

NORTH YORKSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

10 March 2017

Protocol re Members' Gifts and Hospitality**1.0 PURPOSE OF REPORT**

- 1.1 To review the Protocol re Members' Gifts and Hospitality.

2.0 BACKGROUND

- 2.1 On 23 July 2008 full Council adopted, on the basis of recommendations from the Standards Committee, the Gifts and Hospitality Protocol for Councillors attached at **Appendix 1** to this report.
- 2.2 At its meeting on 15 April 2016, the Standards committee agreed that it should review the Members' guidance on registration of gifts and hospitality but that any changes should not be implemented until after the elections in May.

3.0 PROPOSED AMENDMENTS TO PROTOCOL

- 3.1 Proposed amendments to the Protocol to bring it up to date in terms of legislation and ethical framework requirements are set out by way of tracked changes on the version attached at **Appendix 1** for Members' comments.
- 3.2 Subject to any comments Members wish to make at this stage, the draft amendments will then be circulated to the Chief Executive and Executive Members for their views. A further draft will then be brought back to the Committee.

4.0 RECOMMENDATIONS

- 4.1 That Members consider the draft amendments to the Gifts and Hospitality Protocol for Councillors for further consultation with the Chief Executive and Executive Members.

BARRY KHAN

Assistant Chief Executive (Legal and Democratic Services) and Monitoring Officer

Background Papers: NoneCounty Hall
NORTHALLERTON

1 March 2017

Gifts and Hospitality Protocol for Councillors

1. Background

1.1 The role of Council member means that you are brought into contact, as part of your Council work, with many people for many different reasons. From time to time you may encounter situations where individuals, or firms, companies, and other public bodies will offer gifts or hospitality.

1.2 The reasons for this will vary, but such offers will usually be made as goodwill gestures, or for celebration or appreciation, or for helping networking or working together.

1.3 Some Councillors who hold particular positions within the Council will find themselves receiving offers of gifts and hospitality quite frequently, for example the Chairman of the Council in his or her civic role, or senior members who have to liaise often with other public and private sector partners.

1.4 There are rules which regulate the acceptance of gifts and hospitality by Council members. This is because the acceptance of benefits such as gifts can affect the perception of whether Councillors and the Council are acting in the public interest. Councillors are in a position of significant influence over issues that affect people's lives within their area. They are holders of the public purse and in their Council role must always act in the best interests of the people of North Yorkshire. They must not act in any way which undermines public trust in what they are doing.

1.5 Whilst most offers of gifts and hospitality are well meant and innocent, there have been, nationally, instances in the past of gifts and hospitality being offered to and accepted by Councillors for corrupt purposes to secure improper advantage. Whilst this is exceptional and rarely occurs, it is at the worst end of the scale, and is very damaging to public confidence in local government, to the reputation of the authority concerned, and it is unlawful. Even in situations where there are no improper motives, the acceptance of lavish gifts and hospitality can have a negative effect in terms of public perception.

1.6 This inevitably means that as a Council member you need to be very clear about the rules that apply to gifts and hospitality, and you always need to bear in mind how the public might view your accepting them. Any offers should be treated with great care. You have a prime duty to ensure that there is no conflict of interest in the performance of your duties.

1.7 This Protocol aims to help you deal with situations where you are faced with offers of gifts and hospitality. If you are unsure, you should seek advice from the Monitoring Officer who will be pleased to help you.

2. What do we mean by Gifts and Hospitality?

2.1 Gifts and hospitality may include:

- a) A gift of goods or services,

Deleted:

Deleted: members

Deleted: i

Deleted: ,

Deleted: it is damaging

Deleted: ,

Deleted: s

Deleted: ,

Deleted: guidance

- b) The opportunity to acquire any goods or services freely or at a discount or at terms not available to the general public;
- c) The offer of food, drink, accommodation or entertainment freely provided or heavily discounted, or the opportunity to attend any cultural or sporting event on terms not available to the general public.

