

NORTH YORKSHIRE COUNTY COUNCIL

GIFTS AND HOSPITALITY PROTOCOL FOR SCHOOL EMPLOYEES

1.0 Background

- 1.1 School employees may from time to time, in the course of their work, encounter situations where individuals or organisations may offer gifts or hospitality. The reasons for this will vary, but such offers will usually be made as goodwill gestures, or for celebration, or appreciation, or for helping networking or working together. Some employees, e.g. members of the senior management team who liaise with public and private sector partners, may find themselves quite often faced with hospitality opportunities, and teachers and teaching assistants, who engage directly with pupils and their parents, may be offered gifts in thanks for their services.
- 1.2 There are however rules which regulate the acceptance of gifts and hospitality by school employees. This is because the acceptance of benefits offered like this can affect the perception of whether the County Council and its employees are acting in the public interest. Local councils are in a position of significant influence over issues that affect people's lives within their areas. The Council holds the public purse and all employees, as well as Members of the Council and school Governing Bodies, must always be seen to be acting in the best interests of the people of North Yorkshire. It is important not to do anything which undermines public trust in what they are doing.
- 1.3 Whilst most offers of gifts and hospitality are well meant and innocent, there have been, nationally, instances of benefits being offered and accepted for corrupt purposes to secure improper advantage. Whilst this is exceptional and rarely occurs, it is damaging to public confidence in local government, damaging to the reputation of the authority concerned, and it is unlawful. Even in situations where there are no improper motives, the acceptance of lavish gifts and hospitality can have a negative effect in terms of public perception. Council employees must be very clear about the rules which apply to gifts and hospitality and must always bear in mind how the public might view situations where gifts and hospitality are offered and received. Any offer should be treated with great care.
- 1.4 This Protocol aims to help employees deal with situations where they are faced with offers of gifts and hospitality. If any employee is in doubt, further advice can be sought from the Headteacher, Legal Services or Veritau..

2.0 What is meant by Gifts and Hospitality?

- 2.1 Gifts and hospitality may include:
- a gift of money, vouchers, goods or services;
 - the opportunity to acquire goods and services freely or at a discount or at terms not available to other members of the public;
 - the offer of food, drink, accommodation or entertainment freely provided or heavily discounted, or the opportunity to attend any cultural or sporting event on terms not available to the public;
 - a bequest or legacy.

3.0 The Legal Framework

- 3.1 There are several legal constraints. Firstly, it is an offence for a local authority employee (including those that work in schools) to accept any "fee or reward whatsoever other than his proper remuneration" (Section 117 LGA 1972).
- 3.2 Previously, it was also an offence for any employee to corruptly solicit, receive or agree to receive or give for him/herself or any other person, any gift, loan, fee, reward or advantage as an inducement to, or reward for, or otherwise on account of:
- doing or refraining from doing anything in their employment capacity; or

- showing favour or disfavour to any person in their employment capacity;

and any money, gift or other consideration received by a Council employee, in their official capacity, from someone seeking to obtain a contract with the Council was deemed in law to have been received corruptly unless the contrary was proved. (Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Acts 1906 and 1916).

3.3 A revised legal framework to deal with bribery was introduced in The Bribery Act 2010 (“the Act”), which came into force on 1 July 2011 and introduced new bribery offences, the key parts of which are set out below. The Act repeals the previous bribery and corruption laws mentioned above, although does not affect any ongoing matters under that legislation which predate the commencement of the Act.

3.4 The main offences under the Act are:

- **bribing another person** (section 1). A person commits an offence under this section where s/he offers, promises or gives a financial or other advantage to another person, and intends the advantage to induce a person to perform improperly a relevant function or activity (which includes any activity performed in the course of a person's employment), or to reward a person for the improper performance of such a function or activity;
- **being bribed** (section 2). This section provides several cases in which an offence of being bribed may be committed, relating to a person committing an offence where s/he requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly or as a reward for improper performance (whether by him/her or another person);
- **bribing a foreign official** (section 6). A person commits an offence under this section where s/he offers, promises or gives a financial or other advantage to a foreign public official with the intention of influencing the official in the performance of his/her official functions and intends to obtain or retain business or an advantage in the conduct of business.
- **failure of commercial organisations to prevent bribery** (section 7). A relevant commercial organisation is guilty of an offence under this section if a person associated with it bribes another person intending to obtain or retain business or an advantage in the conduct of business for that organisation. It is a defence for the organisation to prove that it had in place adequate procedures designed to prevent persons associated with it from undertaking such conduct.

3.5 The maximum penalties under the Act are 10 years' imprisonment/unlimited fine for individuals and an unlimited fine for organisations.

