

CANNOCK CHASE COUNCIL

STANDARDS COMMITTEE

25 SEPTEMBER, 2008

REPORT OF DIRECTOR OF GOVERNANCE

GIFTS AND HOSPITALITY – A PROTOCOL FOR COUNCILLORS

1. Purpose of Report

- 1.1 This report seeks the Committee's endorsement to a protocol for gifts and hospitality for councillors and co-opted members.

2. Recommendation(s)

2.1 The Committee is recommended to:-

- (a) Endorse the contents of the protocol on gifts and hospitality for Councillors
- (b) Refer the protocol to the Council for adoption

3. Conclusions and Reason(s) for the Recommendation(s)

- 3.1 The Declaration of Gifts and Hospitality forms part of a requirement in the Councillor Code of Conduct. To assist Councillors to navigate and apply a pragmatic approach to dealing with gifts and hospitality the protocol attached is recommended. The protocol follows a format which has been considered by other local authorities.

4. Key Issues

- 4.1 The Councillor Code of Conduct requires councillors to declare any gifts and hospitality received over the value of £25. It is not always clear how gifts and hospitality which are under that value should be dealt with and also gifts and hospitality which are over £25 which relates to certain specific unique functions such as the role of the Chairman on the Council or where the receipt of a gift (although declarable and declared) could be misrepresented. This protocol aims to give guidance to councillors on how to deal with gifts and hospitality. The protocol does not supercede any requirements of the Councillor Code of Conduct but should be seen as a background document to assist councillors in determining whether or not the gift and / or hospitality should be accepted.

REPORT INDEX

Background	Section 1
Details of Matters to be Considered	Section 2
Contribution to CHASE	Section 3
Financial Implications	Section 4
Human Resource Implications	Section 5
Legal Implications	Section 6
Section 17 (Crime Prevention)	Section 7
Human Rights Act Implications	Section 8
Data Protection Act Implications	Section 9
Risk Management Implications	Section 10
Equality and Diversity Implications	Section 11
Other Options Considered	Section 12
Annexes to the Report	
Gifts and Hospitality – A Protocol for Councillors	Annex 1
Report Author Details:	
Philip Lloyd-Williams	
Director of Governance	
Ext 4223	

Section 1

Background

At its last meeting the Committee requested that the Monitoring Officer produce a protocol for councillors regarding gifts and hospitality. The adoption of a protocol by Council is considered to be good practice and should assist councillors in their representative roles. The protocol acknowledges the nature of public life and public office and the understandable opportunities presented to councillors to receive gifts and hospitality as part of their representative role and also as gestures of thanks to themselves personally and to the Council. To govern this potential complex area, the protocol is recommended as a tool for councillors.

Section 2

Details of Matters to be Considered

The Committee should consider whether or not the protocol should be recommended to Council as drafted, amended or at all. The protocol follows good practice and it is recommended as part of a wider governance framework for the Council that advice and assistance to councillors regarding gifts and hospitality would be beneficial.

Section 3

Contribution to CHASE

Public confidence in the Council is paramount if the Council is to deliver the CHASE objectives. Public confidence stems from a variety of means, one of which is the trust the citizens have in councillors and in the way that they receive / reject gifts and / or hospitality. This protocol should assist councillors in ensuring that their personal reputation as a councillor and the reputation of the Council as a whole is not put at risk when gifts and hospitality are presented.

Section 4

Financial Implications

There are no financial implications arising directly as a result of this report.

Section 5

Human Resource Implications

There are no human resource implication arising directly as a result of this report.

Section 6

Legal Implications

The legal implications on the consequence of this decision are included in the main body of this report.

Section 7

Section 17 (Crime Prevention)

There are no Section 17 implications arising directly as a result of this report.

Section 8

Human Rights Act Implications

There are no Human Rights Act implications arising directly as a result of this report.

Section 9

Data Protection Act Implications

There are no Data Protection Act implications arising directly as a result of this report.

