliance

- 3.1 There are a number of risks entailed in breaching the Bribery Act. These include:
- 3.1.1 Criminal justice sanctions against directors, board members and other senior staff (under Section 14);
 - 3.1.2 Damage to the organisation's reputation (something which also may have financial implications);
 - 3.1.3 Conviction of bribery or corruption may lead to the organisation being precluded from future public procurement contracts. *[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 current plans to amend the 2006 Regulations for this to include the crime of failure to prevent bribery. Organisations which are convicted of failing to prevent bribery are not automatically barred from participating in tenders for public contracts; however, there is discretion to exclude organisations convicted of this offence if it is deemed appropriate.]*
 - 3.1.4 Potential diversion and/or loss of resources;
 - 3.1.5 Unforeseen and unbudgeted costs of investigations and/or defence of any legal action;
 - 3.1.6 Negative impact on patient/stakeholder perceptions.

4. Bribery Act Offences

4.1 In summary, there are 4 key offences under the Act:

4.1.1 **Section 1** - Offering, promising or giving a bribe to another person to perform a relevant 'function or activity' improperly, or to reward a person for the improper performance of such a function or activity.

4.1.2 **Section 2** - Requesting, agreeing to receive or accepting a bribe to perform a function or activity improperly, irrespective of whether the recipient of the bribe requests or receives it directly or through a third party, and irrespective of whether it is for the recipient's benefit.

4.1.3 **Section 6** - Bribing a foreign public official (probably of limited applicability to most NHS organisations/staff).

4.1.4 **Section 7** - Failure of a commercial organisation to prevent bribery (the corporate offence). This is a 'strict liability'* offence and an organisation can be found guilty of 'attempted' or 'actual' bribery on the organisation's behalf, even if the organisation and its officers were not aware of the bribery itself. It should be noted that a corresponding Section 1 or Section 6 offence needs to be proven for a section 7 offence to apply.

** Strict liability offences do not require proof of intention or recklessness – in other words, it is not necessary for the prosecution to show that the organisation intended to make the bribe in bad faith, or that it was negligent as to whether any bribery activity took place.*

4.2 An organisation will have a defence to the corporate offence if it can demonstrate that it had in place 'adequate procedures' as part of a cohesive and integrated corporate anti-bribery and corruption ('ABC') strategy designed to prevent bribery by, or of, persons associated with the organisation.

5. Adequate Procedures

5.1 The Act is not prescriptive as to what constitutes 'adequate procedures', although both the Ministry of Justice (MoJ) and NHS Protect have provided guidance as to what form these procedures might take, depending on the nature, size and type of organisation. Adequate procedures need to be applied proportionally, based on the level of risk of bribery across the organisation, and form part of an organisation's overall governance arrangements.

5.2 Adequate procedures relate to relevant compliance protocols and transparent procedures and measures which an organisation can put in place to prevent bribery by individuals associated with it. These might include training, briefings or new internal controls and procedures.

Whether the procedures are adequate will ultimately be a matter for the courts to decide on a case by case basis.

5.3 The MoJ has suggested that an effective ABC strategic framework could be informed by six principles:

5.3.1 **Principle 1 – 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. For example, the implementation of strong 'declarations of interest' procedures and a gifts and hospitality policy.

5.3.2 **Principle 2 – Top-Level Commitment.** The top-level management of an organisation (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.

5.3.3 **Principle 3 – Risk Assessment.** 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.

5.3.4 **Principle 4 – Due Diligence.** 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.

5.3.5 **Principle 5 – Communication (inc. Training).** The organisation seeks to ensure that its bribery prevention policies and procedures are embedded and understood throughout the organisation via internal and external communication, including training, which is proportionate to the risks faced.

5.3.6 **Principle 6 – Monitoring & Review.** The organisation monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary. It considers independent assessment and/or certification of its arrangements.

6. Existing Counter Measures & Arrangements

6.1 The NHS is already ahead of many other public and private sector organisations in that most of these core principles are already in existence in some form or other due to the long-established corporate governance, audit and robust internal control arrangements which already operate throughout the health sector.