3.6 Anyone committing offences of this nature will also be subject to disciplinary action.

3.7 Government guidance on the Act confirms that “*The Government does not intend that genuine hospitality or similar business expenditure that is reasonable and proportionate be caught by the Act, so you can continue to provide bona fide hospitality, promotional or other business expenditure. In any case where it was thought the hospitality was really a cover for bribing someone, the authorities would look at such things as the level of hospitality offered, the way in which it was provided and the level of influence the person receiving it had on the business decision in question. But, as a general proposition, hospitality or promotional expenditure which is proportionate and reasonable given the sort of business you do is very unlikely to engage the Act....*”

4.0 Employees' Code of Conduct:

4.1 Apart from the legal rules, school employees are bound by their contract of employment to comply with the Council's **Code of Conduct for School Based Employees**. These specifically provide that with the exception of the minor items referred to at paragraph 4.3

below, all benefits such as accommodation, travel, entertainment, presents, gifts or bequests should be refused. If they are accepted disciplinary action may be taken. Gifts received through the post should be returned to the sender with an appropriately worded letter.

- 4.2 **Gifts and Bequests:** School employees must always inform their manager of any offer of gifts or bequests received during the course of their employment. They should also complete a form of registration of gifts and hospitality which is signed also by their manager and retained appropriately within the school's Register of Gifts and Hospitality. Employees should also register gifts, hospitality and benefits offered but refused as a matter of good practice (please see paragraph 8.1 below for further details). Headteachers should also ensure that parents are aware that there is no expectation or obligation on them to offer gifts of any kind.
- 4.3 There are exceptions in relation to minor items such as occasional small gifts from parents and pupils (e.g. chocolates, plants, flowers) and diaries, calendars, blotters or other items of low value. This would include items with a monetary value of no more than £10, and on a single occasion only. Any repeated offer should be declined. Offers and receipt must nevertheless be notified to and recorded by the Headteacher. Under no circumstances should offers/gifts of money (of whatever amount) be accepted.
- 4.4 Employees may occasionally receive bequests or legacies in wills. This can reflect the genuine wish of a parent or pupil to register their thanks to someone who has looked after them, and the employee involved may be entirely unaware that the deceased intended to make the bequest. However kindly meant, such gestures can be open to misinterpretation and because of that the Council will not allow bequests to be retained by employees. Any bequest made to employees must be politely refused and returned to the Executor of the will, making it clear that the Council's rules do not allow the acceptance of bequests by employees. Disciplinary action, including the possibility of dismissal, may be taken by the Governing Body if a bequest is accepted in these circumstances.
- 4.5 **Hospitality:** The Code of Conduct for School Based Employees also regulates the acceptance of hospitality. There are sometimes occasions where it is in order to accept hospitality, but only if there is a genuine benefit to the school which would not otherwise be available. Examples are given below. Invitations to attend purely social or sporting functions should be accepted only when these are part of the life of the community served or where the school should be seen to be represented. Attendance must be properly authorised and recorded by the Headteacher, or by the Chair of the Governing Body in the case of a Headteacher. When hospitality has been declined those making the offer should be courteously but firmly informed of the procedures and standards operating within the school.
- 4.6 When considering whether it is appropriate to accept hospitality employees and their managers should be particularly sensitive as to its timing having regard to any decisions the school may be taking affecting those providing it.
- 4.7 Acceptance of hospitality at conferences and courses or events is acceptable where it is clear that the hospitality is corporate rather than personal, where it is authorised and where any contracting decisions are not compromised. Where hospitality is offered in connection with visits to inspect facilities for potential school trips or equipment etc, employees should ensure that the school meets the cost of the visit to avoid compromising the integrity of subsequent decisions on the contract. More examples in relation to hospitality are set out below.
- 4.8 **Sponsorship – Giving and Receiving:** Where an outside organisation wishes to sponsor a school activity, whether by invitation, tender negotiation or voluntarily, the above conventions concerning acceptance of gifts or hospitality apply. Again, care must be taken when dealing with contractors or potential contractors.
- 4.9 Where the school wishes to sponsor an event or service, employees, their partners, relatives or other close associates must not benefit from such sponsorship in a direct way without there being full disclosure to the appropriate Headteacher of any such interest. Similarly where the school, through sponsorship, grant aid, or finance by other means, gives support in the

community, employees must ensure that impartial advice is given and that they have no conflict of interest in the matter.

5.0 What does it mean in practice? – A summary of some general principles and examples.

5.1 These are some practical points which should help employees and Headteachers deal with offers of gifts or hospitality:

(a) Never accept a gift (other than the minor items referred to at 4.3 above).

Acceptance of a gift is very unlikely to confer any advantage on the school. A presumption would arise that acceptance is purely for an employee's personal benefit. There are very few exceptions to this - some minor ones are set out below at paragraph 6.0.

(b) Never accept hospitality as an inducement or reward for anything you do as a school employee. Hospitality should not be accepted unless there is commensurate benefit to the school.

The only proper reason for accepting any hospitality is that there is a benefit for the school which would not otherwise be available. An example is an opportunity to progress the business of the school expeditiously through a working lunch, or to canvas or promote the interests of the school and its area at a meeting where there is incidental hospitality. Similarly, organisers of school trips may be offered "taster trips" to review the facilities at hotels and ski resorts abroad at the expense of specialist tour companies. The acceptance of such offers is inappropriate and, if review visits are required, they should only be undertaken at the expense of the school.

