

AUDIT COMMITTEE

21 MARCH 2019

SENIOR OFFICERS - RECORDING AND PUBLISHING GIFTS AND HOSPITALITY

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Summary

This report sets out the current requirements for officers to record all gifts and hospitality they are offered and responds to a suggestion made by the Audit Committee that this information should be made publicly available in respect of senior officers.

1. Budget and Policy Framework

- 1.1 The rules regarding how officers should deal with gifts and hospitality are set out in the Employee Code of Conduct. Any changes to the latter are a matter for Council.
- 1.2 The Committee's terms of reference include receiving reports in line with the Council's anti-bribery policies.

2. Background

- 2.1 At the September 2019 meeting of the Audit Committee, Members discussed a suggestion that gifts and hospitality registered by senior officers should be published, with the aim of improving transparency and achieving consistency with the requirements placed upon Members to disclose gifts and hospitality.
- 2.2 It was further suggested that:
 - the level for this should be set at the threshold for senior officer remuneration disclosure in the Council's accounts;
 - the approach adopted by other councils should be investigated
 - the issue of Council employees appointed to serve as Directors be looked into, and;
 - a more consistent approach to the registering of gifts and hospitality across the Council should be sought. (In terms of the latter point, this was a recommendation from a recent Internal Audit Ethics review and is being addressed through the subsequent action plan.)

- 2.3 There is no national model Code of Conduct for local authority employees. The Local Government Association published a 'Code of Conduct for Local Government Employees' in 1994. This 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.
- 2.4 Previous governments had taken the view that a statutory code of conduct for local government employees should be implemented similar to the statutory code of conduct which then applied to elected members. Legislation introduced in 2000 which gave the Secretary of State the power to issue a statutory code of conduct for employees of local authorities in England was repealed in 2011.
- 2.5 In 2004 the Government consulted on a draft statutory code of conduct with the intention this would be deemed into employees' contracts of employment. The following year the Government published a paper on the future of the Member conduct regime for local government in England which confirmed the government's intention to proceed with a statutory code of conduct for local government employees but offered no firm indication of when this was likely to take place. At this point it was the Government's intention that further consideration of the content of the employee code would be needed to take into account the lessons learned from the operation of the code of conduct for members.
- 2.6 The Employee Code of Conduct was last updated in April 2016 at which time the section on hospitality was expanded to include a series of questions which officers should consider when deciding whether or not to accept hospitality.

3. The Employee Code of Conduct

- 3.1 The Code makes it clear that the integrity of the Council can be seriously affected if there is any suspicion that decisions are being improperly influenced by the offer of a gift or hospitality and that all employees have a duty to make sure that decisions made by the Council are made on merit and are not affected by the offer of a gift or hospitality.
- 3.2 As a general rule, employees should never accept a gift or hospitality in return for work done in the normal course of their duties no matter how well intended.
- 3.3 To protect the Council and individuals from any accusation of bias, and regardless of whether or not a gift or hospitality is accepted, all offers must be recorded in the relevant directorate's hospitality/gift reporting book.
- 3.4 The Code explains that some modest gifts of a promotional nature e.g. calendars, diaries and other similar articles may be accepted but only if they can reasonably be assumed to be of a nominal value and are not directly related to work done in the normal course of an employee's duties. Legacies and trade discounts should also be treated as gifts and anyone who is unsure about whether a gift should be accepted or not should seek advice from their line manager.

3.5 Employees should only accept hospitality where it is clearly corporate rather than personal. When deciding whether or not to accept, or provide, hospitality it should be considered how this may affect the relationship between the parties and how it may be viewed by others, including the public and media and should consider the following:

- Is the donor, or event, significant?
- Is attendance expected because of the position held in the council?
- Will the event be attended by others of a similar standing in the community or in other communities?
- What is the motivation behind the invitation?
- Would acceptance of the invitation be, in any way, inappropriate or exert pressure in relation to any current or future issue involving the Council?
- Could the decision be justified to the Council, press and public?
- Is the extent of the hospitality or the nature of the gift reasonable and appropriate?
- Is there an expectation that any hospitality would be reciprocated, and if so, how?
- Whether they are comfortable about the decision?

3.6 Offers of hospitality for social or sporting functions should only be accepted when these are part of life in the local community and where the Council would normally expect to be represented.