- 6.2 In addition, the embedded counter fraud and corruption measures introduced under the Secretary of State's Directions over a decade ago in the majority of NHS bodies have prepared much of the groundwork in ensuring that a significant proportion of policies and processes which are likely to constitute 'adequate procedures' are already in place, and should only require minimal adaptation, dovetailing or enhancement for CCG implementation.
- 6.3 Bribery should be seen as another business risk to the organisation and should be treated accordingly. It is the responsibility of everyone in the organisation playing their part to ensure both the likelihood of bribery occurring, and its adverse impact if it does, are kept to an absolute minimum. However, as with the counter fraud strategy, the implementation of an anti-bribery agenda backed by a zero tolerance culture should be driven from the very top of the organisation, at governing body level.
- 6.4 MIAA's Internal Audit (IA) and Anti-Fraud (AF) Services can directly assist and support the organisation and its senior management, through existing IA and AF plans, in ensuring that the necessary additional measures or the amendment of existing policies and procedures take place smoothly, in a timely and integrated manner and with minimal business disruption.
- 6.5 An effective ABC strategy is as much about perception as it is reality. The matrix in the action plan identifies the core actions which should be implemented, in accordance with the six principles noted above; the possible methods by which those core actions would be implemented; and, the identification of responsibilities and timescales for implementation. The core actions and consequential counter measures are not exhaustive and the strategy is meant to be flexible and adaptive in light of experience, practice and any developments in legislative interpretation of the Act once going forwards.

Sources:

- a) Bribery Act (MoJ Final Guidance) <http://www.cipfanetworks.net/fileupload/upload/briberyact2010guidance142011261754.pdf>
- b) Bribery Act (MoJ Quick Start Guide) http://www.cipfanetworks.net/governance/documentation/download_open.asp?sref=TV4PXC437&filename=http://www.cipfanetworks.net/fileupload/upload/briberyact2010quickstartguide142011271739.pdf
- c) NHS Protect – Bribery Act Guidance (Version 16 updated 19/05/11) – available from the LCFS.
- d) NHS Protect – Frequently Asked Questions – available from the LCFS.
- e) Transparency International (UK) www.transparency.org.uk
- f) The UK Anti-Corruption Forum www.anticorruptionforum.org.uk/acf/pages/acf.php

CCG ANTI-BRIBERY COMPLIANCE STRATEGY (FEBRUARY 2014)

No.	Core Actions	MoJ Principles	Recommended Actions	Responsibilities	Actions To Date	Actions to Do	Completion Status/Date
1.	A clear and unequivocal commitment from the CCG's Governing Body / Senior Management to combat bribery, communicated across the organisation to all its staff and partner organisations.	2, 5	a) A clear, joint statement from the Governing Body Chair and Accountable Officer (AO) / Chief Finance Officer (CFO), reported via various internal CCG media, introducing the Act, noting the intention to introduce enhanced counter measures, and establishing a zero tolerance culture with everyone playing their part.	CCG Governing Body, Executive Management, supported by communications and the LCFS.	Joint Statement drafted by LCFS and approved by CFO.	Statement to be included on Anti Fraud SharePoint page and circulated via global email from CFO	Partially Completed - 26 th February 2014
			b) Periodic updates on ABC compliance to be provided to the Governing Body.	As above.	Annual update (this document).	Update ABC strategy annually.	Completed
			c) The appointment of a senior manager at executive level (i.e. AO or CFO) to oversee AB&C implementation on behalf of the Governing Body.	As above.	Assistant Director of Financial Control and Governance / CFO to monitor.	N/A	Completed
			d) Delegated authority to Audit Committee for strategy implementation and progress reporting.	As above.	Paper prepared for Governing Body	Governing Body to note this document.	Completed February 2014