3. The Legal Position

3.1 There are legal rules affecting the acceptance by members of local authorities of benefits other than their official member allowances. The consequences of breaching the rules are serious, so it is important to be aware of what they say.

3.2 **Corruption:** A revised legal framework to deal with bribery was introduced in The Bribery Act 2010 ("the Act"), which came into force on 1 July 2011 and introduced new bribery offences, the key parts of which are set out below. The Act repeals the previous bribery and corruption laws. The main offences under the act are:

- **bribing another person** (section 1). A person commits an offence under this section where s/he offers, promises or gives a financial or other advantage to another person, and intends the advantage to induce a person to perform improperly a relevant function or activity (which includes any activity performed in the course of a person's employment), or to reward a person for the improper performance of such a function or activity;
- **being bribed** (section 2). This section provides several cases in which an offence of being bribed may be committed, relating to a person committing an offence where s/he requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly or as a reward for improper performance (whether by him/her or another person);
- **bribing a foreign official** (section 6). A person commits an offence under this section where s/he offers, promises or gives a financial or other advantage to a foreign public official with the intention of influencing the official in the performance of his/her official functions and intends to obtain or retain business or an advantage in the conduct of business.
- **failure of commercial organisations to prevent bribery** (section 7). A relevant commercial organisation is guilty of an offence under this section if a person associated with it bribes another person intending to obtain or retain business or an advantage in the conduct of business for that organisation. It is a defence for the organisation to prove that it had in place adequate procedures designed to prevent persons associated with it from undertaking such conduct.

The maximum penalties under the act are 10 years' imprisonment/unlimited fine for individuals and an unlimited fine for organisations

3.3 **Code of Conduct:** There is no longer any requirement to register gifts and hospitality received in the Register of Members' Interests however they must be registered in the separate Register of Members' Gifts and Hospitality within 28 days of offer/receipt/acceptance. The Code stipulates that:

10. You must not accept any gift or hospitality which could reasonably be perceived as creating an obligation upon the Council, or upon yourself as a Member. If you do

Deleted: The Public Bodies (Corrupt Practices) Act 1889 provides that if you accept any gift, loan, fee, reward or advantage whatsoever as an inducement to, or reward for doing or forbearing to do anything in respect of any matter or transaction in which the authority is concerned, you commit a criminal offence carrying a maximum term of imprisonment of 7 years

Formatted: Indent: Left: 0.5 cm

Formatted: Font: Not Bold

Formatted: Font: Italic

Formatted: Justified, Indent: Left: 0.75 cm

accept any gift or hospitality which might be attributable to your membership of the Council (other than the refreshments which might usually be expected at a Council meeting or civic function) you must disclose this, or any offer of such gift or hospitality, to the Monitoring Officer.

You must also register the source of the gift or hospitality. Members are also advised to register such gifts/hospitality offered but declined. You need to apply honesty and common sense when you consider how the receipt of a gift may be interpreted.

3.4 If an item of Council business in which you are involved is likely to affect the person/organisation who gave you the gift or hospitality which you have registered, you must bear in mind the rules relating to bias and predetermination and must not participate in, or seek to influence, Council business where your interests (including those required to be registered under the Code) may prejudice, or appear to prejudice, your views.

3.5 Acceptance as a Councillor of a gift or hospitality for your own benefit or advantage, rather than for the benefit to the authority, would be a breach of the Code.

4. What does it mean in practice – some General Principles

4.1 If you receive an offer of gifts or hospitality, the following principles should help you deal with it:

a) Never accept a gift or hospitality as an inducement or reward for anything you do as a Councillor

As a Councillor, you must act in the public interest and must not be swayed in the discharge of your duties by the offer, prospect of an offer, or the non-offer of any inducement or reward for discharging those duties in a particular manner. If you have any suspicion that the motive for a gift or hospitality is an inducement or reward, you must decline it.

As set out above, it is a criminal offence to bribe another or be bribed. The onus would be on you to disprove corruption. The legal consequences are set out above.

