



INTEGRITY IN PUBLIC LIFE

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## ADVICE ON GIFTS AND HOSPITALITY FOR MEMBERS OF DEVOLVED PUBLIC BODIES

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### 1. Introduction

- 1.1 This Advice Note, issued by the Standards Commission, aims to provide assistance to members of devolved public bodies to help them comply with the provisions concerning gifts and hospitality in their public body's Code of Conduct, which is based on the Model Code of Conduct for Members of Devolved Public Bodies (the Code). This Advice Note should 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/members-model-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>

### 2. General Principles

- 2.1 The provisions in the Code on gifts and hospitality are designed to avoid any perception that members 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 members 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 public body itself.
- 2.2 **Paragraphs 3.13 to 3.21** 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 my public body;

- c) hospitality which would reasonably be associated with my duties as board member;  
or
- d) hospitality which has been approved in advance by my public body.

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 board member. 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 public body.

3.19 If I consider that declining an offer of a gift would cause offence, I will accept it and hand it over to my public body at the earliest possible opportunity and ask for it to be registered.

3.20 I will promptly advise my public body's Standards 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 public body can monitor this.

3.21 I will familiarise myself with the terms of the [Bribery Act 2010](#), which provides for offences of bribing another person and offences relating to being bribed.

**2.3 Paragraph 3.14** of the Code prohibits you from seeking, or asking for, a gift or hospitality, in your role as a member. 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 member. Instead, the test for the acceptance of gifts or hospitality is an objective one. As a member, 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 member, 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 a board 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 member.

**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, your public body (for example, from an applicant for grant funding 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, your public body 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, your public body applies irrespective of whether you sit on a committee or panel with an influence on the outcome of such matters. 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, your public body. If you are in any doubt, you should ask employees 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 member. 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. An example of a situation where acceptance of an offer could lead to the perception that you could influence a decision is outlined below:

#### Illustration

**Situation:** *Your public body has a major capital expenditure project underway. Phase one is nearing completion and one of the contractors, a major building firm, is coming to the end of its contract. The next contract for phase two is due to go out to tender at the end of the year. You and your fellow board members have been really impressed with the work that has been done so far. The building firm's Chief Executive has given a number of presentations to the board and you are satisfied that it has been delivered on time and on budget. During a chance meeting with him, you mention that you are the chair of the board of a separate charity that works with underprivileged children and which has plans to refurbish its small playpark. You ask if he can provide advice on suitable firms that might undertake such work. The building firm's Chief Executive explains his own background as an underprivileged child and how close that sort of work is to his heart. He tells you not to worry about looking for quotes as his firm will do the work for the charity "at cost".*

**What you should do:** *You should not accept the offer, regardless of whether you are involved directly in making a decision on the phase two tender. This is because the building firm is seeking to do business with your public body. While you will not benefit personally from the apparent provision of services at a price below that generally charged, accepting this offer on behalf of an organisation you are connected to could lead to a perception that it is a financial inducement. While you may not be involved in the decision-making on the tender, you could still be perceived as being in a position to influence colleagues or employees involved in the process.*

- 2.10 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).

- 2.11 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.
- 2.12 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 member 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 previous versions 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 members are being influenced, and that there is a culture of ‘favouritism’ or ‘cronyism’ within public bodies. 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 (as this would depend on the specific circumstances of each case), it is unlikely that weekly, or even monthly, offers of gifts and hospitality from the same source would fall within this category.

#### Illustrations

**Situation:** all members of your public body are invited to a tour of a newly-opened local attraction, and are offered a commemorative notepad.

**What you should do:** you can accept the notepad, 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 by a consultancy firm who are providing training to members of your public body.

**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:** following your public body’s successful migration to a major new IT system, the IT contractor involved offers you tickets to the Open Championship being held at a nearby golf course.

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

**Situation:** you are offered a year’s free membership to a new gym opening in the same building as your public body’s headquarters.

**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 gift being offered to my public body”***

- 3.4 The Code recognises under paragraph 3.15(b) that there may be situations where, particularly if you are the Chair or Deputy Chair, you will be expected to accept gifts on your public body's behalf. Similarly, paragraph 3.19 of the Code recognises that there could be situations where 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 your public body. You should then pass the gift to the appropriate employee of your public body at the earliest opportunity.

#### Illustrations

**Situation:** you are offered a coffee-table book on local artists during a visit to a refurbished art gallery that your public body has-part funded.

**What you should do:** you should accept the gift and pass it on to employees, who may, for example, wish to display it in the public body's reception area.

**Situation:** members of a foreign delegation visiting your college present you, as the most senior representative of your organisation, with a ceremonial banner celebrating the visit.

**What you should do:** you should accept the gift, and pass it on to employees.

**Situation:** following the completion of a successful advertising campaign for your public body, an advertising agency offers you a framed and signed photograph of the celebrity who featured in the campaign.