Section 10

Risk Management Implications

The risk to an individual councillor in not complying with the Code of Conduct could result in a complaint being made against them to the Standards Committee. The complaint may result in an investigation, which could result in a decision to hear a case against the councillor. Various sanctions are available to the Standards Committee and the Standards Board (in severe cases) where a councillor has failed to follow the Code of Conduct. Where a councillor failed to comply with the requirements regarding gifts and hospitality in the Code of Conduct, there is a risk to them as a councillor and to the Council as a whole. To the councillor, there is a risk that they may be suspended or disqualified (or other penalty) and the Council's risk to reputation would be severely damaged.

Section 11

Equality and Diversity Implications

There are no equality and diversity implications arising directly as a result of this report.

Section 12

Other Options Considered

Please section 2 above.

Section 13

List of Background Papers

Annexes

Gifts and Hospitality – A Protocol for Councillors

CANNOCK CHASE DISTRICT COUNCIL

GIFTS AND HOSPITALITY

A PROTOCOL FOR COUNCILLORS

The acceptance of gifts and hospitality by Councillors is not merely an administrative issue. It reflects directly upon the perception of Councillors and of the authority as acting in the public interest or as acting for the personal advantage of friends and for what personal benefit Councillors can get out of their position.

The law on the acceptance of gifts and hospitality is set out in the authority's Code of Conduct for Members and in the Prevention of Corruption Acts. These requirements are then supplemented by the procedures which have been adopted by this authority, to provide a clear set of rules for the protection of both Councillors and the authority. Acceptance of a gift or hospitality in breach of the Code, or failure to declare receipt of such a gift or hospitality, can lead to disqualification from holding any public office for a period of up to five years. Corrupt acceptance of a gift or hospitality can lead to a heavy fine or up to 7 years' imprisonment.

This Protocol of Conduct sets out:

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

This Protocol does not apply to the acceptance of any facilities or hospitality which may be provided to you by this authority.

It is impossible to cover every eventuality but these guidelines should assist you in making a decision. If you are in any doubt as to whether to accept or refuse an offer of a gift or hospitality you should seek advice from the Monitoring Officer.

1 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 would be in breach of one or more of these principles:

- (a) Never accept a gift or hospitality as an inducement or reward for anything you do as a Councillor**

As a Councillor, you must 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.

The Public Bodies (Corrupt Offences) Act 1889 provides that if you accept any gift, loan, fee, reward or advantage whatsoever as an inducement to or reward for doing or forbearing to do anything in respect of any matter or transaction in which the authority is concerned, you commit a criminal offence carrying a maximum term of imprisonment of 7 years.

Further, the authority's Code of Conduct for Members provides that you 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 on any person, including yourself. As a general rule of thumb small tokens of gratitude e.g. chocolates and flowers are acceptable.

(b) You should only accept a gift or hospitality if there is a commensurate benefit to the authority.

The only proper reason for accepting any gift or hospitality is that there is a commensurate benefit for the authority which would not have been available but for acceptance of that gift or hospitality.

Acceptance of hospitality can confer an advantage on the authority, such as an opportunity to progress the business of the authority expeditiously through a working lunch, or to canvass the interest of the authority and its area at a meeting. Acceptance of a gift is much less likely to confer such an advantage.

But unless the benefit to the authority is clear, and is commensurate with the value of the gift or hospitality, the presumption must be that the gift or hospitality is purely for your personal benefit.

As set out above, the authority's code provides that you must not improperly confer any advantage on anyone, including yourself. Acceptance as a Councillor of a gift or hospitality for your own benefit or advantage, rather than for the benefit to the authority, would be a breach of the Code.

(c) 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 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 you as a Councillor are involved in the process.
- (ii) determinations of 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.
- (iv) Where the Council is in dispute with the person or organisation

(d) 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. Hospitality given by employees of the Council should be justified as being in the public interest. It should be on a scale appropriate to the occasion and should not be lavish or extravagant.

(e) Never solicit a gift or hospitality

You must never solicit or invite an offer of a gift or hospitality or sponsorship 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.

