



INTEGRITY IN PUBLIC LIFE

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## ADVICE NOTE FOR COUNCILLORS ON GIFTS AND HOSPITALITY

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### 1. Introduction

- 1.1 This Advice Note, issued by the Standards Commission, aims to provide assistance to councillors to help them comply with the provisions in the Councillors' Code of Conduct (the Code) in respect of gifts and hospitality. This Advice Note should, therefore, be read in conjunction with the Code, which can be found on the Standards Commission's website at: <https://www.standardscommissionscotland.org.uk/codes-of-conduct/councillors-code-of-conduct>.
- 1.2 The Standards Commission has also produced a general Guidance document on the Code, which can be found on the Standards Commission's website at: <https://www.standardscommissionscotland.org.uk/guidance/guidance-notes>. This Advice Note is intended to supplement that general Guidance.

### 2. General Principles

- 2.1 The provisions in the Code on gifts and hospitality are designed to avoid any perception that councillors may be using their role to obtain access to benefits that members of the public would otherwise be expected to pay for, and also to prevent them from being influenced (inadvertently or otherwise) into making decisions for reasons other than the public interest. Any perception, whether justified or otherwise, that councillors are making decisions for their own personal interests or for those of their friends or family erodes public trust both in their role and the Council itself.
- 2.2 **Paragraphs 3.13 to 3.20** of the Code concern gifts and hospitality. These paragraphs are reproduced below:

- 3.13 I understand that I may be offered gifts (including money raised via crowdfunding or sponsorship), hospitality, material benefits or services ("gift or hospitality") that may be reasonably regarded by a member of the public with knowledge of the relevant facts as placing me under an improper obligation or being capable of influencing my judgement.
- 3.14 I will never **ask for** or **seek** any gift or hospitality.
- 3.15 I will refuse any gift or hospitality, unless it is:
- a) a minor item or token of modest intrinsic value offered on an infrequent basis;

- b) a civic gift being offered to the Council;
  - c) hospitality which would reasonably be associated with my duties as a councillor or as a member of an arm's length external organisation to which I have been appointed or nominated by my council ("ALEO"); or
  - d) hospitality which has been approved in advance by my council or the ALEO.
- 3.16 I will consider whether there could be a reasonable perception that any gift or hospitality received by a person or body connected to me could or would influence my judgement.
- 3.17 I will not allow the promise of money or other financial advantage to induce me to act improperly in my role as a councillor. I accept that the money or advantage (including any gift or hospitality) does not have to be given to me directly. The offer of monies or advantages to others, including community groups, may amount to bribery, if the intention is to induce me to improperly perform a function.
- 3.18 I will never accept any gift or hospitality from any individual or applicant who is awaiting a decision from, or seeking to do business with, my council.
- 3.19 If I consider that declining an offer of a gift would cause offence, I will accept it and hand it over to the Council at the earliest possible opportunity and ask for it to be registered.
- 3.20 I will promptly advise my council's Monitoring Officer if I am offered (but refuse) any gift or hospitality of any significant value and / or if I am offered any gift or hospitality from the same source on a repeated basis, so that my council can monitor this.

2.3 **Paragraph 3.14** of the Code prohibits you from seeking, or asking for, a gift or hospitality, in your role as a councillor. This is regardless of the circumstances or value of the gift or hospitality. The Code recognises, however, that you may be offered a gift or hospitality. It seeks to outline the limited circumstances in which such an offer can be accepted.

2.4 **Paragraph 3.13** of the Code makes it clear that the test is not whether the acceptance of any gift or hospitality could or would affect your decision-making as a councillor. Instead, the test for the acceptance of gifts or hospitality is an objective one. As a councillor, you should consider whether your acceptance of any gift or hospitality would lead an informed member of the public (i.e. someone who knows you are a councillor, the nature of the gift or hospitality, and who has offered it) to reasonably think it could influence your judgement, discussions or decision-making as an elected member. As in all such considerations, you should think not just of your own perception as to whether it could do so, but the perception of others. You should always consider whether you would have been offered the gift or hospitality if you were not a councillor.