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No.	Core Actions	MoJ Principles	Recommended Actions	Responsibilities	Actions To Date	Actions to Do	Completion Status/Date
2.	<p>Establish a clear AB&C policy and ensure that all relevant operational policies, procedures and documentation are also 'bribery-proofed'.</p> <p>The updated arrangements should be communicated to all relevant personnel and 3rd parties.</p>	1, 5	a) Ensure the Anti-Fraud, Bribery & Corruption Policy reflects the Bribery Act provisions alongside existing fraud references	a) LCFS / CFO.	Revised AB&C policy devised and approved by CCG Audit Committee (June 2013)	N/A	Completed June 2013
			b) Review, amend and dovetail all related policies and procedures to reflect AB&C provisions, for example: <ul style="list-style-type: none"> ▪ Whistleblowing policy; ▪ Disciplinary policy and procedures; ▪ Ethics / Conduct codes and policies 	b) HR, supported by the LCFS.	The LCFS has reviewed key CCG policies including; Whistleblowing Disciplinary and Financial Management Policies and provided recommendations to HR to ensure robust measures are in place.	N/A	Completed April 2013 – February 2014 (as agreed within the LCFS 2013-14 workplan)
			c) Review and amend all other relevant policies, procedures and documentation to ensure they reflect AB&C provisions. For example: <ul style="list-style-type: none"> ▪ Hospitality & Gifts policy / register; 	c) Relevant Personnel / Service Leads, supported by	The LCFS has undertaken a review of the CCG's Financial Management Policy including the	The LCFS to continue to provide advice, guidance and training as and when required by principle officers and review CCG	Completed April 2013 – February 2014 (as agreed

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No.	Core Actions	MoJ Principles	Recommended Actions	Responsibilities	Actions To Date	Actions to Do	Completion Status/Date
Page 22			<ul style="list-style-type: none"> ▪ Declarations of Interest requirements; ▪ Contracts of Employment, Job Descriptions / Application Forms; ▪ Contract Terms & Conditions of Business for third parties; ▪ Procurement protocols & SOPs. 	the LCFS.	SFIs/SOs/Gifts & Hospitality/Declarations of Interests as well as the Procurement Strategy to ensure fraud and bribery narrative is up to date and that the policies have adequate anti fraud, bribery and corruption measures in place.	policies as part of the review programme.	within the LCFS 2013-14 workplan)
	The CCG should review and assess its exposure to the risk of bribery across all areas of the organisation. High risk areas should review existing control and due diligence procedures for adequacy and	1, 3, 4	a) The CCG should assess those areas which are potentially exposed to bribery risks. These areas are likely to include: those which deal with <u>all</u> 3 rd party appointments, contracts or negotiations; and, those which are responsible for procuring any goods or services for the organisation. Risk areas could include, but not be limited to: <ul style="list-style-type: none"> ▪ Procurement / Purchasing (including devolved procurement areas); ▪ Executives involved in buying 	a) Executive management and relevant key personnel, supported by the LCFS.	The LCFS has reviewed the CCG Procurement Strategy in January 2013 and provided the CCG with recommendations for the inclusion of robust measures within the policy including reference to the Bribery Act 2010 and Fraud.	N/A	Completed January 2013

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Page 23	effectiveness.		consortiums; ▪ Key personnel approached by medical manufacturers to trial/sponsor new 'kit' or trialling new pharmaceutical products.		The CCG is supported by the North West Healthcare Procurement Team, which is part of the Commissioning Support Service (CSS) Healthcare Procurement Team, who has overall responsibility for the implementation of the strategy.		
			b) For high risk areas identified, the CCG should facilitate bribery risk workshops to: (i) identify specific risk exposure points (now and in the future); (ii) determine the adequacy of existing controls (including due diligence checks) to mitigate those risks; (iii) agree corrective actions where necessary; and, (iv) advise relevant staff on the potential 'red flag' indicators of bribery to look out for; and, (v) what steps to take if bribery is suspected or found.				

