

Audit Committee, 25 June 2013

Internal Audit Report – Bribery Act

Executive summary and recommendations

Introduction

Mazars has undertaken a review of HCPC's high level framework to prevent the offering or payment of bribes by staff or associates of HCPC as well as the receipt of bribes.

Decision

The Committee is asked to discuss and approve the report

Background information

This review was undertaken using the contingency days in the internal audit strategy and operational plan approved by the Committee on 13 March 2012.

Resource implications

None

Financial implications

Mazars' fees £27,000

Appendices

Internal Audit Report – Bribery Act

Date of paper

13 June 2013



Internal Audit Report

Bribery Act (08.12/13)

March 2013

FINAL REPORT

CONTENTS

	Page
1. Introduction	1
2. Background	1
3. Scope and objectives of the audit	1
4. Summary of findings	2
5. Action plan agreed with management	6

Appendix 1 – Definitions of Recommendations

AUDIT CONTROL SCHEDULE:

Client contacts	Tim Moore: Interim Finance Director Teresa Haskins: HR Director Louise Hart: Secretary to the Council	Internal Audit Team	Peter Cudlip: Partner Graeme Clarke: Director Karen Lowe: Director
Finish on Site \ Exit Meeting:	25 January 2013	Management responses received:	4 March 2013 11 March 2013
Draft report issued:	8 February 2013	Final report issued:	12 March 2013

In the event of any questions arising from this report please contact Graeme Clarke, Director, Mazars LLP graeme.clarke@mazars.co.uk

Status of our reports

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1. INTRODUCTION

- 1.1 As part of the Internal Audit Plan for 2012/13, we have undertaken an advisory review of the Health and Care Professions Council's (HCPC) high level framework to prevent the payment or offering of bribes by staff or 'associates' of HCPC, as well as the receiving of bribes. This review was undertaken using the Contingency days within the Plan.
- 1.2 We are grateful to the Interim Finance Director, HR Director and Secretary to the Council for their assistance during the course of the audit.
- 1.3 This report is for the use of the Audit Committee and senior management of HCPC. The report summarises the results of the internal audit work and, therefore, does not include all matters that came to our attention during the audit. Such matters have been discussed with the relevant staff.

2. BACKGROUND

- 2.1 The Bribery Act 2010 ("the Act"), which came into force on 1 July 2011, has significant implications for all organisations formed or doing business in the UK as, in particular, it introduces:
 - a new corporate offence of failure to prevent bribery (specifically relating to bribes being paid by, or on behalf of, the company in order to obtain a commercial advantage); and
 - offences by corporate bodies relating to the offer/payment or request/receipt of bribes where committed with the consent or connivance of a 'senior officer'.
- 2.2 An organisation can face prosecution if bribes have been paid or received, or if the intent to accept or offer bribes is shown. Penalties for companies and individuals found guilty of an offence under the Act are not insignificant, and include unlimited fines and imprisonment for up to 10 years. The reputational risk to the organisation and Board of getting this wrong is clearly material, and directors face being disqualified as a result of the organisation being found guilty of the offence.
- 2.3 The legislation poses a particular risk for persons charged with maintaining systems of internal control as, in the absence of any case law as yet, the current interpretation of the legislation is that under the corporate offence "senior officers", as well as directors, will be liable for prosecution if they cannot demonstrate having 'adequate procedures' in place to prevent bribery. A director, manager or similar employee of the organisation will be liable to be proceeded against if a bribery offence has been committed with their consent or involvement.
- 2.4 The implementation by an organisation of "adequate procedures" to prevent the payment of bribes provides a specific defence against the corporate offence.