2.5 It should be noted that 'gifts' and 'hospitality' can come in many forms. Beyond the more obvious things like bottles of wine or offers of lunch, they can include:

- the provision of services at a price below that generally charged to the public;
- the provision of a meal or drinks at a price below that generally charged to the public;
- incurring personal debts or obligations on someone's behalf;
- relief from indebtedness;
- loan concessions; and / or
- other financial inducements.

2.6 **Paragraph 3.18** of the Code provides that you must NOT accept any gift or hospitality from any individual or organisation who is awaiting a decision from, or seeking to do business with, the

Council (for example, from an applicant for a licence or from a company tendering for a contract). Again, this applies regardless of how small in nature or value the offered gift or hospitality may be. The ban on accepting a gift or hospitality from any individual or organisation who is awaiting a decision from, or seeking to do business with, the Council under paragraph 3.18 is absolute, meaning it is not qualified by any objective test.

- 2.7 The prohibition under paragraph 3.18 on you accepting a gift or hospitality from someone who is awaiting a decision from, or seeking to do business with, the Council also applies irrespective of whether you sit on a Committee with an influence on the outcome of such matters (such as a licensing or planning committee). This is because there could be a perception that you could still be in a position to influence colleagues into making the decision one way or another.
- 2.8 As you have a personal responsibility to comply with the Code, the onus is on you to ascertain whether the individual or organisation offering you gifts and/or hospitality is awaiting a decision from, or seeking to do business with, the Council. If you are in any doubt, you should ask officers to check. You should not accept the gift or hospitality until you have confirmed the position.
- 2.9 As noted above, it is accepted that you will be offered gifts and hospitality in your role as a councillor. It is further accepted that any person or organisation making such an offer may not necessarily be trying to influence you. You should be mindful, nevertheless, that this is a possibility. It is also a possibility that such an offer could give rise to a perception that influence is being sought.
- 2.10 It should be noted that serious organised crime groups can offer gifts and hospitality as a means of creating a relationship which could lead you, whether knowingly or unconsciously, to feel obliged to make a certain decision. Serious organised crime groups often target councils and councillors when seeking to obtain contracts and licences as a means of facilitating money laundering activities.
- 2.11 The Code makes it clear that the default position is you should refuse all offers of gifts and hospitality, except in the very limited circumstances listed at paragraph 3.15 of the Code. It should be noted that acceptance can include accepting the promise of a gift or hospitality (even if that gift or hospitality is not then provided).
- 2.12 Essentially, unless the gift or hospitality falls within one of the categories listed under paragraph 3.15, it should not be accepted. These categories are discussed in more detail under Section 3 below.
- 2.13 As a general rule, you should not accept gifts and hospitality that members of the public would otherwise have to pay for.

### 3. Categories of gifts and hospitality that can be accepted, in terms of paragraph 3.15

#### *“A minor item or token of modest intrinsic value”*

- 3.1 **Paragraph 3.15(a)** of the Code provides that you can accept minor gifts and hospitality of a modest intrinsic value. These would be items such as a pen or a notepad, or hospitality that a councillor would normally be expected to be offered in their everyday role – such as tea or coffee at a local event, or a sandwich or buffet lunch included as part of a daily rate charged and provided to all delegates at a training event or conference.

- 3.2 It is important to note that, unlike in the previous version of the Code, there is no financial limit of £50 in respect of gifts under the current version of the Code. Even gifts with a small monetary value, or limited hospitality, can create the impression that councillors are being influenced, and that there is a culture of ‘favouritism’ or ‘cronyism’ in the council. Such allegations are much easier to refute if no gifts or hospitality have been accepted.
- 3.3 It should also be noted that gifts and hospitality under this category can only be accepted if they are ones that are offered on an infrequent basis. While infrequent is not defined, it is unlikely that weekly, or even monthly, offers of gifts and hospitality from the same source would fall within this category.

