



Record of Officer's Decision

The Openness of Local Government Bodies Regulations 2014 and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

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| Date of Decision: | 11 th May 2016 |
| Decision Maker (Officer): | Lisa Hastings, Monitoring Officer |
| Authority for Delegated Decision (Cabinet/Committee Decision or Scheme of Delegation – provide reference): | Minute 16 – Standards Committee 14 th March 2016 |
| Identify which Portfolio Holder(s)/Committee consulted? Chairman | Chairman of the Standards Committee |
| Ward Member(s) consulted? | Not applicable |
| Is it a Key Decision? | No |
| Is it subject to call-in? | No |
| Decision Made: | The Monitoring Officer, in consultation with the Chairman of the Committee, publish and publicise the final version of the Gifts and Hospitality Policy having taken the aforementioned comments into account. |
| Reason for Decision (if a report was produced to support the Decision, refer to or attach it): | Report was presented to the Standards Committee on 14 th March 2016 |
| Highlight any associated risks/finance/legal/equality considerations: | Please refer to Report |
| Details of any Alternative Options Considered and rejected (together with reasons): | Not applicable |

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| <p>Details of any declarations of interest (by Portfolio Holder/Committee Chairman who was consulted by the officer, which related to the decision)</p> <p>If relevant, a note of the dispensation granted by the Monitoring Officer:</p> | <p>Not applicable</p> | | | | | | | | | | | | | | | | | | | | | | |
| <p>Reason Decision, or supporting Report, is not published:</p> <p><i>Tick one or more of the specific exemptions,</i></p> <p><u>and</u></p> <p><i>Give more information in the final box with regards to why the exemption applies and outweighs the public interest test (which is in favour of disclosure).</i></p> | <table border="1"> <tr> <td data-bbox="716 504 756 539">x</td> <td data-bbox="756 504 1492 539">Not applicable – Decision to be published</td> </tr> <tr> <td colspan="2" data-bbox="716 539 1492 618">If Report is not to be published – tick one of the following boxes:</td> </tr> <tr> <td data-bbox="716 618 756 689"></td> <td data-bbox="756 618 1492 689">The report supporting the Decision contains confidential information</td> </tr> <tr> <td data-bbox="716 689 756 801"></td> <td data-bbox="756 689 1492 801">The Report supporting the Decision falls within an exemption pursuant to Schedule 12A of the Local Government Act 1972 Information:</td> </tr> <tr> <td data-bbox="716 801 756 842"></td> <td data-bbox="756 801 1492 842"> <ul style="list-style-type: none"> • Relates to an individual </td> </tr> <tr> <td data-bbox="716 842 756 882"></td> <td data-bbox="756 842 1492 882"> <ul style="list-style-type: none"> • Likely to reveal the identity of an individual </td> </tr> <tr> <td data-bbox="716 882 756 994"></td> <td data-bbox="756 882 1492 994"> <ul style="list-style-type: none"> • Relating to financial or business affairs of a person or organisation </td> </tr> <tr> <td data-bbox="716 994 756 1106"></td> <td data-bbox="756 994 1492 1106"> <ul style="list-style-type: none"> • Relates to a claim for legal professional privilege in legal proceedings </td> </tr> <tr> <td data-bbox="716 1106 756 1330"></td> <td data-bbox="756 1106 1492 1330"> <ul style="list-style-type: none"> • Reveals that the Council proposes to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or to make an order or direction under any enactment </td> </tr> <tr> <td data-bbox="716 1330 756 1480"></td> <td data-bbox="756 1330 1492 1480"> <ul style="list-style-type: none"> • Relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime </td> </tr> <tr> <td colspan="2" data-bbox="716 1480 1492 1738"> <p><u>And</u> is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information</p> <p>Reasons: N/A</p> </td> </tr> </table> | x | Not applicable – Decision to be published | If Report is not to be published – tick one of the following boxes: | | | The report supporting the Decision contains confidential information | | The Report supporting the Decision falls within an exemption pursuant to Schedule 12A of the Local Government Act 1972 Information: | | <ul style="list-style-type: none"> • Relates to an individual | | <ul style="list-style-type: none"> • Likely to reveal the identity of an individual | | <ul style="list-style-type: none"> • Relating to financial or business affairs of a person or organisation | | <ul style="list-style-type: none"> • Relates to a claim for legal professional privilege in legal proceedings | | <ul style="list-style-type: none"> • Reveals that the Council proposes to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or to make an order or direction under any enactment | | <ul style="list-style-type: none"> • Relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime | <p><u>And</u> is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information</p> <p>Reasons: N/A</p> | |
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Officers



Signed:

Title: Monitoring Officer

Dated: 18th May 2016

STANDARDS COMMITTEE

14 MARCH 2016

REPORT OF THE MONITORING OFFICER

A.2 MEMBERS' GIFTS AND HOSPITALITY POLICY

(Report prepared by Lisa Hastings)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To seek the approval of the Members' Gifts and Hospitality Policy.