3. SCOPE AND OBJECTIVES OF THE AUDIT

- 3.1 In conducting our high level review of HCPC's controls and processes to prevent the payment or offering of bribes by staff or 'associates' of HCPC, as well as the receiving of bribes, we considered the following areas:
 - Policies and procedures including Anti-Bribery, Fraud, Gifts and Hospitality, Declaration of Interest, due diligence on suppliers and contractors, and recruitment checks on staff;
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- Risk assessment used to determine where your operations may potentially be exposed to bribery and corruption, and any action plans arising from that assessment;
 - Policies and procedures in place to mitigate these risks;
 - Disseminating and communication of policies and procedures through communications and training to "at risk" employees and third parties who conduct business on the organisation's behalf (e.g. agents, consultants);
 - Due diligence processes;
 - Measures to monitor "at risk" functions, contracts and transactions; and
 - Procedures for responding to and investigating instances of misconduct.
- 3.2 Our assessment is based on a desktop review of key documentation provided to us by HCPC as well as a site visit involving interviews with the Interim Finance Director, HR Director and Secretary to the Council.
- 3.3 In giving our assessment, it should be noted that assurance cannot be absolute. The most an Internal Audit service can provide is reasonable assurance that there are no major weaknesses in the framework of internal control.
- 3.4 We are only able to provide an overall assessment on those aspects of the control framework that we have tested or reviewed. The responsibility for maintaining internal control rests with management, with internal audit providing a service to management to enable them to achieve this objective. Specifically, we assess the adequacy of the internal control arrangements implemented by management and perform testing on those controls to ensure that they are operating for the period under review. We plan our work in order to ensure that we have a reasonable expectation of detecting significant control weaknesses. However, our procedures alone are not a guarantee that fraud, where existing, will be discovered.

4. SUMMARY OF FINDINGS

Overall conclusions

- 4.1 Based on our desk top review of policies and procedures and discussions with the Interim Finance Director, HR Director and Secretary to the Council, we consider HCPC needs to take further action in order to achieve 'adequate procedures' in the anti-bribery control framework.
- 4.2 The table below summarises our assessment of where HCPC is against the six principles on 'adequate procedures' outlined in the Ministry of Justice's guidance to the Bribery Act. Green would indicate that no further immediate action is required, amber means that further action is required to achieve 'adequate procedures' in this area and red would indicate urgent action is required to strengthen the anti-bribery control framework.
- 4.3 The areas for improvement highlighted below have been discussed with management, to whom we have made a number of recommendations. The recommendations have been, or are being, addressed as detailed in the management action plan (Section 5 below).

Ministry of Justice Principle	Audit Findings
<p>Tone at the Top</p>	<ul style="list-style-type: none"> – The Bribery Act has been discussed by the Council in the context of an investigation by the National Audit Office (NAO) into the contents of an anonymous letter. – This audit report will be discussed at the next meeting of the Audit Committee. – However, there is no overall sponsor at a senior level for ensuring an anti-bribery culture and control framework is embedded, nor are there any existing plans for further reporting to the Council on the implications of the Bribery Act to the HCPC.
<p>Risk Assessment</p>	<ul style="list-style-type: none"> – An assessment of the bribery risks facing the HCPC has been carried out as part of our review. However, none had specifically previously been undertaken by HCPC. – The action plan contained within our report needs to be completed and arrangements made for emerging bribery risks to be considered going forward and captured, where appropriate, on the Corporate Risk Register.
<p>Proportionate procedures</p>	<ul style="list-style-type: none"> – There are a range of policies that are accessible on the HCPC internet site, including one relating to raising concerns. Although this relates specifically to concerns about professionals registered with the HCPC, there is general contact information and explanation around the independence of members to suggest adequate management of the risk that general concerns about HCPC staff, members, partners and other associated individuals regarding, for example bribery, fraud etc, are not reported due to a lack of clear guidance on how to report such concerns. – There are individual codes of conduct, covering gifts and hospitality and other related governance issues for members, staff and partners. HR would be able to evidence that the main governance related policies have been brought to the attention of staff and partners at their engagement (and similarly when partners' contracts are renewed after 4 years). – The provision of hospitality by the HCPC is minimal and considered low risk. – It would be good practice for the gifts and hospitality policies to require the registration of those items and invitations that have been declined as well as those that are accepted, and also to include the details of non-HCPC staff/members/partners who have benefited from the acceptance of hospitality. – The HCPC should develop supplier terms and conditions that make reference to compliance with the Bribery Act and where possible introduce them into all future contracts and for existing contracts as they come up for renewal.

