

**Addendum Report**  
**Standards Committee 24<sup>th</sup> March 2006**

**Employee Code of Conduct – Report to Council’s Standards**  
**Committee relative to proposed amendments to the Employee Code**  
**of Conduct (made 24<sup>th</sup> April 2002)**

**Purpose of Report**

1. To seek Committee’s approval for a variation to be made to the Council’s Employee Code of Conduct in relation to the acceptance of gifts by employees in very specific circumstances, as set out in this report.

**Background Information**

2. The Council’s Employee Code of Conduct was reviewed in 2002 primarily to incorporate the Wales Assembly Government (WAG) Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001, but also for ‘local’ provisions to be updated.
3. This WAG Code is incorporated by law into employees’ contracts of employment so there is no query regarding enforceability. The remainder of the Code is Council’s own policy incorporated into employees’ contracts of employment and as it is non statutory can be more open to challenge.
4. The particular feature of the Employee Code that this report considers for review is that, but for a few exceptions, the Employee Code has an absolute bar on the acceptance of gifts and other material benefits, advantages and services.
5. The relevant paragraphs of the Code under consideration are appended hereto in **Appendix 1**.
6. Paragraph 5.11 deals with employees who are in close contact with service users and clearly sets out what the employee must not do, i.e. not accept money, goods, loans or financial arrangements or assisting service users in making future disposal of assets e.g. preparation of wills or deeds of gift.

7. The intention of this is obviously to prevent abuse of vulnerable people and undue influence being exercised over a service user through the dependency that usually arises in a caring relationship - it also protects employees from risk of such accusations being made.
8. Paragraph 13 contains the main provisions relating to employees generally, including obligations in respect of other persons who are not necessarily service users.
9. Paragraph 13.3.1. is an absolute bar on the acceptance of gifts etc. except for those of insignificant token value. 13.3.3 also covers gifts given by individuals to express gratitude to employees for help given in the proper performance of their official duties where refusal would needlessly upset or offend which must be limited to, for example, bunches of flowers, boxes of chocolates and inexpensive wine. Repeated gifts of this nature, or costly goods of this nature, must be politely refused.
10. Members should note that the Employee Code differs from the Members Code in that in the latter Code, declarations of gifts etc. are related to a specific value i.e. £50. Members' conduct in considering whether gifts etc. should be accepted under or over this threshold is governed by Members' consideration of the principles of public conduct and the Code of Conduct for Members. The same main considerations apply to hospitality for Members.
11. The Employee Code whilst having strict rules on receipt of hospitality does, through delegations to senior officers, allow some discretion to be exercised by those officers to allow a consideration of what an employee can accept or not.
12. The WAG Code says employees must comply with the Council's rules on "declaration" and says "employees must not accept benefits from a third party unless authorised to do so".
13. The Council's Employee Code has operated on a basis of an absolute bar on the acceptance of any gift etc. from any 'source' since it was adopted but offers of gifts to employees in Social Services especially as bequests in Wills from 'deceased service clients' continue to raise issues with regard to this policy. Families are sometimes bewildered and are often caused added grief and intense offence when receipt of well intentioned gifts have to be

rejected. It is especially difficult for people to accept when they as “givers” are not a recipient of any service themselves but often related to the donor.

14. Sometimes these persons just cannot understand why the rules apply to thwart their intentions. This is especially the case when the prospective givers are adults of sound mind, and sometimes feel the amount of money they want to give employees is small relative to the size of the estate of the deceased which sometimes they themselves have inherited.
15. I have previously sought Counsel’s advice, on the interpretation, reasonableness and enforceability of Council’s Code.
16. Counsel, in giving his advice in considering the fit of the WAG Statutory Code and Council’s Code, has said there can be two interpretations. One is that there is no conflict with WAG Code which may merely be intended to enable Council to authorise acceptance of gifts, so if Council imposes an absolute bar then that does not conflict with WAG but merely develops the rules locally.
17. The Second interpretation is that there is conflict.
18. Counsel says:-

“However, one factor which might mitigate against the (first interpretation).....  
... is the wording in subparagraph (2) of paragraph 8 of the WAG Code in the preceding sentence where it says that employees “**must comply with the rules of the Authority on the declaration by employees of hospitality or gifts offered to or received by them, from any person or organisation doing or seeking to do business, or otherwise benefiting or seeking to benefit from a relationship with the Authority**”. Those words do not apply to third parties and so, it follows, the next sentence, which is expressed to apply only to third parties, permits benefits from that source if “**authorised**”.

19. Counsel continues to say

“The answer to the question about what interpretation should be placed upon the Code is, for reasons set out above, not absolutely clear. The view of the Head of Legal Services, however, is that the final sentence in paragraph 13.1 of the Code does permit a discretion where benefits are accepted from a third party and insofar as this conflicts with the absolute prohibition in 13.3.1 then it would be unreasonable for the Council to rely on and enforce the absolute prohibition. The reasons for this are set out above.

