

TEWKESBURY BOROUGH COUNCIL

GIFTS & HOSPITALITY

PROTOCOL FOR COUNCILLORS

Adopted ~~16-May-2006~~ by Council on 4 December 2018

1. GENERAL INTRODUCTION

Tewkesbury Borough Council's Code of Conduct, adopted on 26 June 2012, requires Members to notify the Monitoring Officer in writing of any gift or hospitality received in their official capacity of an estimated value of at least £5025. *This written notification is registered within the authority's Register of Members' Interests.* The Code also requires that Members must not ~~conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute, or to~~ use or attempt to use their position as a Member improperly to confer on or secure, for *themselves* or any other person, an advantage or disadvantage, or seek to improperly influence a decision about any matter from which the Member is excluded from participating or voting as a result of the requirements of Part VI of the Code.

In accordance with the adopted Code of Conduct in carrying out their duties in exercising the functions of their Authority, or otherwise acting as a Councillor, Members will be expected to observe the general principles of conduct of:

- selflessness;
- integrity;
- objectivity;
- accountability;
- openness;
- honesty; and
- leadership.

This Protocol aims to assist Members in complying with the Council's Code of Conduct but it also goes beyond these basic provisions and seeks to provide wider guidance so Members can avoid any situation where their integrity may be brought into question as a result of the receipt of gifts and hospitality.

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The acceptance of gifts and hospitality reflects directly upon the public perception of Councillors and the authority. It is imperative, therefore, that Members only act in the public interest and not for personal advantage. Members should always consider whether the acceptance of any gifts or hospitality could be seen as being inappropriately linked to their official role.

The Code of Conduct does not apply to gifts and hospitality that are not related to a Councillors role, for example presents from friends and family.

Legal Position

The legal position on acceptance of gifts and hospitality is set out in the provisions of the Council's Code of Conduct and in the ~~Prevention of Corruption legislation~~ Bribery Act 2010.

The Bribery Act 2010 provides that it is a criminal offence for a Member (either personally or through a third party, whether for the Member's benefit or the benefit of another) to request, receive, agree to receive, promise, offer or give any gift or loan, fee or reward or advantage for doing or not doing anything or showing favour or disfavour to any person in that official capacity. It is for the Member to demonstrate that any such advantage has not been corruptly obtained. This Protocol should be read in conjunction with the Council's Anti-Fraud and Corruption Policy (which also covers bribery).

~~The relevant provisions of the Code of Conduct are set out above, breach of which can lead to disqualification from holding any public office for a period of up to 5 years.~~

~~The Public Bodies Corrupt Practices Act 1889 provides that it is an offence for any member to corruptly receive or agree to receive any gift, loan, fee, reward or advantage for doing or not doing something in connection with the work of the Council.~~

~~The Prevention of Corruption Act 1916 provides that where such a gift, loan etc. is received by a Member from a person seeking a contract with the Council then the gift or loan is deemed to have been received corruptly. This would put the giver and the receiver in the position of having to prove that they did not act dishonestly.~~

The penalty for corrupt acceptance of a gift or hospitality is a fine (unlimited), imprisonment (maximum ~~seven-ten~~ years), or both.

Remit of Protocol for Gifts & Hospitality

This Protocol sets out:-

- (a) the principles which you should apply whenever you have to decide whether it would be proper to accept any gift or hospitality;
- (b) a procedure for obtaining consent to accept a gift or hospitality, when you consider that it would be proper to accept it; and
- (c) a procedure for declaring any gift or hospitality which you receive and for accounting for any gift to the authority.

2. GENERAL PRINCIPLES

2.1 In deciding whether it is proper to accept any gift or hospitality, the following principles should be applied. Even if the gift or hospitality comes within one of the general consents set out in section 3 of this Protocol, it should not be accepted if to do so would be in breach of one or more of these principles:

1. Gifts or hospitality shall never be accepted as an inducement or reward for anything done as a Councillor.

Councillors must act in the public interest and must not be swayed in the discharge of their 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.

The Tewkesbury Borough Council Code of Conduct for Members provides that Councillors 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 *for a Member to use or attempt their position to improperly to confer on or secure for himself or any other person an advantage or disadvantage, or seek to improperly influence a decision about any matter from which the Member is excluded from participating or voting as a result of the requirements of Part VI of the Code.*

Any contravention of this principle is likely to contravene the Public Bodies (Corrupt Offences) Act 1889 of which further detail is given in section 1 above.