3.7 Where it is clear that the hospitality is linked with the event and applies to a wide range of participants it will normally be appropriate to accept the hospitality. However, the hospitality should still be declined if, for example, the Council is considering contracting in the near future with the organisation offering the hospitality.

4. Advice and analysis

a) Comparison with the requirements for Members to register gifts and hospitality

4.1 One of the reasons Members had for wanting to publish senior officer gifts and hospitality is to achieve consistency with the requirements for Members to disclose gifts and hospitality. The latter are set out in the Member Code of Conduct.

4.2 It is important to note though there are some important differences between the rules on gifts and hospitality that apply to employees compared to Members:

- Employees have to register *all* offers of gifts and hospitality even if these are not accepted. Members are only required to register gifts and hospitality they have actually received.
- There are no financial limits in respect of gifts and hospitality which employees must register. Members are only required to register gifts, benefits or hospitality with an estimated value of £100 or more or a series of gifts, benefits or hospitality from the same or an associated

source, with an estimated cumulative value of £100 or more in any one calendar year.

- Members must register the source of the gifts, benefits or hospitality, whereas the Employee Code of Conduct does not specify the source should be recorded.
- A timescale for registering gifts, benefits or hospitality applies to Members, who must do so within 28 days from receipt or acceptance. The Employee Code of Conduct does not specify a timescale.
- Any gift or hospitality registered by a Member is also published on the website as part of their Register of Interests form. The registers of officer gifts and hospitality are not published on the website and are not available for public inspection.

4.3 Some senior officers are already required to publish any gifts and hospitality they receive. The Director of Public Health, the Deputy Director Children and Adults Services and the Assistant Director - Adult Social Care are all members of the Health and Wellbeing Board. The Member Code of Conduct applies to all Members of the Board and as such officers who are Board Members must also register gifts and hospitality in accordance with the Member Code of Conduct, which therefore means these are published on the Council's website.

b) Central Government and Best Practice

4.4 Since 2009, the Government has published the hospitality records of the most senior civil servants, board members, directors-general and senior military officers. Departments are expected to publish their data on a quarterly basis.

4.5 In 2016 the National Audit Office published a report on this issue following an investigation into the acceptance of gifts and hospitality. This compared Civil Service and departmental policies and guidance on accepting and recording hospitality with recognised good practices, drawing on material published by the Institute of Business Ethics and the report of an inquiry by Sir Alex Allan into practices at the Serious Fraud Office.

4.6 The National Audit Office found that these policies were in some respects less stringent than the good practice they had identified, as set out below:

Best Practice

i) Guidance and rules

Are the principles consistent with Civil Service guidance?

Does the guidance cover what can and can't be accepted?

Is there a minimum level for recording type or value of gifts?

Is there a minimum level for recording type or value of hospitality?

Is prior approval required?

Is it clear whether there are sanctions for not following the rules?

Is there a reference to the Bribery Act 2010?

ii) Information required to be recorded in register

Date offered/received
Recipient
Name of host organisation
Type of hospitality
Estimated value of gifts/hospitality
Offers that are declined
Reasons for accepting or declining
Managerial review/sign-off

c) Comparison with similar Councils

- 4.7 Looking at the websites of the CIPFA benchmarking group of Councils¹, it does not appear that any of them publish their records of officer gifts and hospitality.

d) The Local Government Association

- 4.8 When the Government consulted on a proposed statutory code of conduct for employees of local authorities in 2004, views were sought on whether there should be a standard list of gifts and hospitality that must always be registered and whether this list should be available to the public or, alternatively, whether the list should be restricted to officers above a certain salary.
- 4.9 The LGA responded: *“there should be no significant difficulties with allowing the public access to the list of interests that must be declared. However, the register itself would contain details of an employee’s private life. Allowing the public access to these details could be seen as being disproportionate.....It is presumed that the management of such a list would be the responsibility of the authority’s monitoring officer, with members possibly having rights of access The public’s confidence in the integrity of the authority should be secured by the knowledge that an adequate system is in place to ensure that conflicts of interest are identified and appropriate action taken. Furthermore, managing public access to the list could lead to unwarranted bureaucracy for authorities.* In relation to whether the list could be restricted to officers above a certain salary, the LGA thought this would go some way to ensuring there was an adequate system to safeguard the interests and ensure the confidence of the public.
- 4.10 The Council appoints officers from time to time as Directors of alternative delivery models such as Medway Norse and Medway Commercial Group. Those officers are expected to comply with the rules on gifts and hospitality set by those separate organisations. This could be set out explicitly in the Council’s Employee Code of Conduct.