**What you should do:** you should accept the gift and pass it to employees, who may, for example, wish to include it as a raffle prize when raising funds for the staff-nominated charity.

**Situation:** a board member of an analogous organisation from another country presents you with a hamper of food and drink from that country as a thank you for hosting a fact-finding visit.

**What you should do:** you should accept the gift and pass it on to employees (who may choose to donate it to a local charity).

### ***“Hospitality which would reasonably be associated with my duties as a board member”***

- 3.5 Paragraph 3.15(c) of the Code covers hospitality which would reasonably be associated with your duties as a member. Examples of this could be:
- tea or coffee at a local event for stakeholders;
  - a sandwich or buffet lunch included as part of a daily rate charged and provided to all delegates at a training event or conference; or
  - an invitation to a drink reception at the Scottish Parliament that was extended to all members of your public body.

#### Illustrations

**Situation:** as Chair of a Health Board, you and the Chief Executive are invited by a well-known national health charity to an evening event. The invitation includes dinner.

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

**Situation:** as a College member, you are invited by a local school to a careers event. You are offered a cup of coffee and a piece of cake.

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

### *“Hospitality which has been approved in advance by my public body”*

- 3.6 Paragraph 3.15(d) of the Code covers hospitality which has been approved in advance by your public body. You should check your public body’s internal rules and policies on this, and, if in doubt, seek advice from your public body’s Standards 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, your public body. You must then seek approval, from the public body’s Chief Executive or Standards Officer. 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:** *as a board member of a cultural organisation, you are invited to attend a drinks reception on the opening night of a new three-day arts festival.*

**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 (for example, in relation to an application for grant funding), or seeking to do business with, your public body. Having done so, you should write to your Chief Executive to ask for approval to attend. You should advise 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 member. 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 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 a councillor's ward if that councillor votes in favour of granting planning permission in circumstances where it would not otherwise be granted (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 regardless of any of the provisions in the Code, a gift to someone else which induces you to improperly undertake a statutory duty, is still likely to fall foul of the provisions of the Bribery Act. This could result in a criminal prosecution against you.
- 4.6 If you are in any doubt about whether an offer either you, or another person has received might fall foul of the Bribery Act, you should seek legal advice immediately.

## 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 is seeking to do business with, your public body.
- 5.2 Where anyone is awaiting a decision from, or seeking to do business with, your public body, 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 are on a committee or panel that is responsible for making the decision, as there could still be a perception that you might be in a position to influence colleagues making the decision one way or another. This is particularly the case if anyone offering a gift or hospitality has an outstanding quasi-judicial or regulatory application that is due to be considered by the public body.
- 5.3 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.
- 5.4 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, as noted above. It may also lead to the decision itself being struck down subsequently.

### Illustrations

**Situation:** *you are contacted by an online learning provider. They propose a lunch meeting at their offices to demonstrate their services. Although you will not be directly involved in the decision-making around any future e-learning, you are aware that your public body is seeking tenders from various providers, including the company in question.*

**What you should do:** *you should refuse the offer of lunch. Accepting it could give rise to a perception that it could affect your public body's decision-making process.*

**Situation:** *as a Health Board member, you have been asked by a pharmaceutical company's agent to meet to discuss 'exciting new trial results' from a recent clinical trial. The agent also mentions in the phone call that she has 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 trials, you should arrange for the appropriate employee to be present, and check that there are no outstanding applications or business approaches from the same company.

**Situation:** your board is about to make a decision on a substantial investment in new equipment. One of the potential providers contacts you to complain that they have recently been unable to win any tenders because of 'the unfair way your public body assesses tenders.' 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 ahead of the forthcoming tender decision. You could offer to meet them at another time of day, with a senior employee from your public body's procurement team, to discuss their concerns.

## 6. Advising Employees

- 6.1 **Paragraph 3.20** of the Code provides that you should advise your public body's Standards 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 members to advise their public body's Standards Officer of any offers of any gifts or hospitality from the same source on a repeated basis is intended to ensure the public body can take action if it appears the same individual or organisation is attempting to influence its members and decision-making.
- 6.3 Public body employees may be better placed than an individual member to detect patterns of behaviour by organisations who are trying to influence the public body. Similarly, if employees are made aware of persistent attempts to offer hospitality to members, they are better placed to contact the organisation, point out the difficulties they are causing, and persuade them to desist.

## 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 3.21 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 public body's Standards Officer.



8.2 The Scottish Government’s publication “On Board: a guide for members of statutory boards” contains useful information and guidance for members of the boards of public bodies in Scotland, and can be found at:

<https://www.gov.scot/publications/board-guide-members-statutory-boards>

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

Standards Commission for Scotland

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Edinburgh, EH99 1SP

Tel: 0131 348 6666

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