EXECUTIVE SUMMARY

The Council's Monitoring Officer's has an on-going responsibility to ensure Tendring District Council follows best practice and adopts relevant guidance, policies and protocols in respect of decision making and Code of Conduct related matters.

The Members' Code of Conduct requires declaration of non-pecuniary interests at meetings where the business to be discussed and decided upon, is likely to affect a person from whom a Member has received a gift and/or hospitality with an estimated value of at least £50. In addition, the Code requires compliance with the Council's Gifts and Hospitality Policy.

The Policy aims to provide a clear set of Rules for the protection of both Councillors and the Council and sets out the General Principles to be applied when deciding whether it would be proper to accept any gift or hospitality; and the Procedure for declaring any gift or hospitality received.

RECOMMENDATION(S)

It is recommended that:

1. Subject to any proposed amendments requested by the Standards Committee, that the Members' Gifts and Hospitality Policy, as set out in the Appendix to this report is approved and adopted.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The Protocol also builds on the Council's good governance arrangements and promotes the maintenance of integrity, both real and perceived within the Council's decision making as well as high standards of conduct.

FINANCE, OTHER RESOURCES AND RISK

Finance and Other Resources

Finance

None associated with the content of this report.

Risk

The Council must ensure that any Codes and Protocols which provide guidance for Councillors are up to date with current policy, legislation, good practice and national guidance. Up to date guidance will prevent confusion and legal challenges by way of judicial review to decisions based on failure to declare interests, predetermination or bias.

LEGAL

Section 2 of the Bribery Act 2010 ('the Act') makes it a criminal offence for a person to request, agree to receive, or accept a financial, or other advantage, to improperly perform or not perform, whether by her/ himself or another, a relevant function or activity. In the context of the Council the relevant function or activity means a public activity which a reasonable person would expect to be performed in good faith, impartially, or in a particular way by a person performing it in a position of trust.

This Policy follows best practice and assists the Council to fulfil its statutory duty to promote and maintain high standards of conduct for both Members and Officers.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following:

Crime and Disorder/Equality and Diversity/Health Inequalities/Area.

Wards Affected: All

PART 3 – SUPPORTING INFORMATION

CURRENT POSITION

The Members' Code of Conduct was adopted by Council in November 2013 and makes specific reference to complying with the Gifts and Hospitality Policy. This has recently been updated for Officers and it is now appropriate to also adopt a specific policy for Members.

The proposed Policy aims to provide a clear set of Rules for the protection of both Councillors and the Council and sets out the General Principles to be applied when deciding whether it would be proper to accept any gift or hospitality; and the Procedure for declaring any gift or hospitality received.

The Policy also includes at (b)(viii) a list of circumstances, which the Standards Committee is requested to agree are appropriate for Members to choose to accept gifts and hospitality. Declarations are still required in accordance with the Policy.

It is each Member's own individual responsibility to observe the proposed Policy, but the Monitoring Officer and Members' Support Officers will assist where possible. The Standards Committee is requested to endorse the use of a standard form for the purposes of registering acceptance of gifts and hospitality over £50, which will be

available on the Council's website.

BACKGROUND PAPERS FOR THE DECISION

There are no background papers arising from this report.

APPENDICES

Appendix A1 – Members' Gifts and Hospitality Policy

Appendix A2 – Standard Form for Registering Acceptance of Gifts and/or Hospitality over £50 in value

Tendring **District Council**



MEMBERS' GIFTS AND HOSPITALITY POLICY MARCH 2016

Introduction:

This Policy has been approved by the Council's Standards Committee and sets out elected Members' obligations to declare gifts and hospitality received in their capacity as members of the Council and to provide guidance on those obligations. A breach of this Policy amounts to a breach of the Council's Code of Conduct and a complaint can be reported to the Monitoring Officer and dealt with in accordance with the Members' Complaints Procedure.

The Code and Legislation:

Paragraph 3.7 of the Code of Conduct states:

Compliance with the Law and the Authority's Rules and Policies

You must:

- (b) comply with the provisions of the Bribery Act 2010 or similar;
- (c) comply with the Authority's Gifts and Hospitality Policy.

Paragraph 6.1 states:

"You have a Non-Pecuniary Interest in any business of the Authority where it relates to or is likely to affect –

- (c) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £50.

Section 2 of the Bribery Act 2010 ('the Act') makes it a criminal offence for a person to request, agree to receive or accept a financial or other advantage, to improperly perform or not perform, whether by her/ himself or another, a relevant function or activity. In the context of the council the relevant function or activity means a public activity which a reasonable person would expect to be performed in good faith, impartially or in a particular way by a person performing it in a position of trust.