5. Potential changes

- 5.1 Members have indicated that the requirement for officers to publish gifts and hospitality should only apply to the most senior officers of the Council. Specifically, it was proposed that the threshold should be the same as for the

¹ Bolton, Bradford, Bury, Calderdale, Derby, Dudley, Kirklees, Plymouth, Rochdale, Stockton-on-Tees, Stockport, Swindon, Tameside, Telford and Wrekin, Wigan

senior officer remuneration disclosures in the Statement of Accounts, i.e. the Chief Executive, Directors and Assistant Directors.

- 5.2 To achieve this the Employee Code of Conduct would need to be amended so that the current requirement for employees to register gifts and hospitality be extended to specify that all gifts and hospitality registered by the Chief Executive, Directors and Assistant Directors in accordance with the Employee Code of Conduct must be published on the Council's website. Members could propose that, so that there is some consistency with the rules that apply to Members, all gifts and hospitality should be registered within 28 days of acceptance or receipt. The following amendment to paragraph 14.3 of the Employee Code of Conduct would be required:

Recording offers of gifts or hospitality - To protect the Council and individuals from any accusation of bias, and regardless of whether or not a gift or hospitality is accepted, all offers must be recorded in the directorates hospitality/gift reporting book within 28 days from receipt or acceptance. In addition, in the case of the Chief Executive, Directors and Assistant Directors, any gifts or hospitality recorded will also be published on the Council's website.

6. Options

- 6.1 Members could recommend that all gifts and hospitality registered by officers should be published. Given that Central Government only publishes this information in respect of senior civil servants and also the fact that it appears very few councils publish this information, this is not recommended as it would be disproportionate to introduce such a system in a large local authority such as Medway where relatively few officers are offered gifts and hospitality.
- 6.2 Members could recommend that gifts and hospitality registered by the Chief Executive, Directors and Assistant Directors should be published.
- 6.3 Members could recommend a review of the current Employee Code of Conduct so that the requirement to register for all officers mirrors the requirement for Members but stop short of any publication. The Code could also include an explicit reference to the action expected of officers appointed as Directors of external Council owned or controlled companies.
- 6.4 Members could recommend that no changes are made to the existing rules.

7. Risk management

- 7.1 As the Employee Code of Conduct sets out a framework for considering when employees should accept gifts and hospitality, it is not considered there are any risks associated with this proposal.
- 7.2 Accepting gifts and hospitality can sometimes risk creating a perception of a conflict of interest. The act of publishing gifts and hospitality offered to senior officers might be considered to mitigate this risk, at least in part.

8. Consultation

- 8.1 If the Committee wished to recommend some publication of gifts and hospitality by Senior Officers, it might be appropriate to consult with those affected.

9. Financial implications

- 9.1 There are no financial implications.

10. Legal implications

- 10.1 Section 117 of the Local Government Act 1972 makes it an offence for an officer of a local authority from “*under colour of his officer or employment*” from accepting “*any fee or reward whatsoever other than his proper remuneration.*” In the context of the section this refers to financial transactions.
- 10.2 Section 82 of the Local Government Act 2000 had provided the Secretary of State with the power to issue a statutory code of conduct for employees of local authorities in England. This section was repealed by the Localism Act 2011.
- 10.3 Any changes to the Employee Code of Conduct are a matter for Full Council as they form part of the Constitution.

11. Recommendations

- 11.1 Members are asked to consider whether the Employee Code of Conduct should be amended as set out in paragraph 5.2 above or at all; if so Members are asked to make their detailed recommendations to the Employment Matters Committee prior to consideration by Full Council.
- 11.2 Members are asked to note that the Assistant Director – Transformation will be issuing advice on how Directorates should adopt a consistent approach to how gifts and hospitality are recorded and also to ensure that employees know how to report offers of gifts and hospitality.

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Appendices:

None

Background papers:

None