(f) Cash

Cash and monetary gifts must always, without exception be refused as should those which appear immodest or lavish.

2 Consent Regimes

(a) General consent provisions

For clarity, the authority has agreed that 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 the authority and those events provided by others provided that attendance is beneficial for the reputation of the Council and is not purely for personal pleasure
- (iv) small gifts of low intrinsic value below £25, 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 alcoholic or soft drink on the occasion of an accidental social meeting, such as a pint of beer from an employee of a contractor or party with whom you have done business on behalf of the authority if you meet accidentally in a public house, café or bar. In such cases, you should make reasonable efforts to reciprocate where this is practicable
- (vi) a modest working lunch not exceeding £10 a head in the course of a meeting in the offices of a party with whom the authority has an existing business connection where this is required in order to facilitate the conduct of that business.
- (vii) modest souvenir gifts with a value below £25 from another public authority given on the occasion of a visit by or to the authority
- (viii) Hospitality received in the course of an external visit or meeting which has been duly authorised by the authority.
- (ix) other unsolicited gifts, where it is impractical to return them to the person or organisation making the gift, provided that the Councillor deals with the gift strictly in accordance with the following procedure:
The Councillor must, as soon as practicable after the receipt of the gift, pass it to the Monitoring Officer together with a written statement identifying the information set out in Paragraphs 2(b) below. The Monitoring Officer 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 Chairman'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 Chairman.
- (x) It is permissible to accept:-
 - Modest refreshments offered in the normal course of business e.g. coffee, sandwiches over a lunchtime meeting
 - Hospitality offered by other non-commercial bodies provided that there is a general understanding that no indebtedness will result from the acceptance
 - Invitations to functions where you represent the Council in an official capacity or by virtue of professional position, for example, when invited to/attending opening ceremonies, conferences

(b) Special consent provisions

If you wish to accept any gift or hospitality which is in accordance with the General Principles set out in Paragraph 1, but is not within any of the general consents set out in Paragraph 2 (a), you may also 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 the 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 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.

The Monitoring Officer will enter details of any approval in a register which will be available for public inspection.

3 Reporting

You must comply with the Code of Conduct for the reporting of gifts. Where you accept any gift or hospitality which you estimate to have a market value or cost or provision of £25 or greater, you must make a declaration in writing to the Monitoring Officer, setting out the information set out in Paragraph 2 (b) above, within 28 days of receipt. A form for this purpose is attached to this Protocol, 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 until the approval of the authority's accounts for the year in question.

Even if the value of the gift or hospitality is less than £25, if you are concerned that its acceptance might be misinterpreted, and particularly where it comes from a contractor or tenderer, you may make a voluntary declaration in the same manner to ensure that there is nothing secret or underhand about the gift or hospitality.

4 Gifts to the authority

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 of 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 dis-benefits). 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.

5 Civic Gifts and Hospitality

The Chairman and Vice-Chairman of the Council may accept gifts of hospitality over £25 received by them by virtue of their office. They shall determine whether such gifts are personal or to be donated to their Charity Fund or to the Council. The Chief Executive's office shall record all gifts in writing on the forms enclosed with this Protocol whether personal or otherwise on a Register which shall be kept by the Monitoring Officer. Such declarations are to be with the Monitoring Officer 28 days after receipt of the gift/hospitality.

6 Definitions

- (a) "Gift or hospitality" includes any:
- (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 goods, 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 or:

- (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.

To: The Monitoring Officer

Declaration of Receipt of Gifts or Hospitality

Name	
Address:	
What was the gift or hospitality?	
What is your best estimate of its Market value or cost?	
Who provided it?	
When and where did you receive it?	
Does it come within one of the general consents set out in the protocol of Conduct? If so, which? Gift or Hospitality	
Did you get the consent of the Monitoring Officer Before accepting it? If so, who?	
Were there any special circumstances Justifying acceptance of this gift or Hospitality?	
Do you have any contact in your job with the person or organisation providing the gift or hospitality	
Signed	Date