

GIFTS AND HOSPITALITY

Background

The public is entitled to expect the highest standards of conduct from all employees who work for local government. The Employment Relations Unit published a 'Code of Conduct for Local Government Employees' in 1994. This publication outlined existing laws, regulations and conditions of service and provided guidance designed to assist local authorities in the development of their own voluntary local codes of conduct. Most have since implemented such codes and the Council's Code is clearly derived from this document and codes which were developed for consultation in 2004 and 2008.

From a review of several Council codes, authorities split gifts and hospitality into three categories:

1. Tokens such as pens, desk diaries, tea and biscuits or a sandwich which do not have to be registered. To allow flexibility, tokens are normally defined by a list which is not all inclusive. Some councils give a value for such items e.g. under £5
2. Gifts and hospitality which are more than token but which are acceptable as being reasonable in the context must be registered and authorised by management. These must only be accepted for a good business reason
3. Gifts and hospitality which must be registered and refused of any value no matter how small because they are solicited offered or accepted as inducements or because they are unreasonable in the context and the employee or Council may be perceived to be acting improperly or even be subject to formal action.

Where cash gifts are mentioned in the codes reviewed it is on the basis that they are not acceptable.

The Law On Gifts and Hospitality

The law is set out in a number of Acts:

The Local Government Act 1972

Section 117 (1) - provides that if an officer knows that a contract in which he/she has a pecuniary interest is before the local authority, he/she must give notice of his/her interest to the authority. This does not, of course, apply to a contract in their own name because the authority will then know of his/her interest.

Section 117(2) forbids an officer "*under colour of his office or employment*" to accept "*any fee or reward*" whatsoever other than proper remuneration.

The Prevention of Corruption Acts 1906 and 1916

says about acceptance of gifts by way of inducements or rewards:

- (a) Under the Prevention of Corruption Acts 1906 and 1916, it is an offence for employees corruptly to accept any gifts or consideration as an inducement or reward for doing, or refraining from doing, anything in their official capacity: or showing favour or disfavour to any person in their official capacity
- (b) Under the Prevention of Corruption Act 1916, any money, gift or consideration received by an employee in public service from a person or organisation

holding or seeking to obtain a contract will be deemed by the courts to have been received corruptly unless the employee proves to the contrary.

(See also the Public Bodies Corrupt Practices Act 1889).

The Bribery Act 2010

The Act came into force with effect from the 1 July 2011. Bribery is defined as "the giving or taking of a reward in return for acting dishonestly and/or in breach of the law. The reward could relate to money, payment in kind, goods or service". Accordingly, any gift or hospitality which is requested by a Council worker for improper performance of their job or taken as an inducement for such improper performance is an offence under the Act. The Council will also commit an offence if it fails to take steps to prevent such bribery.

The National Code

The 1994 Code had the following sections on corruption and hospitality:

Corruption

Employees must be aware that it is a serious criminal offence for them corruptly to receive or give any gift, loan, fee, reward or advantage for doing, or not doing, anything or showing favour, or disfavour, to any person in their official capacity. If an allegation is made it is for the employee to demonstrate that any such rewards have not been corruptly obtained.

Hospitality

1. Employees should only accept offers of hospitality if there is a genuine need to impart information or represent the local authority in the community. Offers to attend purely social or sporting functions should be accepted only when these are part of the life of the community or where the authority should be seen to be represented. They should be properly authorised and recorded.
2. When hospitality has to be declined, those making the offer should be courteously but politely informed of the procedures and standards operating within the authority.
3. Employees should not accept significant personal gifts from contractors and outside suppliers, although the authority may wish to allow employees to keep insignificant items of token value such as pens, diaries etc.
4. When receiving authorised hospitality, employees should be particularly sensitive as to its timing in relation to decisions which the authority may be taking affecting those providing the hospitality.
5. Acceptance by employees of hospitality through attendance at relevant conferences and courses is acceptable where it is clear the hospitality is corporate rather than personal, where the authority gives consent in advance and where the authority is satisfied that any purchasing decisions are not compromised. Where visits to inspect equipment etc. are required, employees should ensure that authorities meet the cost of such visits to avoid jeopardising the integrity of subsequent purchasing decisions.

ISSUES

A code on gifts and hospitality gives clarity to officers and the public on the behaviours expected, allows them to avoid breaches of the rules and assists in maintaining the reputation of the Council and the prevention of fraud. A range of

options is open to the Council. It would be possible to prohibit all gifts and hospitality; however the various codes recognise the benefits of hospitality and small gifts in terms of social graces including not causing offence, enabling good social relationships which lead to better work outcomes and the practical benefits to the parties of being able to give and accept for example refreshments and office equipment. The issue is clarity and where to draw the line.

It would seem clearer to describe token gifts and hospitality if they are to be allowed at all as being gifts or hospitality which the officer estimates as being valued at less than a given value - say £5 - so long as these are not offered, solicited or accepted as inducements to improper behaviour.

All other gifts and hospitality would then be required to be registered whether refused or allowed to be accepted. Acceptance is only allowed where that is reasonable in the context and the Council may wish to define that further. Rejected gifts should be returned where possible but where that is impractical or the donor agrees they may be passed on to a charity. It is a matter for the recipient and their managers to determine which charity and it is not considered appropriate that this should be directed by the Council in relation to any particular charities.

Gifts to groups may be treated differently to gifts to individuals as that changes the context. For example a £15 box of chocolates may not be acceptable to an individual but may be acceptable for a team of 5.

If cash is to be allowed then there needs to be clear rules, particularly around registration. S.117 (2) presents a difficulty if this is to be allowed. On the other hand, anecdotally payments at Christmas are commonplace in certain services throughout the country which appears to be allowed. A view might be taken that if such payments are authorised then they form part of the proper remuneration. There is no case law on the point so it is clearly vulnerable to challenge. It should be noted that where tips are paid voluntarily and not allocated by the Employer the responsibility for tax belongs to the persons collecting the tip.