Prosecution under the Act could lead to a criminal conviction and an unlimited fine or up to 10 years imprisonment (or both).

The Policy:

This Policy aims to provide:

- (a) a clear set of **Rules** for the protection of both Councillors and the Council and sets out:
- (b) the **General Principles** you should apply whenever you decide whether it would be proper to accept any gift or hospitality; and
- (c) the **Procedure** for declaring any gift or hospitality which you receive and for accounting for any gift to the authority.

This Policy does not apply to the acceptance of any facilities or hospitality which may be provided to you by the Council, in your role as a Councillor.

This Policy applies to all Members including, the Chairman and Vice-Chairman of the Council. It is inevitable that during the holding of either office, the opportunity to receive gifts and hospitality offered may be greater, hence office holders must be ensure openness and transparency by declaring any offer or acceptance.

(a) THE RULES

- You must register *every* individual gift or item of hospitality received that is over £50 in value.
- Your registration must be made *within 28 days of the date you received it*, by completing and sending the attached form for the attention of the Council's Monitoring Officer;
- You must declare the:
 - *value and details* of the gift or hospitality received on the form;
 - whether the donor has or has had in the past or likely to have in the future, *dealings with the Council*;
 - whether the gift or hospitality has been *accepted*; and
 - the *reason* for that acceptance.
- The form must be signed by you *personally*. Forms will be checked and returned if not completed properly.
- Even if all members, or a large number of them, received the same gift or were invited to the same event, they must each make *individual* notifications.
- Failure to comply with these rules is a breach of the Members' Code of Conduct.
- The press and public have the right to inspect your gift and hospitality declaration forms. The Register is also public via the Council's web site at www.tendringdc.gov.uk (follow link to 'Councillors' page). Councillors and officers may also gain access through the Council's intranet (PING). You should have this in mind when completing declaration forms, as your comments will not be edited.

(b) GENERAL PRINCIPLES

In deciding whether it is proper to accept any gift or hospitality, you should apply the following principles. Even if the gift or hospitality comes within one of the general consents set out below, you should not accept it if to do so would be in breach of one or more of these principles

(i) Should I accept gifts and hospitality?

Registering and declaring gifts or hospitality received does not automatically mean it is appropriate or sensible to accept them in the first place.

Particular care should be taken in relation to gifts and hospitality offered by current or potential::

- contractors for the Council;
- developers within the district;
- businesses associated with the district.

In certain cases the acceptance of a gift or hospitality from these sources could constitute a criminal offence, even if declared. If there is any suspicion that any offer is intended as an inducement then the matter should be reported in accordance with established procedures.

(ii) Never accept a gift or hospitality as an inducement or reward for anything which you do as a Member;

(iii) Only accept a gift if there is a commensurate benefit to the Council;

The only proper reason for accepting any gift or hospitality is that the councillor reasonably believes that there may be a benefit for the authority.

Unless the benefit to the authority is clear, and proportionate to the value of that gift or hospitality, the presumption must be that the gift or hospitality is purely for your personal benefit.

(iv) Never accept a gift or hospitality which might be open to misinterpretation;

The appearance of impropriety can be just as damaging to the authority and to you as a Councillor as actual impropriety. The Council's reputation is based on ensuring it acts 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 Council 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.

(v) Never accept a gift or hospitality which puts you under an improper obligation; and

(vi) Never 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 unless the acceptance of that gift or hospitality would be permitted under this Protocol. You should also take care to avoid giving any indication that you might be open to such any improper offer.

(vii) Must I register all gifts and hospitality which I receive or am offered?

You **must register** any gifts or hospitality **worth over £50 that you receive & accept** in connection with your official duties as a Member.

Where the value of any gift or hospitality is **under £50 you may wish to** declare receiving it.

You **should register** any offer of gift and/or hospitality **over £50 which you have declined**, since this protects both your position and that of the Council.

Only gifts and hospitality offered to you in your official capacity must be registered. Gifts and hospitality offered to you in your private capacity, of whatever value, should not be registered at all. You do not need to register gifts and hospitality which are not related to your role as a Member. However, you should always consider whether any gifts or hospitality could be seen as being connected with your public role as a Member.

DETERMINING THE VALUE OF THE GIFT/ HOSPITALITY?

You may have to estimate how much a gift or some hospitality is worth. The form requires you to give an estimate of the value. It is suggested that you take a common sense approach, and consider how much you reasonably think it would cost a member of the public to buy the gift, or provide the hospitality in question. If as a result you estimate that the value is greater than £50, then you should declare receipt.

Where hospitality is concerned, you can disregard catering on-costs and other overheads, e.g. staff and room hire. If the sandwiches or your meal, including drinks and alcohol, would cost £50 in a comparable establishment providing food of comparable quality, register it.

If you are not certain whether the value is under £50, the safest course is to register it and give an approximate value.