School employees must act in the public interest and must not be swayed in the discharge of their 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. If an employee has any suspicion that the motive is an inducement or reward s/he should *decline*.

(c) Never accept if acceptance might be open to misinterpretation.

The appearance of impropriety can be just as damaging to the school and to the employee as actual impropriety. The school's ability to function rests upon its reputation for acting fairly and in the public interest.

Employees must therefore consider whether the acceptance of the hospitality is capable of being interpreted as a sign that the school favours any particular person, company or section of the community, or is placing the employee under any improper obligation to any person or organisation.

Certain occasions are particularly sensitive and require the avoidance of any opportunity for misunderstanding. These include:

- when the school is conducting a competitive procurement process, in respect of any indication of favour towards particular tenderer(s);
- when the school is engaged in legal proceedings, hospitality from other parties to the proceedings would be inappropriate.

(d) Do not accept 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 an employee accepts improperly, it is possible that they may seek to use this to persuade him/her to determine an issue in their favour.

(e) **Do not solicit a gift or hospitality.**

Employees must never solicit or invite an offer of a gift or hospitality in connection with their position as a school employee. Also, employees should take care to avoid giving any impression that they might be open to any such improper offers.

(f) **Some other situations to avoid:**

- hospitality in situations where the employee would be the sole guest;
- hospitality of significant value.

6.0 Gifts and Hospitality which it is appropriate to accept

6.1 There are some circumstances where it is in order to accept hospitality, though some situations will nevertheless require the exercise of careful judgment.

- (a) Official hospitality such as a civic reception or a working/business lunch in school or Council owned premises (provided it is ancillary to the business being conducted).
- (b) Civil hospitality provided by another school or public authority.
- (c) Refreshments in connection with any meeting in the course of an employee's work as a school employee.
- (d) Meals or refreshments funded by other public sector partners as the part of joint working/collaboration, and provided it is ancillary to the business being conducted.
- (e) Meals or refreshments being provided as part of a ceremony or event to promote or launch a project or initiative.
- (f) Meals or refreshments provided at design/progress meetings, by a consultant, contractor or adviser who is already appointed by the school for that project, scheme or initiative (provided it is ancillary to the business being conducted).
- (g) Gifts given to the *school* which an employee accepts formally on the school's behalf and which are retained by the school but not by the employee personally e.g. a commemorative item.
- (h) Gifts given as prizes at exhibitions, conferences, seminars etc as part of a free raffle or draw.
- (i) Gifts known to be available to all employees e.g. badges etc.
- (j) Hospitality known to be available to all employees.
- (k) Hospitality ancillary to the school's business being conducted such as an overnight stay for an away day with a partner organisation of the school.
- (l) Hospitality ancillary to attendance at conferences, seminars and courses where hospitality is corporate rather than personal.
- (m) Hospitality ancillary to attendance at functions where an employee represents the school e.g. ceremonies, public speaking events, conferences where hospitality is ancillary.

6.2 Reporting of inappropriate gifts and hospitality offered

7.1 As stated above, it is a criminal offence for a person to offer, promise or give a financial or other advantage as an inducement or reward for an employee improperly to do or not do

something in their employment. School employees must immediately report to their Headteacher any circumstances where inappropriate gifts or hospitality have been offered to them. The employee may then be required to assist the police in providing evidence.

8.0 Procedure for registration of gifts and hospitality

8.1 Before accepting hospitality or other benefit employees must seek approval from their Headteacher, complete a registration form setting out the reasons for acceptance, or the fact that it has been declined, have the form signed by their Headteacher and recorded in the school's Register. Employees should register gifts, hospitality and benefits offered but refused as a matter of good practice.

9.0 The Register of Gifts and Hospitality

9.1 Schools keep a Register of Gifts and Hospitality for their employees. A form that may be used is shown as an Appendix to this Protocol.

9.2 The Registers are not available to the public.

9.3 The Register is additionally open to inspection by the following:

- The Chief Internal Auditor;
- The Assistant Chief Executive (Human Resources and Development);
- The Council's external auditor;
- Any other party with a legal entitlement to inspect it.

10.0 Conclusion

10.1 Should school employees have any queries relating to the acceptance and registration of gifts and hospitality, please contact Legal Services (01609 532347 or legal.services@northyorks.gov.uk) or Veritau (01609 532739 or internal.audit@veritau.co.uk).

School Name:

REGISTER OF GIFTS AND HOSPITALITY RECEIVED

Date 1	Received From 2	Gift/Hospitality Received 3	Use of Gift 4	Estimated Value of Gift/Hospitality 5	Signed 6

Key

1. Date gift/hospitality accepted
2. Name of person/company supplying gift/hospitality
3. Details of gift/hospitality received
4. Use of gift, e.g. shared with
5. Estimated value of gift/hospitality
6. Signature of member of Governing Body or staff