Ministry of Justice Principle	Audit Findings
	<ul style="list-style-type: none"> - Segregation of duties over the selection and engagement of IT suppliers is often an area across both the not-for-profit and private sector where, in reality, there is minimal challenge to the decisions being made due to the technical content of the IT specifications. However segregation of duties in a small team such as IT can never be ideal and within HCPC there is not much more that can be done to improve controls in this respect.
<p>Communication including training</p>	<ul style="list-style-type: none"> - Since the NAO investigation took place, training on the Bribery Act has been provided to HCPC representatives, and training specifically for Council Members is due to take place in March 2013. - Although the Bribery Act has been mentioned at staff meetings this is not minuted. It would be good practice for general fraud and bribery risks to be formally raised, and minuted, with staff at least once a year, ideally around the Christmas period when the generic risk of fraud and bribery increases. This could be done by way of the staff newsletter. - Similarly, although the partner governance policies make indirect reference to bribery risks, a communication to partners (including lay partners) on the HCPC's approach to managing bribery risks when new contracts are being sent out would help the HCPC to demonstrate that it had complied with this principle of the Ministry of Justice guidance.
<p>Due Diligence</p>	<ul style="list-style-type: none"> - Basic reference checks are made on members as they have been appropriately assessed as low risk in terms of their ability to engage in bribery. Although members are involved in panel meetings their decision making powers are as part of a group rather than as an individual and they have minimal input to the invitations for HCPC events, including out of London meetings. - For partners, professional references from their last two posts are taken up and for those partners that should be registered as members with the HCPC, their current membership status is checked. Partner contracts are typically for four years, and although no proactive checks are made during that period for changes in status, there is a clause within partner contracts for them to notify HCPC of any changes in their status that could impact on their role. For those partners that are also members of the HCPC (approximately 670 of the 800), HR would be automatically notified of any issues with their membership that may impact on the appropriateness of them continuing as members. Although partners are considered higher risk than members and certain employees, their decision making powers are only as part of a group, rather than an individual. - Staff reference checks are undertaken at recruitment but there is no written policy as to which posts, if any, would be subject to enhanced due diligence. In reality, we understand that HR

Ministry of Justice Principle	Audit Findings
	<p>would undertake checks with professional bodies, as well as take up professional references, for senior members of staff. Enhanced due diligence is not considered necessary at present for staff involved in the processing of complaints prior to panel meetings as the decision to proceed with a compliant is made on a joint rather than an individual basis.</p> <ul style="list-style-type: none"> - High risk suppliers that would warrant enhanced due diligence have not yet been identified. In reality this may not be many; however, based on expenditure (both in terms of value and number of transactions), the sector/services they are involved in, and the country in which they are based, an assessment should be made on the current supplier list to identify any that could be considered higher risk. For any such suppliers due diligence should be extended as appropriate, for example conducting a search of directors with disqualifications, news searches for court cases involving bribery etc.
<p>Monitoring and Reporting</p>	<ul style="list-style-type: none"> - Although ownership of the relevant anti-bribery/governance related policies is not explicit within the policies themselves, there are nominated staff/departments with responsibilities for monitoring the compliance of the policies and reporting any exceptions. The Ministry of Justice are quite clear in that an organisation would need to be able to demonstrate compliance with this principle in practice and at present it is unclear if HCPC could provide such evidence. - Declarations of interest are requested at the start of each meeting and are recorded in the minutes. HR retain a record of staff declarations of interest, and this should be shared with the internal lead for procurement exercises to minimise the risk of potential or actual conflicts of interest when putting together a procurement team for a tender exercise. - Any declared gifts and hospitality by members is shown on the HCPC internet site although to date just one member has reported the receipt of gifts and hospitality.

5. ACTION PLAN

	Area/Observation	Recommendation	Priority	Management response	Timescale/ responsibility
5.1	<i>Tone at the Top:</i> There is no overall sponsor at a senior level for ensuring an anti-bribery culture and control framework is embedded, nor are there any existing plans for further reporting to the Council on the implications of the Bribery Act to the HCPC.	A sponsor at Council level is appointed and the Council are updated on anti-bribery risks and actions plans on at least an annual basis.	2	All Council members will be trained on the Bribery Act in March 2013 and, in future, this will form part of the induction of Council members. Council is due to be reconstituted in January 2014. Pending this the sponsors will be the Chair of Council and the Secretary to Council.	March 2013 Secretary to Council
5.2	<i>Risk Assessment:</i> The recommendations from risk assessment undertaken as part of this audit review have not yet been actioned and, linked to the recommendation above, there are no immediate plans to monitor and report on emerging bribery risks going forward.	As well as general completion of this action plan, arrangements made for emerging bribery risks to be considered going forward and captured, where appropriate, on the Corporate Risk Register.	2	We will prepare an action plan to set out adequate procedures in the anti- bribery control framework. Resultant risks will be added to the risk register.	September 2013 Head of BPI

