

Committee: STANDARDS COMMITTEE

Date: 26 February 2013

Agenda item: 10

Wards: All

Subject: Protocol on Gifts and Hospitality by elected and co-opted Members

Lead officer: Monitoring Officer

Lead member: Chair of Standards Committee

Contact officer: Fiona.thomsen@merton.gov.uk

Recommendations:

A. That the Committee agrees the protocol.

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

1.1. Following the introduction of the new standards regime by the Localism Act 2011 and the adoption of the new code of conduct for councillors by Council on 11 July 2012, it was agreed by members that a protocol on the offer, acceptance and declaration of the receipt of gifts and hospitality should be prepared to reflect the guidance existing under the previous code of conduct.

2 DETAILS

2.1. Under the Code of Conduct adopted by the Council on 11 July 2012 , members agreed under the Code to “to behave in accordance with all our legal obligations, alongside any requirements contained within this authority’s policies, protocols and procedures, including on the use of the Authority’s resources. “

2.2. This report provides a draft protocol at Appendix 1 which is based heavily on the guidance, which existed under the previous Code of Conduct.

2.3. The Committee is invited to comment upon the draft protocol.

3 ALTERNATIVE OPTIONS

3.1. It is not a statutory requirement to have a protocol on gifts and hospitality but in the spirit of openness and transparency it is regarded a matter of best practice.

4 CONSULTATION UNDERTAKEN OR PROPOSED

4.1. No consultation has taken place.

5 TIMETABLE

5.1. If the Protocol is approved it will be issued to members with immediate effect.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

6.1. None

7 LEGAL AND STATUTORY IMPLICATIONS

7.1. If approved, any allegation that there has been a breach of this protocol will be dealt with under the Members' Complaints Procedure.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

8.1. There are no specific human rights or equalities issues arising from this report.

9 CRIME AND DISORDER IMPLICATIONS

9.1. None

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

10.1. None

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Appendix 1: Draft Protocol on the acceptance and declaration of the receipt of gifts and hospitality by members

12 BACKGROUND PAPERS

12.1. None

Protocol on the offer, acceptance and declaration of the receipt of gifts and hospitality by elected and co-opted members

Introduction

This protocol has been approved by the Standards Committee of the London Borough of Merton and sets out 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 protocol 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.

What are the rules?

- You must register *every* individual gift or item of hospitality received that is over £25 in value.
- Your registration must be made *within 28 days of the date you received it*, by completing and sending the attached form to the Council's Monitoring Officer (Paul Evans, Assistant Director of Corporate Governance and Joint Head of Legal Services).
- You must declare the *value* and details of the gift or hospitality received on the form, as well as whether the donor of the gift has or has had in the past or likely to have in the future, dealings with the Council and also if the gift or hospitality has been accepted the reason for that acceptance. The form must be signed by you *personally*; they should not be signed by support staff for you. 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.
 - Breaches of the Code render members liable to a complaint being reported to the Monitoring Officer, who can decide whether there should be an investigation into the allegation.
- 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.merton.gov.uk. (follow link to 'Councillors' page). Councillors and officers may also gain access through the council's intranet. (You should have this in mind when completing declaration forms, as we cannot edit your comments.)

Should I accept gifts and hospitality?

Registering gifts or hospitality received under the Code 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. 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.

The Bribery Act 2010, which came into force on 1 July 2011, creates offences of “bribing another person” (active bribery) and of “being bribed” (passive bribery). The offences consist of “promising, offering or giving” or “requesting, agreeing to receive or accepting an advantage (financial or otherwise)” in circumstances involving the improper performance of 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. There is a maximum penalty of 10 years imprisonment or an unlimited fine for these offences.

In considering whether to accept gifts or hospitality Members should have regard to the following general principles:

- Never accept a gift or hospitality as an inducement or reward for anything which you do as a Member;
- Only accept a gift if there is a commensurate benefit to the Council;
- Never accept a gift or hospitality which might be open to misinterpretation;
- Never accept a gift or hospitality which puts you under an improper obligation; and
- Never solicit a gift or hospitality.