Additionally, the Council's Code of Conduct for Members provides that you must act in the public interest, serving the authority and the whole community, rather than acting in the interests of any particular individual or section of the community. It is a breach of the Code to use your position as a Member improperly to obtain any advantage or disadvantage for yourself or any other person, or attempt to do.

b) Gifts or hospitality should not be accepted unless there is a commensurate benefit to the Council

The only proper reason for accepting any gift or hospitality is that there is a benefit for the Council which would not otherwise have been available. An example is an opportunity to progress the business of the Council expeditiously through a working lunch, or to canvass or promote the interests of the Council and its area at a meeting where there is incidental hospitality.

Formatted: Font: Italic

Deleted: The Code of Conduct for Elected Members requires that you register in your Register of Interests any gifts or hospitality with an estimated value of £25 or more, which you receive as a member of the Council – i.e. gifts and hospitality that could reasonably be viewed as relating to your official duties as a Council member.

Deleted: You must register the gift or hospitality within 28 days of its receipt/acceptance.

Deleted:

Deleted: ¶

Deleted: The Code of Conduct provides that you automatically have a personal interest in a matter under consideration at a Council meeting, if

Deleted: it the

Deleted:

Deleted: .

Deleted: In practical terms, this means that you must also, at the meeting, disclose the personal interest, and its nature, and decide whether your interest is also prejudicial. If so, you must declare you have a prejudicial interest and comply with the rules on prejudicial interests.

Deleted: 3.5 The registration requirement in the Code is limited to gifts or hospitality worth £25 or more. If you receive a series of gifts or hospitality from the same source that add up to £25 or more, then this must be registered on your Register of Interests as an accumulation. You may have to estimate the value of the gifts or hospitality, based on what you would expect a person to pay for a similar function or event run on a commercial basis. ¶

Deleted: 3.4 You must continue to disclose the existence and nature of the gift or hospitality etc at relevant Council, Executive or committee meetings, for three years from the date you first registered the gift or hospitality. This disclosure requirement ceases after three years. ¶

Deleted: A serious breach of the Code of Conduct can result in members being suspended or debarred from being members of the authority.

Deleted: 3.6 The Standards Board for England has printed helpful guidance in relation to Gifts and Hospitality in The Case Review 2007 which can be accessed at www.standardsboard.gov.uk

Deleted: corruptly to solicit or receive any gift, reward or advantage as an inducement to do or not to do something in respect of any transaction involving the Council.

Deleted: in relation to the receipt of a gift or hospitality from a person holding or seeking to obtain a contract from the Council.

Deleted: improperly to confer on, or secure for yourself or any other person, any an advantage or disadvantage

Deleted: ¶

Acceptance of a gift is much less likely to confer such an advantage, and unless the benefit and relevance to the authority is clear, for example as in the case of a civic gift to the Chairman received on behalf of the Council, a presumption will arise that it is purely for your personal benefit.

c) Never accept a gift or hospitality if acceptance might be open to misinterpretation

The appearance of impropriety can be just as damaging to the Council and to you as a Councillor as actual impropriety. The Council's ability to govern rests upon its reputation for acting fairly and in the public interest. You must therefore consider whether the acceptance of the gift or hospitality is capable of being interpreted as a sign that you, or the authority, favour any particular person, company or section of the community, or as placing you under any improper obligation to any person or organisation.

Certain occasions are particularly sensitive, and require the avoidance of any opportunity for misunderstanding. These include:

- when the authority is conducting a competitive procurement process, in respect of any indication of favour of a particular tenderer.
- Determining planning or licensing applications or planning or licensing policy, in respect of any person or organisation which stands to gain or lose from the determination.
- funding decisions, when the authority is determining a grant application by any person or organisation.
- decisions about the allocation of work to current partners which will affect the amount of income the partner might gain from the authority
- when the Council is dealing with applicants for benefits, claims and dispensations.
- when the Council is engaged in legal proceedings, gifts or hospitality from other parties to the proceedings would be inappropriate.

d) Do not accept a gift or hospitality which puts you under an improper obligation

It is important to recognise that some commercial organisations and private individuals see the provision of gifts and hospitality as a means of buying influence. If you accept a gift or hospitality improperly, it is possible that they may seek to use this to persuade you to determine an issue in their favour.