What about gifts of low value?

There is no requirement to declare gifts of a value of less than £50. However, in order to be transparent, if you receive a series of related gifts in connection with your role as a Member which are all under £50, but together total above £50, then you should register them if they are from the same person. If the

small gifts received from different persons are connected in some way, it is *good practice* to register them.

(viii) Gifts which have been considered acceptable by the Standards Committee

Decisions on declarations must be made by individual members. The Standards Committee has however agreed that in appropriate circumstances members may choose to accept gifts and hospitality in the following circumstances:

- Civic hospitality provided by another authority;
- modest refreshments received in the ordinary course of duties as a member e.g. at formal meetings or when in contact with constituents;
- Tickets for sporting, cultural events which are sponsored or supported by the Council;
- Small gifts of low intrinsic value i.e. below £50 which are branded with the name of the company or organisation making the gift (e.g. diaries, calendars etc);
- Modest souvenir gifts with a value below £50 from another public body given on the occasion of a visit by or to that body;
- Hospitality received in the course of an external visit or meeting which has been authorised by the Council. In such cases the arrangements should be made by officers rather than the members who will be benefiting and hospitality should be commensurate with the nature of the visit; and
- Other unsolicited gifts where it is impracticable to return them or where refusal would in the circumstances cause offence. In such cases you may wish to pass the gift to the Chairman's charitable fund.

Receipt of gifts and hospitality of this type is still subject to the requirements of the Policy regarding the notification to the Monitoring Officer of gifts and hospitality of greater than £50 in value. The appropriateness of acceptance should always be considered beforehand. It should also be noted that the mere fact that a gift or hospitality does not have to be notified under the Policy does not necessarily mean that it is appropriate to accept it

(C) PROCEDURE FOR REGISTRATION & DECLARATION

(i) How do I register gifts and hospitality I receive?

You must give Member Support (working on behalf of the Monitoring Officer) written details about the gifts and hospitality you are offered. The Standards Committee endorses the use of a standard form for this purpose, which is available on the Council's website.

The best advice is to get into the habit of registering things as soon as possible, and if in doubt, register receipt. The appropriate form is available on the Council's website.

(ii) How do I declare gifts and hospitality with an estimated value of £50 or over.

You must also disclose, as a Declarable Non-Pecuniary Interest, the existence and nature of the gift or hospitality at any meeting at which business that relates to, or is likely to affect, the donor of that gift or hospitality is considered.

You need not disclose the interest if it was registered more than 6 years before the date of the meeting. You should follow the provisions of paragraphs 7 and 10 of the Members' Code of Conduct on how you treat this interest in a meeting.

(iii) Gifts and hospitality that have been refused

The Council's Register of Gifts and Hospitality for Councillors has provision for showing where a gifts or hospitality has been offered but you have refused it. Although there is no legal or other requirement to notify such an offer/refusal, you are able to register it if you prefer to put your refusal on the public record.

Definitions

(a) "Gift or hospitality" includes:

- i. the gift of any goods or services.
- ii. the offer of food, drink, accommodation or entertainment, or the opportunity to attend any cultural, sporting or entertainment event, free of charge or at a reduced rate.
- iii. the opportunity to obtain any goods or services which are not available to the general public
- iv. 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.

(b) References to the "value" or "cost" (estimated or actual) of any gift or hospitality are to be assessed against 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.

Further assistance

It is each Member's own individual responsibility to observe this Policy, but the Monitoring Officer and their staff will assist where possible. If you have any questions at all please contact Member Support, the Monitoring Officer or Deputy Monitoring Officer for advice and assistance.

Monitoring Officer

TENDRING DISTRICT COUNCIL

(Please complete this form in black ink and write clearly and legibly, using block capitals)

REGISTER OF GIFTS AND HOSPITALITY

**Notification by Member of
Offer and/or Receipt of Gift or Hospitality over value of £50.00**

I, GIVE NOTICE as an elected Member of **TENDRING DISTRICT COUNCIL** that I have [been offered] [received] the following [gift(s)] [hospitality] (delete whichever does not apply) over the value of £50.00

(a) Date(s) of [offer] [receipt] of [gift(s)] [hospitality]

(b) Nature of gift(s) and/or hospitality

(c) Approximate value

(d) Was the gift/hospitality accepted?

[YES] [NO]

(e) If yes – please give the justification for accepting the gift/hospitality

(f) Name(s) and addresses of donor(s)

(g) Does the donor of the gift and/or hospitality have or has had or is likely in the future to have dealings with the Council?

[YES] [NO] [DON'T KNOW]

(h) If yes please specify

Date of declaration;.....

Name (please print);.....

Signed;.....

This form should be printed and signed by the declaring Member and returned to



RECEIVED:

Signed:

Dated:

(on behalf of the Monitoring Officer at Tendring District Council)