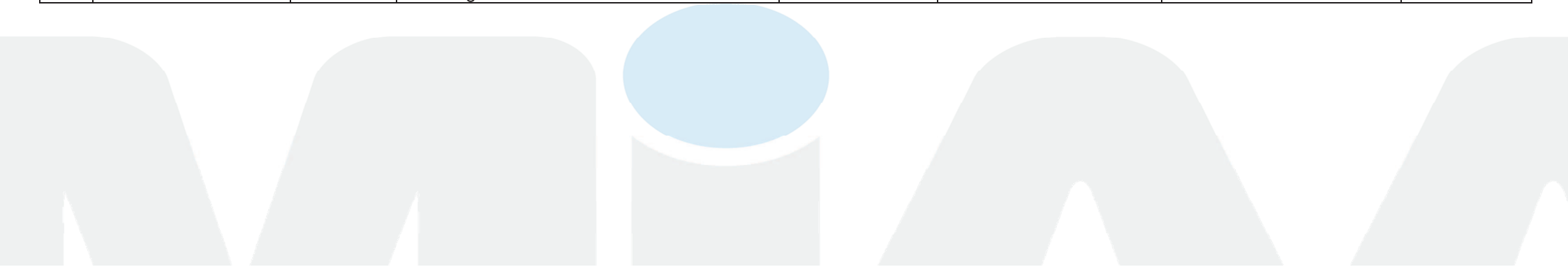


CCG ANTI-BRIBERY COMPLIANCE STRATEGY (FEBRUARY 2014)

No.	Core Actions	MoJ Principles	Recommended Actions	Responsibilities	Actions To Date	Actions to Do	Completion Status/Date
					CCG's rolling training programmes for non-finance staff throughout the financial year.		
4.	The CCG ensures that effective due diligence arrangements are in place both in respect of all 3 rd party dealings, but also with regard to the recruitment and appointment of personnel working within 'high risk' areas of the organisation.	1, 4	a) The CCG should review the adequacy of its due diligence arrangements when dealing with all 3 rd parties and ensure that at the outset of any business dealings (regardless of materiality or duration), all potential, new and existing partners are made aware in writing of the organisation's anti-bribery policy, reporting arrangements and expected standards of conduct.	a) Relevant Personnel / Service Leads, supported by the LCFS.	The CCG is supported by the North West Healthcare Procurement Team who has overall responsibility for the implementation of the Procurement strategy. Anti bribery messages are continually promoted with 3 rd parties and the rolling programme of training by the LCFS reinforces the CCG's standards of conduct.	N/A	Completed – embedded practice
			b) Due diligence arrangements should be graduated in their application based on perceived levels of bribery risk,	b) Relevant Personnel, supported by	As above – procurement support is provided by North West Healthcare	N/A	Completed – embedded practice

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Page 25			materiality, duration, 3 rd party location etc. c) Due diligence also applies to individuals as well as to organisations. This is commonly known as 'staff vetting'. The adequacy of recruitment procedures in respect of all personnel (including temporary and contract staff) working in 'high risk' areas should be considered and enhanced where necessary.	the LCFS. c) Relevant Personnel, supported by the LCFS.	Procurement Team. The CCG currently has an SLA with CSU to provide recruitment services including advertisement, shortlisting and pre-employment checks including CRB (DBS), Right to Work, qualifications and references.	N/A	Completed – embedded practice
	5.	The CCG implements clear anti-bribery awareness and training for all personnel and third parties , in addition to specific training for 'front line' staff.	5	a) These measures are in addition to the specific measures recommended at 1a), 2a-c) and 3b). b) The LCFS should ensure all counter fraud awareness materials (including presentations, publications etc) reflect anti-bribery provisions and include reference to the CCG's anti-bribery arrangements in awareness and	a) N/A – as above. b) LCFS	N/A The LCFS has provided the CCG with various anti fraud, bribery and corruption materials including posters and leaflets. All LCFS	N/A N/A Completed April 2013 (The LCFS continually reviews and



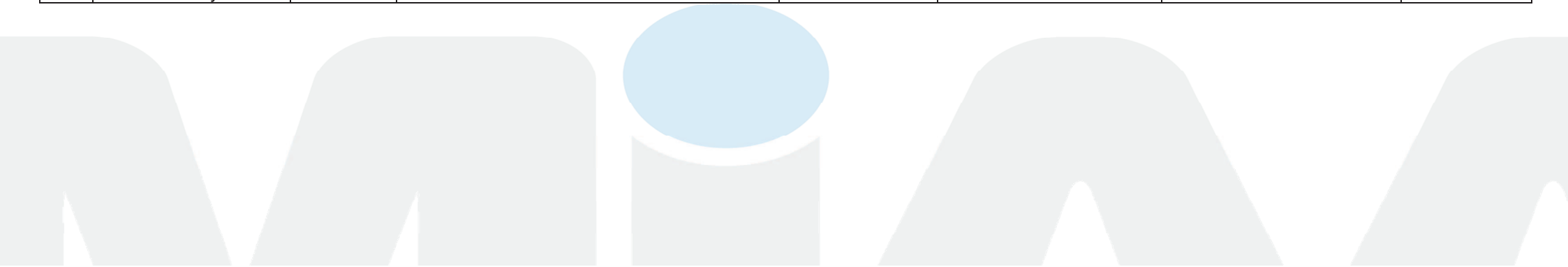
CCG ANTI-BRIBERY COMPLIANCE STRATEGY (FEBRUARY 2014)