	Area/Observation	Recommendation	Priority	Management response	Timescale/ responsibility
5.3	<i>Gifts and Hospitality Policies:</i> The current policies only require the recording of those gifts and hospitality that have been accepted. There is no explicit requirement to record the details of family members, etc. who may have benefited from the acceptance of such gifts and hospitality, and the templates that are used do not necessarily encourage the recording of that level of detail.	It would be good practice for the gifts and hospitality policies to require the registration of those items and invitations that have been declined as well as those that are accepted, and also to include the details of non-HCPC staff/members/partners who have benefited from the acceptance of hospitality.	3	The forms in respect of Council members will be updated as part of the review of the Code of Governance in 2013. The policies in the Staff Handbook will be updated in 2013.	December 2013 Secretary to Council December 2013 HR Director
5.4	<i>Procurement procedures – terms and conditions:</i> There are no standard HCPC terms and conditions in place with suppliers that make any reference to the Bribery Act and HCPC's zero tolerance to bribery.	The HCPC should develop supplier terms and conditions that make reference to compliance with the Bribery Act and where possible introduce them into all future contracts and for existing contracts as they come up for renewal.	3	This will be included in the action plan for the to be recruited Procurement Manager	September 2013 Procurement Manager
5.5	<i>Supplier Due Diligence:</i> High risk suppliers that would warrant enhanced due diligence have not yet been identified. There is a risk that HCPC are engaging with suppliers who have been, or who are currently, engaged in bribery, thereby leading to reputational damage and potential breach of the Bribery Act by the organisation.	Based on expenditure (both in terms of value and number of transactions), the sector/services they are involved in, and the country in which they are based, an assessment should be made on the current and future supplier list to identify any that could be considered higher risk. For any such suppliers due diligence should be extended as appropriate, for example conducting a search of directors with disqualifications, news searches for	3	All our suppliers are based in the UK. We undertake due diligence on new suppliers and tendering via the OJEU imposes controls through prescribed requirements and involvement of different people in the process. A review of our suppliers' database will be one of the tasks assigned to our procurement manager when recruited.	N/A September 2013 Procurement manager

	Area/Observation	Recommendation	Priority	Management response	Timescale/ responsibility
		court cases involving bribery etc.			
5.6	<i>Communication:</i> Although the Bribery Act has been mentioned at staff meetings this is not minuted. Similarly, although the partner governance policies make indirect reference to bribery risks, there has been no explicit communication to partners (including lay partners) on the HCPC's zero tolerance to bribery.	<p>It would be good practice for general fraud and bribery risks to be formally raised, and minuted, with staff at least once a year, ideally around the Christmas period when the generic risk of fraud and bribery increases. This could be done by way of the staff newsletter.</p> <p>Similarly, a communication to partners (including lay partners) on the HCPC's approach to managing bribery risks when new contracts are being sent out would help the HCPC to demonstrate that it had complied with this principle of the Ministry of Justice guidance.</p>	3	<p>We will make sure that bribery risks are made clear to employees during their inductions and may issue occasional reminders and policy updates.</p> <p>Information of bribery risks will be provided when partners are appointed.</p>	<p>N/A</p> <p>September 2013</p> <p>Partner Manager</p>

	Area/Observation	Recommendation	Priority	Management response	Timescale/ responsibility
5.7	<p><i>Monitoring and Reporting:</i> To successfully defend a corporate charge under the Bribery Act, the HCPC would need to be able to evidence compliance with all six principles.</p> <p>In relation to the monitoring and reporting of existing policies and procedures, although there are individual staff with responsibility for these, it is unclear if evidence could be provided to demonstrate active compliance with this particular principle, especially given the low number of declared interests and receipt of gifts and hospitality.</p>	Management should review their ability to evidence monitoring and reporting of their governance related policies and procedures.	3	We suggest that this is covered in an Internal Audit visit	2013/2014 Mazars

Appendix 1 – Definitions of Assurance Levels and Recommendations

We use the following levels of recommendations in our audit reports:

Recommendation Grading	Definition
Priority 1 (Fundamental)	Recommendations represent fundamental control weaknesses, which expose, HPC to a high degree of unnecessary risk.
Priority 2 (Significant)	Recommendations represent significant control weaknesses which expose, HPC to a moderate degree of unnecessary risk.
Priority 3 (Housekeeping)	Recommendations show areas where we have highlighted opportunities to implement a good or better practice, to improve efficiency or further reduce exposure to risk.