

## **PROTOCOL FOR MEMBERS AND OFFICERS ON GIFTS AND HOSPITALITY**

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### **1. BACKGROUND**

Both members and officers should avoid putting themselves in a position where their integrity is called into question because of any financial or other impropriety. As well as avoiding actual impropriety it is also essential to avoid giving the impression or appearance of impropriety. To achieve this, the Council has adopted this Protocol which is applicable to both members and officers.

### **2. LEGAL POSITION**

- 2.1 The Public Bodies Corrupt Practices Act, 1989 provides that it is an offence for any employee or member to accept any gift, loan, fee, reward or advantage whatsoever as an inducement to or reward for doing, or not doing, something in respect of any matter or transaction involving the Council. This offence can carry up to 7 years imprisonment.
- 2.2 The Prevention of Corruption Act, 1916 provides that where such a gift, loan etc. is received by an employee or member from a person seeking a contract with the Council, then the gift is deemed to have been received corruptly. This has the effect of shifting the balance of proof onto the giver and receiver, i.e. they would have to prove that they did not act dishonestly.
- 2.3 The Local Government Act, 1972 further provides that an employee shall not, under colour of their office, accept any reward or fee other than their proper remuneration.

### **3. GENERAL PRINCIPLES**

3.1 The purpose of this Protocol is to :-

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

This Protocol does not apply to any offer of hospitality, which may be provided by this Council.

3.2 You must never solicit or invite an offer of a gift or hospitality in connection with your position as an officer or a councillor. You should also take care to avoid giving any indication that you might be open to such an improper offer.

### **4. CIRCUMSTANCES WHEN HOSPITALITY OR A GIFT CAN NEVER BE ACCEPTED**

#### **4.1 Never accept a gift or hospitality as an inducement or reward for anything you do as an officer or a councillor**

You must always 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.

Further, the authority's Code of Conduct for members provides that a councillor 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, and that it is a breach of the Code improperly to confer any advantage or disadvantage of any person, including yourself.

The Officer Code of Conduct deals specifically with the Prevention of Corruption at paragraph 12.

#### **4.2.1 Never accept a gift or hospitality if acceptance might be open to misinterpretation**

The appearance of impropriety can be just as damaging to the authority and to you as a councillor or officer as actual impropriety. The authority'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 favours any particular person, company or section of the community or as placing you under any improper obligation to any person or organisation. If there is any possibility that it might be so interpreted, you must either refuse the gift or hospitality or take appropriate steps to ensure that such a misunderstanding cannot arise.

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

- (i) occasions when the authority is going through a competitive procurement process, in respect of any indication of favour for a particular tenderer.
- (ii) determination of licensing applications, planning applications or planning policy, in respect of any person or organisation which stands to gain or lose from the determination.
- (iii) Funding decisions, when the authority is determining a grant application by any person or organisation.

#### **4.3 Never accept a gift or hospitality, which puts you under an improper obligation**

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 fact to persuade you to determine an issue in their favour. Equally, if others note that you have been prepared to accept a gift or hospitality improperly, they may feel that they will no longer be able to secure impartial consideration from the authority.

## 5. CONSENT REGIMES

### 5.1 General consent provisions

For clarity, the authority has agreed that, provided the principles set out in Section 4 are not breached, you may accept gifts and hospitality in the following circumstances: -

- (i) civic hospitality provided by another public authority
- (ii) modest refreshment in connection with any meeting in the ordinary course of your work, such as tea, coffee, soft drinks and biscuits
- (iii) tickets for sporting, cultural and entertainment events, which are sponsored by Middlesbrough Council
- (iv) small gifts of low intrinsic value below £25, branded with the name of the company or organisation making the gift, such as pens, pencils, mouse pads, calendars and diaries. However, you should take care not to display any such branded items when this might be taken as an indication of favour to a particular supplier or contractor, for example in the course of a procurement exercise.
- (v) a modest working lunch in the course of a business meeting in the offices of a third party where this is required in order to facilitate the conduct of that business.
- (vi) modest souvenir gifts with a value below £25 from another public authority given on the occasion of a visit by or to the authority.
- (vii) Hospitality received in the course of an external visit or meeting which has been duly authorised by the authority.
- (viii) Other unsolicited gifts, where it is impracticable to return them to the person or organisation making the gift, provided that the officer or councillor deals with the gift strictly in accordance with the following procedure. The officer or councillor must, as soon as practicable after the receipt of the gift, pass it to the Director of Legal & Democratic Services of the Council, together with a written statement identifying the information set out in Paragraph 5.2 below. The Director of Legal & Democratic Services will then write to the person or organisation making the gift thanking them on your behalf for the gift and informing them that you have donated the gift to the Chair's Charity Fund, on whose behalf it will be raffled or otherwise disposed of in due course, the proceeds being devoted to a charitable cause chosen by the Chair.

### 5.2 Special Consent Provisions

If you wish to accept any gift or hospitality which is not within any of the general consents set out in Paragraph 5.1, you may only do so if you have previously obtained specific consent in accordance with the following procedure: -

You must make an application in writing to the Monitoring Officer, setting out: -

- (i) the nature and your estimate of the market value of the gift or hospitality
- (ii) who the invitation or offer has been made by or on behalf of
- (iii) the connection which you have with the person or organisation making the offer or invitation, such as any work which you have undertaken for the authority in which they have been involved.
- (iv) any work, permission, concession or facility, which you are aware that the person or organisation making the offer or invitation may seek from the authority.
- (v) any special circumstances, which lead you to believe that acceptance of the gift or hospitality, will not be improper.

You must not accept the gift or hospitality until you have received the appropriate consent.