#### Illustrations

**Situation:** you are offered a mug from the gift shop of a newly-opened local museum during its opening ceremony.

**What you should do:** you can accept the mug, because it is likely to fall within the definition of “a minor item or token of modest intrinsic value”.

**Situation:** you are offered free tickets to the Scottish Cup Final.

**What you should do:** you should not accept the tickets. They would not be considered to be of a minor nature or of modest intrinsic value.

**Situation:** you are offered a year’s membership to a new gym opening in your council ward.

**What you should do:** you should not accept the membership. A year’s membership would not be considered to be of a minor nature or of modest intrinsic value.

#### **“A civic gift being offered to the Council”**

- 3.4 The Code recognises under paragraph 3.15(b) that there may be situations where you will be expected to accept gifts on the Council’s behalf. Similarly, paragraph 3.19 of the Code recognises that there could be situations where, (particularly if you the civic leader of the council or are deputising for them) refusing to accept a gift might cause embarrassment or offence. If you consider that may be the case, you can accept the gift on behalf of the Council. In both circumstances, you are required to pass the gift to an appropriate officer at the earliest possible opportunity.

#### Illustrations

**Situation:** you are offered a book on local artists during a visit to a refurbished art gallery in your ward.

**What you should do:** you should accept the gift and pass it on to officers, who may wish to display it at Council Headquarters.

**Situation:** a Mayor of a twin town presents you, as Provost, with pennants, featuring her town’s coat of arms.

**What you should do:** accept the gift and pass it on to officers for appropriate public display.

**Situation:** a local distillery presents you, as a ward councillor, with a bottle of its latest blend of gin. The managing director explains he wants to thank all the ward councillors for their help in getting established in the area. There are no outstanding applications for consent at present with the council.

**What you should do:** you could accept this gift, if you consider refusing to do so would cause offence. However, you should then hand it to officers and ask for it to be registered as a gift to the Council.

***“Hospitality which would reasonably be associated with my duties as a councillor or as a member of an arm’s length external organisation to which I have been appointed or nominated by my council”***

3.5 Paragraph 3.15(c) of the Code covers hospitality which would reasonably be associated with your duties as a councillor (or as a member of an ALEO to which you have been appointed or nominated to by your council). It should be noted that this exception will usually apply to councillors with a civic role, such as a council leader or someone deputising for them. Examples of this could be:

- an invitation to a local school’s prizegiving ceremony or festive play;
- tea or coffee at a local event; or
- a sandwich or buffet lunch included as part of a daily rate charged and provided to all delegates at a training event or conference.

**Illustrations**

**Situation:** a local football team invites you, and your fellow ward councillors, to the opening of a new stand. The invitation includes a sandwich lunch.

**What you should do:** you can accept both the invitation and the lunch.

**Situation:** a school in your ward invites you to a summer concert. You are offered a cup of coffee and a piece of homemade cake.

**What you should do:** you can accept both the invitation and hospitality.

***“Hospitality which has been approved in advance by my council or the ALEO”***

3.6 Paragraph 3.15(d) of the Code covers hospitality which has been approved in advance by your Council (or an ALEO to which you have been appointed or nominated to by your Council). You should check your Council’s internal rules and policies on this and, if in doubt, seek advice from your Council’s Monitoring Officer.

3.7 If you wish to accept any offer of hospitality that falls outwith that which can be accepted under paragraph 3.15(c) you should, in the first instance, confirm that it is not being offered by any individual or organisation who is awaiting a decision from, or seeking to do business with, the council. You must then seek approval, from the Council’s or ALEO’s Chief Executive or the Council’s Monitoring Officer or their deputies. In seeking approval, you should clearly state the name of the individual or organisation who has offered the hospitality and what it will entail (including the date and venue). You should always try to seek approval in writing.

**Illustration**

**Situation:** you are invited to attend a drinks reception on the opening night for a three-day music festival being held in your Council area.