Deleted: R

e) Do not solicit a gift or hospitality

You must never solicit or invite an offer of a gift or hospitality in connection with your position as a Councillor. Also take care to avoid giving any impression that you might be open to any such improper offer.

f) Some other situations to avoid

The decision for you in every case is whether or not it is appropriate to accept any gift or hospitality that might be offered to you, having regard to how it might be perceived by an

ordinary member of the public. The following are further examples of what would not be appropriate:

- hospitality in situations where you would be the sole guest
- accepting a gift or hospitality of significant value or whose value is excessive in the circumstances
- cash or monetary gifts (these should always be refused without exception and the refusal notified to the Monitoring Officer).

5. Gifts and Hospitality which need not be registered

5.1 There are some circumstances where you may accept gifts and hospitality without the need to register the gift or hospitality. Some situations will require the exercise of your personal judgement. You should always be cautious, when additional services, privileges or advantages are offered, which might be related to your position as a Member.

a) Official hospitality such as a civic reception or a working/business lunch in Council owned premises (provided it is ancillary to the business being conducted).

b) Civic hospitality provided by another public authority.

c) Refreshments in connection with any meeting in the course of your work as a member e.g. normal refreshments.

d) Meals or refreshments funded by other public sector partners, as part of joint working/collaboration, and provided it is ancillary to the business being conducted.

e) Meals or refreshments provided as part of a ceremony or event to promote/or launch a project or initiative.

f) Meals or refreshments provided at design/progress meetings, by a consultant, contractor or advisor who is already appointed by the Council for that project, scheme or initiative (provided it is ancillary to the business being conducted).

g) Low value gifts, such as pens, calendars, diaries, and other small mementos and tokens.

h) Gifts and hospitality not related or connected with your membership of the Council i.e. received by you outside the performance of your functions as a Member, such as gifts and hospitality you may receive from family and friends e.g. birthday presents that are not related to your position as a Member.

i) Gifts given to the Council that you accept formally on the Council's behalf and are retained by the Council and not by you personally e.g. a commemorative goblet for display in the Mayor's parlour.

j) Gifts given as prizes at exhibitions, conferences, seminars etc. as part of a free raffle or draw.

Deleted: k

k) Gifts known to be available to all members of the Council e.g. badges and ties bearing the Council's coat of arms.

Deleted: l

l) Hospitality known to be available to all members of the Council e.g. Annual Meeting refreshments

Deleted: n

m) Hospitality ancillary to the Council business being conducted, such as an overnight stay for an 'away – day' with a partner organisation of the Council.

Deleted: o

n) Hospitality ancillary to attendance at conferences, seminars and courses where the hospitality is corporate, rather than personal.

Deleted: p

o) Hospitality ancillary to attendance at functions where you represent the Council (opening ceremonies, public speaking events, conferences)

Deleted: q

p) Hospitality ancillary to attendance as Chairman of the Council at charity events, garden parties, fetes, schools, concerts etc.

Deleted: r

6. Gifts and Hospitality declined

6.1 There is no requirement to register gifts and hospitality offered but declined but you may choose to do so in a spirit of complete transparency. When gifts or hospitality are declined, the person making the offer should be courteously but firmly informed of the procedures and standards operating within the Council.

7. Reporting of inappropriate Gifts and Hospitality offered

Deleted: 8

7.1 You must immediately report to the Monitoring Officer any circumstances where an inappropriate gift or hospitality has been offered to you. You may thereafter be required to assist the Police in providing evidence.

Deleted: It is a criminal offence for a person corruptly to give or offer any gift, reward or advantage as an inducement or reward to you for doing or not doing something as a member of the Council.

March 2017

Deleted: 2008