2. Gifts or hospitality should only be accepted if there is a commensurate benefit to the authority.

The only proper reason for accepting any gift or hospitality is that there is a commensurate benefit for the Council which would not have been available but for the acceptance of that gift or hospitality (e.g. an opportunity to progress the business of the authority expeditiously through a working lunch, or to canvass the interests of the authority and its area at a meeting). The acceptance of a gift is much less likely to confer such an advantage.

Unless the benefit to the authority is clear, and is commensurate with the value of the gift or hospitality, the presumption would be that the gift or hospitality is purely for the Councillor's personal benefit, which would be contrary to the provisions of the Council's Code of Conduct as set out in section 1.

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3. Gifts or hospitality shall not be accepted if acceptance might be open to misinterpretation

The appearance of impropriety can be just as damaging to Councillors and the Authority as actual impropriety. The Council's ability to govern rests upon its reputation for acting fairly and in the public interest.

Councillors must therefore consider whether the acceptance of the gift or hospitality is capable of being interpreted as a sign that either the Councillor or the Authority favours any particular person, company or section of the community or places the Councillor or the Authority under any improper obligation to any person or organisation. *If there is any possibility that it might be so interpreted the gift or hospitality should be refused.*

This principle is of critical importance where decisions and / or actions of the Council could be discredited or even legally challenged, examples of which include:

- (i) undertaking a competitive procurement / tendering process;
- (ii) regulatory decisions, such as determinations of licensing or planning applications, or setting planning policy; and
- (iii) determination of grants or other requests for funding.

Members should also consider whether the individual or organisation offering a gift or hospitality may have dealings within the Council of which the individual Councillor being offered the gift / hospitality is unaware.

(b) Gifts and hospitality must never be accepted which place a Councillor under an improper obligation

Members will recognise that some commercial organisations and private individuals see the provision of gifts and hospitality as a means of gaining influence.

Equally, if others note that a Councillor has been prepared to accept a gift or hospitality, they may feel that they will no longer be able to secure impartial consideration from the Authority.

(c) Gifts and hospitality should never be solicited

Councillors should never solicit or invite an offer of a gift or hospitality in connection with their position as a Councillor. Care should also be taken to avoid giving any indication that a Councillor might be open to such an improper offer.

3. CONSENT REGIME

There may be occasions where it may not be appropriate for a Member to refuse a gift or hospitality in the course of their duties as it would appear unusual, impolite, or be likely to cause offence. In such situations the following provisions shall apply:-

General Consent Provisions

- 3.1 Subject to the General Principles set out in section 2 of this Protocol, Members may accept gifts and hospitality in the following circumstances:-
 - 3.1.1 civic hospitality offered by another public authority.
 - 3.1.2 reasonable refreshment in connection with any meeting or visit in the ordinary course of a Councillor's duties, such as tea, coffee, soft drinks and biscuits.
 - 3.1.3 tickets for sporting, cultural and entertainment events which are sponsored by the Council.
 - 3.1.4 small gifts of low intrinsic value below ~~£5025~~, branded with the name of the company or organisation making the gift, such as pens, pencils, mouse pads, calendars and diaries.
 - 3.1.5 a modest working lunch provided to enable the parties to discuss business.
 - 3.1.6 modest souvenir gifts with a value below ~~£5025~~ from another public authority given on the occasion of a visit by, or to, the authority.
 - 3.1.7 reasonable hospitality provided at external visits, meetings or conferences provided that this is in line with that available to other delegates at the event.
- 3.2 Other unsolicited gifts may be accepted where it is impracticable to return them to the person or organisation making the gift. However, as soon as is practicable after receipt, the gift should be passed to Democratic Services together with a written statement containing the information set out in paragraph 3.4.1 below. Democratic Services will write to the person or organisation making the gift thanking them on the Councillor's behalf for the gift informing them that the gift will be donated to the Mayor's charity fund on whose behalf it will be raffled or otherwise disposed of in due course.
- 3.3 Where branded gifts are accepted in accordance with paragraph 3.1.4 above care should be taken not to display such items in a manner which might be taken as an indication of favour to a particular supplier or contractor.