**What you should do:** you should check that neither the person or organisation who has invited you, nor the organisers are awaiting a decision from, or seeking to do business with, the council. Having done so, you should write to the Chief Executive or Monitoring Officer to ask for approval to attend. You should advise the Chief Executive or Monitoring Officer of the name of the individual or organisation who has invited you and the name of the individual or organisation who is hosting the event (if this is different). You should provide details about what you expect

*the reception to entail and the date and venue. You should not attend the event until approval has been granted.*

#### 4. Bribery

- 4.1 **Paragraph 3.17** of the Code provides that you must not allow the promise of money or other financial advantage (including any form of gift or hospitality) to induce you to act improperly (i.e. in a way that is dishonest or is against the law, a rule, the Code or a policy) in your role as a councillor. You should note that this includes any money or advantage (including any gift or hospitality) given to you both directly and indirectly (i.e. via a friend, family member or associate or to a club or group you are a member of). The offer of monies or advantages to others, including community groups, may amount to bribery, if the intention is to induce you to improperly perform a function.
- 4.2 The Standards Commission's Guidance on the Code makes the point that, aside from considerations of whether you have breached the Code or not, offers of such inducements can be a criminal offence for the person making the offer, the recipient, and the person being induced to act differently as a result of the offer:
- 4.3 You should note that, in terms of the [Bribery Act 2010](#), the following cases are offences:  
**Case 1** is where:  
P 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, or to reward a person for the improper performance of such a function or activity.  
**Case 2** is where:  
P offers, promises or gives financial or other advantage to another person, and P knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.
- 4.4 An example of bribery might be where a windfarm operator promises to pay community benefit to an organisation in your ward, provided you grant planning permission in circumstances where it would not otherwise be awarded (i.e. if the proper statutory test of considering the provisions of the development plan and all material planning considerations was not applied or if community benefit was wrongly taken into account in determining a planning application).
- 4.5 You should, therefore, be aware that irrespective of any of the provisions in the Code, a gift which induces an individual to improperly undertake a statutory duty, such as granting planning permission, is still likely to fall foul of the provisions of the [Bribery Act 2010](#). Such an action could result in a criminal prosecution.
- 4.6 You should seek legal advice immediately if you have any concerns that an offer either you or another person has received might fall foul of the Bribery Act.

#### 5. Decision Making

- 5.1 **Paragraph 3.18** of the Code provides that you must never accept any gift or hospitality from any individual or organisation who is awaiting a decision from, or seeking to do business with, your Council.
- 5.2 Where anyone is awaiting a decision from, or seeking to do business with, your Council, you should not accept any form of gift or hospitality from them, no matter how small in nature or

value. This is irrespective of whether you sit on a Committee with an influence on the outcome of such matters, as there could still be a perception that you might be in a position to influence colleagues making the decision one way or another.

- 5.3 This is an especially risky area for councillors. Businesses – both local and national, such as large-volume housebuilders or pub and restaurant chains – will be keen to maintain good relations with elected representatives at all levels. Their intention in offering the occasional gift or invitation to a social event may not be intended to influence you directly. However, the public perception of commercial interests ‘oiling the wheels’ in this way can bring councils – and individual councillors – into disrepute.
- 5.4 This is particularly the case if those businesses have outstanding applications that are due to be considered by one of the Council’s quasi-judicial or regulatory committees, such as planning or licensing. Whether or not you are on such a committee, you should make it your business to know whether such applications are in progress. You should never accept any offer of a gift or hospitality if you are in any doubt as to whether the individual or organisation making the offer is awaiting a decision from, or seeking to do business with, your Council.
- 5.5 In addition, the receipt of gifts and hospitality, where there is a specific objective that may be behind it, risks straying into the scope of the [Bribery Act 2010](#), as above. It may also lead to the decision itself being struck down subsequently.