No.	Core Actions	MoJ Principles	Recommended Actions	Responsibilities	Actions To Date	Actions to Do	Completion Status/Date
Page 26			<p>prevention activities.</p> <p>c) All reporting procedures and mechanisms for any staff or 3rd parties to raise any concerns should include reference to bribery, indicating that any such concerns should be reported to the LCFS, the National Fraud & Corruption reporting options, the Whistleblowing policy or CFO etc.</p>	<p>c) Relevant Personnel / Policy Owners etc, supported by the LCFS.</p>	<p>presentations make reference to anti bribery provisions and the Counter Fraud website within SharePoint provides continued reference to these key areas.</p> <p>The LCFS has reviewed the CCG's Whistleblowing Policy in October 2013 and mapped it against Whistleblowing 'good practice'. The LCFS provided narrative recommendations as well as a model whistleblowing template for the CCG's consideration. The CCG shared the template</p>	<p>N/A</p>	<p>updates information on SharePoint</p> <p>Completed October 2013</p> <p>The LCFS ensures that all procedures and notifications to staff highlight the official reporting</p>



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Page 27					police with the People Services team in GM and upon reflection felt that the template policy was much better than the one that GM had which was a BSA policy, so WBCCG have agreed to adopt the policy the LCFS recommended. The policy will also be considered across Greater Manchester.		lines for any concerns or suspicions for fraud or bribery.
6.	The CCG ensures that there are adequate monitoring and review arrangements are in place to assess the effectiveness of its anti-bribery	6	a) The CCG should request Internal Audit to review the adequacy and appropriateness of its anti-bribery measures once they have been embedded in the organisation as a means of assurance. IA should then perform a review periodically thereafter.	a) Executive Management / Internal Audit	MIAA Internal Audit services have undertaken a Conflicts of Interest Review in 2013. The review included declaration of interests, procurement commissioning and conflicts of interest – all	N/A	Completed November – December 2013



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No.	Core Actions	MoJ Principles	Recommended Actions	Responsibilities	Actions To Date	Actions to Do	Completion Status/Date
Page 28	provisions.				key risks within bribery. The LCFS has supported the review by undertaking a fraud detection review in December 2013 to identify any potential fraudulent or bribery activity.		
			b) The LCFS should utilise a Staff Survey to assess the awareness of anti-bribery provisions which have been implemented.	b) LCFS	The LCFS has devised a staff survey to assess the awareness of fraud and bribery provisions across the CCG.	Staff Survey to be circulated across the CCG	Partially Completed – staff survey to be completed in March 2014.
7.	Other Considerations.	6	a) The LCFS should ensure that any local risk assessment and proactive exercises include a consideration of the detection of bribery in the planning process of the areas being considered.	a) LCFS	The LCFS ensures that bribery risks are included within the CCG's fraud risk assessment and local detection exercises. In December 2013 bribery	N/A	Completed – embedded programme



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Page 29			b) The CCG should ensure that any audit, governance, compliance or quality assurance reviews which take place across the organisation are mindful of the risk of bribery and alert to potential indicators which may be detected in the course of their normal work.	b) As applicable.	was included within the local review of Conflict of Interests. The LCFS has conveyed the key messages relating to the risk of bribery to all relevant departments including audit and governance.	N/A	Completed – embedded programme
			c) The CCG should ensure that adequate records are maintained which record the existence and operation of anti-bribery controls across the organisation. These might include attendance records and evaluation feedback forms from bribery risk workshops, awareness sessions etc.	c) As applicable.	The LCFS has maintained records of all advice, training and delivery provided. The LCFs has advised all personnel trained / advised to ensure records are maintained.	N/A	Completed – embedded programme



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