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

- You must register any gifts or hospitality worth over £25 that you receive in connection with your official duties as a Member.
- Where the value of any gift or hospitality is under £25 you may wish to declare receiving it.
- You should register any offer of gift and/or hospitality over £25 which you have declined.

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.

What is 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 £25, 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 £25 in a comparable establishment providing food of comparable quality, register it.

What about gifts of low value?

There is no requirement to declare gifts of a value of less than £25. 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 £25, but together total above £25, 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.

How do I register gifts and hospitality I receive?

You must give the Group Office Managers (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..

Which organisation do I make declarations to?

As mentioned, anything received in your private capacity is not declarable. However, what is your "*official capacity*"? So far as the Council is concerned it is when you do any of the following -

- You conduct the Council's business; or
- You conduct the business of the office of Councillor; or
- You act as a formal representative of the Council on another body.

To deal with the issue of when things are received in different capacities or where there are overlapping roles:

- Only use the Council's gifts and hospitality registration declaration form for things received in your capacity as a Merton councillor, and send it to the Council's Monitoring Officer.

- If you receive things in another capacity, i.e. arising from holding another public office, register in accordance with whatever code is in place for that other body. If a particular body does not actually require you to register anything (e.g. a community association), then you do not need to do anything in respect of the receipt of a gift or hospitality directly attributed to your role within that organisation.
- If you cannot decide what capacity you received something in, e.g. you were invited as both a Councillor and a health trust member, provided you declare the gift/ hospitality *at least once* with the body that appears to be the most appropriate, you will have fulfilled your duties. The overriding purpose is public transparency.

What happens if I do not register a gift or hospitality?

Failure to notify the Monitoring Officer of the receipt of a gift or hospitality is a breach of this protocol and consequently also a breach of the Code of Conduct. An alleged breach of the Code can be the subject of a complaint to the Monitoring Officer which could result in the matter becoming the subject of the investigation.

Gifts which are more likely to be 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 £25 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 £25 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.

Receipt of gifts and hospitality of this type is still subject to the requirements of the protocol regarding the notification to the Monitoring Officer of gifts and hospitality of greater than £25 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 protocol does not necessarily mean that it is appropriate to accept it.

Guidance on particular gifts and hospitality

Tickets to events

The evidence of the Register indicates that the most common benefits accepted by Merton Councillors from time to time, are tickets to functions, notably theatrical performances in the Borough. If a Member considers it appropriate to accept such tickets, then the value must be assessed and if greater than £25 they should be declared as gifts.

All England Lawn Tennis Championships

Where, as in the case of the All England Lawn Tennis Championships, tickets are allocated by lottery and then purchased, the mere fact of payment should not necessarily mean that a notification should not be made under the Code. If participation in a lottery enables a member as a result of his or her office, the opportunity to purchase tickets which would not be available to the public at large then a benefit has been enjoyed by the member. The Standards Committee considers that even though the value of this benefit is difficult to quantify the interests of probity and transparency require the notification of such tickets whether purchased or not. A specific form with standardised wording is available on the Council's website for these circumstances.

Civic Ceremonial

The Standards Committee does not consider that the attendance of the Mayor, the Deputy Mayor or any other Councillor as an accredited representative of the Council needs to be notified to the Monitoring Officer under the Protocol. However should any personal gift be offered in such circumstances the approach to be adopted in relation to acceptance must be considered in accordance with this protocol and this guidance.

Ceremonial gifts

Ceremonial gifts greater than £25 in value offered by visiting delegations from British or overseas public authorities may be accepted on the basis that the gift is made to the Council rather than the individual Councillor. Arrangements should be made for any such gifts which are received to be displayed or kept corporately.

Will the register be open to the public?

Yes, the register is available to the public in the same way as the register of disclosable pecuniary interests. It is open for inspection and also available on the internet and the Council's intranet.

The Monitoring Officer produces regular updates of declarations, which are reported to the Standards Committee once a year, and available for public inspection.

Further assistance

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

Paul Evans

Monitoring Officer

London Borough of Merton

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