#### Illustrations

**Situation:** *as Leader of the Administration, you are contacted by a well-known celebrity chef who plans to expand his chain of high-end restaurants into your area. He proposes meeting at his existing operation, in a neighbouring council area, to carry out what he calls ‘a taste test.’ Although you are not a member of either the Licensing Board or the Regulation and Licensing Committee, you are aware that premises for the expansion have been identified in your area, and applications for the relevant consents are in the system.*

**What you should do:** *you should refuse the invitation. Accepting it could give rise to a perception that the council is already minded to consider the application favourably.*

**Situation:** *you have been asked by a developer’s agent to meet with her client to discuss ‘exciting new proposals’ for a long-derelect site in your area. The agent also mentions in the phone call that her clients have spare tickets for the next rugby international, and wondered if you would like them?*

**What you should do:** *you should refuse the offer of tickets, perhaps suggesting they be donated to a local school or sports club instead. If you decide to meet to discuss the proposals, you should arrange for an officer to be present, and check that there are no outstanding planning applications with the same developer.*

**Situation:** *an all-trades contractor who has recently set up business in the area contacts you to complain that they are unable to win any of the repairs and maintenance contracts for council houses because of ‘the unfair way the in-house team is assessed favourably.’ They offer to discuss the issue in more detail over lunch at their offices.*

**What you should do:** *you should decline such an invitation. The purpose of the meeting is quite clearly to influence you to change the way the contracts are awarded. You could offer to meet them at another time of day, with a senior official from the council’s procurement team, to discuss their concerns.*

### Case Example

*A complaint alleged that a councillor had failed to declare hospitality received from a recipient of planning permission who was to make further applications for the same development, during a site visit. However, there was no evidence to suggest that any Council representative, including the councillor in question, received any gift or further hospitality other than being provided with light refreshments mid-morning. Evidence suggested that these had been provided by the developers, following a Council request. This was not regarded as inappropriate for the purposes of the Code.*

## 6. Advising Officers

- 6.1 **Paragraph 3.20** of the Code provides that you should advise your council's Monitoring Officer promptly if you are offered (but refuse) any gift or hospitality of any significant value and / or if you are offered any gift or hospitality from the same source on a repeated basis.
- 6.2 The requirement for councillors to advise their Council's Monitoring Officer of any offers of any gifts or hospitality from the same source on a repeated basis is intended to ensure the Council can take action if it appears the same individual or organisation is attempting to influence its elected members and decision-making.
- 6.3 Council officers may be better placed than an individual councillor to detect patterns of behaviour by organisations who are trying to influence the Council. Similarly, if officers are made aware of persistent attempts to offer hospitality to, for example, members of a planning committee, they are better placed to contact the organisation, point out the difficulties they are causing, and persuade them to desist.

### Illustration

**Situation:** *a company seeking to obtain planning permission for a major mixed-use development invites you to an 'information event,' which is to take place in a restaurant just ahead of the formal pre-application meeting with the public at another venue. You are minded to decline - you've spoken to your ward colleagues and one has said they're thinking of going, whilst the other one has declined.*

**What you should do:** *you should decline the invitation and contact your council's Monitoring Officer to let them know a number of councillors have been invited to the event. The Monitoring Officer may then decide to write to all councillors advising them not to attend.*

## 7. Registration; Transitional Arrangements

- 7.1 The Code provides, at paragraph 4.21 that:

4.21 I understand the requirements of paragraphs 3.13 to 3.20 regarding gifts and hospitality. As I will not accept any gifts or hospitality, other than under the limited circumstances allowed, I understand there is no longer the need to register any.

- 7.2 As outlined above, the default position now is you should refuse to accept any gifts and hospitality, except in very limited circumstances. However, if you have accepted gifts and hospitality under previous versions of the Code (which allowed you to accept them), any entries to that effect should remain on your Register of Interests for the term of office.



## 8. Further Sources of Information

8.1 If you have any queries or concerns about this Advice Note or how to interpret or act in accordance with the provisions in the Code, you should seek assistance from your Monitoring Officer or their deputies.

8.2 Further information can also be obtained from the Standards Commission using the contact details below.

Standards Commission for Scotland

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Email: [enquiries@standardscommission.org.uk](mailto:enquiries@standardscommission.org.uk)