## **6. REPORTING**

- 6.1 Whenever a councillor accepts any gift or hospitality, which you estimate to have a market value or cost of provision of £25 or greater, you must, as soon as possible after receipt of the gift or hospitality, make a declaration in writing to the Monitoring Officer, setting out the information set out in Paragraphs 5.2 above. A form for this purpose is attached to this Code, but you can send the same information by any convenient means. The Monitoring Officer will retain a copy of any such declaration in a register, which will be available for public inspection
- 6.2 In respect of councillors, even if the value of the gift or hospitality is less than £25, and you are concerned that its acceptance might be misinterpreted, and particularly where it comes from a contractor or tenderer, you may take a voluntary declaration in the same manner to ensure that there is nothing secret or underhand about the gift or hospitality.
- 6.3 All Heads of Service must keep a register of gifts and hospitality and it is the responsibility of the officer receiving the gift or hospitality to ensure that it is recorded in the register.

## **7. GIFTS TO THE AUTHORITY**

- 7.1 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. You 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, for example in relation to sponsorship of public musical and theatrical performances and developers' contributions under Section 106 Agreements. If you receive such an offer on behalf of the authority, you must first consider whether it is appropriate for the authority to accept the offer (in terms of whether the acceptance or the gift might be seen as putting the authority under any improper obligation, whether there is a real benefit to the authority which would

outweigh any disbenefits). If you do not have delegated authority to accept the gift, you should report the offer directly to the Monitoring Officer who has such delegated authority, together with your recommendation. The Monitoring Officer will then 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. If you 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, you should consult the Monitoring Officer directly.

## 8. DEFINITIONS

- (a) “Gift or hospitality” includes :-
- (i) the free gift of any goods or services.
  - (ii) the 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.
  - (iii) the opportunity to obtain any goods or services which are not available to the general public.
  - (iv) the offer of food, drink, accommodation or entertainment, or the opportunity to attend any cultural, sporting or entertainment event.
- (b) References to the “value” or “cost” of any gift or hospitality are references to the higher of :-
- (i) your estimate of the cost to the person or organisation of providing the gift or consideration
  - (ii) 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 you would be required to make toward that price to the person or organisation providing or offering the gift or hospitality.

**MIDDLESBROUGH BOROUGH COUNCIL**  
**Members' Declaration of Gifts and Hospitality**

*Please read the rules and guidance accompanying this form before completing it  
The form should be returned to the Director of Legal & Democratic Services*

Name of Member .....

Give details of the gift/hospitality .....

What was its estimated value? .....

When was the gift or hospitality received/refused? .....

Who was the recipient of the gift/hospitality? If not yourself, what is their relationship to you?  
.....

Who made the offer? *[individual/company/organisation etc.]*  
.....

Is the individual/company/organisation dealing with you or the Council in relation to any legal, statutory or enforcement matters, such as planning applications? If so, please give details  
.....  
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Are they asking to be added to the Council's tender or approved Contractors list?  
.....

Are they providing goods/services to the Council or hoping to do so in future?  
.....

I certify that I have read the rules and guidance overleaf and that to the best of my knowledge, I have complied with them

Signature of Member .....

Date of declaration .....

For Office Use Only  
Date of Receipt .....

Note of any further action taken .....

Quarterly Review by Monitoring Officer .....

## **Gifts and Hospitality Guidance for Members**

*The new Code of Conduct for Members includes mandatory requirements set out in the Local Authorities (Model Code of Conduct) (England) Order [2001, which sets out the minimum standards of conduct that Members must observe. One of these requirements relates to the receipt of gifts and hospitality and states:-*

“A member must within 28 days of receiving any gift or hospitality over the value of £25 provide written notification to the authority’s monitoring officer of the existence and nature of that gift or hospitality.”

*Failure to comply with this requirement will constitute a breach of the Code.*

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The Standards Committee of Middlesbrough Borough Council has given the following guidance to Members on how to deal with offers of gifts and hospitality.

1. As an elected member, you are personally responsible for all decisions connected with your acceptance of any gift or hospitality and for avoiding the risk of damage to public confidence in local government.
2. You should treat with extreme caution any offer of gifts or hospitality made to you personally or partners/members of your family. Acceptance of inappropriate gifts or hospitality may lead to you being investigated by the Standards Board.
3. Gifts or hospitality of nominal value in the course of Council business (eg, lunch/refreshments or a token promotional gift) may be accepted but always consider if they need to be declared.
4. Tactfully refuse any gift or hospitality, which might be perceived by the public as influencing your decisions or actions as an elected member. If the gifts are sent to you, arrangements for them to be appropriated to the benefit of the Council or to a charity nominated by the Council or returned by the Council.
5. Where the value of any gift or hospitality is over £25.00 you MUST declare receiving it within 28 days.
6. Where the value of any gift or hospitality is under £25.00 you may wish to declare receiving it.
7. Where an offer of any gift or hospitality is made but declined, you may wish to declare the offer.
8. Where the value of any gift or hospitality is substantially higher than £25.00 seek the approval of the Monitoring Officer before accepting it.
9. Any cash payments made to you in your capacity as an elected member, eg. A token payment following a talk you have given or an appearance at an event should either be refused or, if intended for charity, paid via the Council. It is not appropriate to make the donation yourself.
10. Declarations must be made on this form and no other method of declaration is valid.
11. When making decisions, answer all of the questions on the form.
12. Give the completed form to the Members’ Office Manager who will check that it has been properly completed and add a serial number to the form. The register is open to the public and will be periodically reviewed by the Monitoring Officer and the Standards Committee.
13. If you are in any doubt about whether it would be appropriate for you to accept any gift or hospitality, decline it or seek the advice of the Members’ Office Manager on 729704 or the Director of Legal & Democratic Services on 729781.