3.4 Special Consent Provisions

3.4.1 Members who wish to accept any gift or hospitality which is in accordance with the General Principles set out in Section 2, but is not within any of the general consents set out in Section 3.1, must apply for specific consent, in writing to the Monitoring Officer, giving the following information:

- (i) the nature and your estimate of the market value of the gift or hospitality.
- (ii) by whom or on whose behalf the offer or invitation has been made.
- (iii) the connection which the Councillor has with the person or organisation making the offer or invitation.
- (iv) any work, permission, concession or facility of which the Councillor is aware and which is being sought, or likely to be sought, from the Council by the person or organisation making the offer or invitation.
- (v) any circumstances which lead the Councillor to believe that acceptance of the gift or hospitality would not be improper.

3.4.2 Any Councillor making an application in accordance with the provisions of Section 3.4.1 must not accept the gift or hospitality until consent has been received (in writing / by email) from the Monitoring Officer.

3.4.3 The Monitoring Officer will enter details of any consent given in a register which will be available for public inspection. This consent procedure does not remove the obligation of the Member to register the receipt of any gift or hospitality in accordance with Section 4 of this Protocol.

4. REGISTRATION OF GIFTS AND HOSPITALITY

- 4.1 Any Councillor who accepts any gift or hospitality with an estimated market value or cost of provision of *at least* ~~£5025~~, must, as soon as possible after receipt of the gift or hospitality (but in any event within 28 days of its receipt), make a declaration in writing to the Monitoring Officer setting out the information shown in Paragraphs 3.4.1 above. A form for this purpose is available from the Monitoring Officer, but the information can be sent by any other written means as is convenient to the Councillor.
- 4.2 The requirement to register the gift or hospitality in paragraph 4.1 above applies, regardless as to whether the gift / hospitality has been accepted in accordance with the General Consent Provisions or has been authorised by the Monitoring Officer in accordance with the Special Consent Provision. Any gift/hospitality offered but not accepted does not need to be declared.
- 4.3 The Monitoring Officer will retain a copy of any such declaration in *the Council's Register of Members' Interests* which *is* available for public inspection.
- 4.4 Councillors may voluntarily register the receipt of gifts and hospitality under ~~£5025~~ in value (or the offer of a gift or hospitality of any value which has been declined) if they are concerned that its acceptance (or offer) might be misinterpreted, particularly if it comes from or on behalf of a contractor, tenderer, or applicant / agent for a planning or licensing application.

5. GIFTS TO THE AUTHORITY

- 5.1 Gifts to the authority may take the form of the provision of land, goods or services, either to keep or to test with a view to future acquisition, an offer to carry out works or sponsorship of a function which is organised or supported by the Authority.
- 5.2 Councillors should not solicit any such gift on behalf of the Authority except where the Authority has formally identified the opportunity for participation by an external party and how that participation is to be secured.
- 5.3 Any Member receiving such an offer on behalf of the Authority, must first consider whether it is appropriate for the Authority to accept the offer (in terms of whether the acceptance of the gift might be seen as putting the authority under any improper obligation, or whether there is a real benefit to the authority which would outweigh any dis-benefits).
- 5.4 If the Councillor considers that the offer is of real benefit to the Authority the Councillor should report the offer directly to the Monitoring Officer who will then arrange for the appropriate Officer of the Council to write back to the person or organisation making the offer, to record the acceptance or non-acceptance of the gift, record the gift for audit purposes and ensure that the gift is properly applied for the benefit of the Authority.
- 5.5 If Members have any concerns about the motives of the person or organisation making the offer, or whether it would be proper for the authority to accept the gift, they should consult the Monitoring Officer.

6. DEFINITION OF GIFT AND HOSPITALITY

6.1 Gift of hospitality includes any:-

- (i) free gift of goods or services.
- (ii) money (or loan), gift voucher, lottery ticket, raffle ticket or anything else offering the chance of winning a prize.
- (iii) opportunity to acquire any goods or services at a discount or on terms which are more advantageous than those which are available to the general public.
- (iv) opportunity to obtain any goods or services which are not available to the general public
- (v) offer of food, drink, accommodation or entertainment, or the opportunity to attend any cultural, sporting or entertainment event.

6.2 References to the "value" or "cost" of any gift or hospitality are references to the higher of:-

- (a) the Councillor's estimate of the cost to the person or organisation of providing the gift or hospitality.
- (b) the open market price which a member of the public would have to pay for the gift or hospitality, if it were made available commercially to the public, less the cash sum of any contribution which the Councillor would be required to make toward that price to the person or organisation providing or offering the gift or hospitality.