..... Where there can be no suggestion of there having been undue influence it would seem quite illogical for there to be an absolute prohibition in those circumstances. There may be other cases where there is a suggestion, or the potential, of there having been undue influence..... However, in general terms there should be the ability on the part of the Council to make a decision, based on the individual facts, and for it not to be fettered by the kind of absolute prohibition contained in paragraph 13.3.1. Post-mortem gifts may well, therefore, subject to the discretion of the Council, be prohibited if they infringe paragraph 5.11 and, where the gift is made to a person with whom the employee is living, paragraph 13.6.”

20. Finally, Counsel said

“It is always, of course, difficult to know precisely where to draw the line if a policy permits gifts to be given. Ultimately, that is a matter for the good sense of the relevant officer in the Council. Such an approach is, as interpreted, recognised by the WAG Code.....” ”

21. Counsel is also aware that other Councils have an element of discretion in their Codes.

22. Counsel advised that it would be prudent to compare Council’s policy with that of other Welsh Local Authorities.

23. The Head of Legal Services is aware that obviously most Welsh Local Authorities discourage the receipt of gifts by officers – but three have no absolute bar (one has a limit of £10.00). Those three leave discretion to a Senior Officer of Council to decide what can or cannot be accepted. The fourth has an absolute bar but admits to having problems with enforcing that policy.

24. Obviously under the WAG Code the receipt of all 'gifts' have to be declared as a statutory requirement (regardless of the Council's policy on acceptance).
25. One problem the Head of Legal Services perceives is the temptation that employees will fail to declare the receipt of gifts if it is felt that there will be no chance of some meritorious consideration of their cases. This will have the reverse effect of what is required.
26. When this issue was initially considered by Personnel Committee in 2003 the following recommendation was made to them in a Joint Report of The then Director of Social Services and Housing and the Head of Legal Services.
27. It is **RECOMMENDED** that Council reconsiders its policy in the light of Counsel's advice:
  - (a) That in circumstances where Paragraph 5.11 of the Employee Code is concerned with respect to service users and under the WAG Code with respect to any person, organisation doing or seeking to do business, or otherwise benefiting or seeking to benefit from a relationship with Council there still should be an absolute bar on the acceptance of gifts to Council employees (only excepted by paragraph 13.3.1/2/3 of the Employee Code i.e. gifts of token value etc.).
  - (b) Otherwise that whilst the Code should clearly continue to discourage the receipt of gifts by all employees it will enable Council to delegate to Corporate Directors the discretion to determine whether in any specific case not otherwise excluded that a gift or benefit may be accepted by an employee if duly authorised by that officer.
  - (c) The exercise by the named officer of the above delegation be subject to consultation with the Section 151 Officer (in his absence his nominated representative); the Monitoring Officer, (in her absence the Deputy Monitoring Officer); and the Head of Strategic Personnel, (or in his absence, his nominated representative) prior to the delegation being exercised.

28. Personnel Committee consequent to the above decided to accept, in principle, the recommendations made to amend the Code as follows:-
- “(a) that, in circumstances where paragraph 5.11 of the Employee Code is concerned with respect to service users, and under the Welsh Assembly Government Code, with respect to any person, organisation doing or seeking to benefit from a relationship with Council, there should remain an absolute bar on the acceptance of gifts by Council employees (subject only to the current exemptions in paragraph 13.3.1/2/3 of the Employee Code i.e. gifts of token value, etc.);
- (b) that whilst the Code should clearly continue to discourage the receipt of gifts by all employees there will be a discretion to determine whether, in any specific circumstances, not otherwise excluded above, that a gift or benefit may be accepted by an employee and that the decision be made by the Personnel Committee following consideration of an appropriate report;
- (c) that the above Code be redrafted appropriately and the same be referred to the Standards and Audit Committees for their views to be known and final consideration of this matter by Committee.”
29. It has further been suggested that consequent upon the above that the views of the Trade Unions should also be sought before the matter is reconsidered by Personnel Committee.
30. The proposed amendments to the Code are made in blue ink to the Code (see Appendix I).
31. Committee’s views are sought on the proposal of making such changes to The Code and on the proposed amendments themselves especially as far as acting as safeguards are concerned.

Committee’s decision is requested hereon.

### **Impact of Report**

32.

Environment	-	N/A
Anti Poverty	-	N/A
Crime & Disorder	-	N/A
Welsh Language	-	N/A
Equalities	-	N/A

### **Officer Contact**

33. For further information on this report item, please contact Mrs. Carole Anne John on 01639 763658 or e-mail [c.a.john@npt.gov.uk](mailto:c.a.john@npt.gov.uk)

34. **Background Papers**

NPT Employee Code of Conduct

## APPENDIX 1

- 5.11 Employees who are in close contact with service users both in the community and residential settings may find themselves placed in invidious situations for a number of reasons. Where such circumstances arise, employees must not:
- (a) accept presents in money or goods for themselves or members of their family;
  - (b) accept loans of money or goods to themselves or members of their family;
  - (c) enter into financial arrangements with the service user, e.g. by buying goods from the service user, or selling goods/services; similar restrictions also apply to the employee's family;
  - (d) assist with the preparation of a Will, or Deeds of Gift.

~~Adherence to these measures will assist employees to minimise any risk of accusation that undue influence has been exercised by an employee over a service user.~~

- 5.12. The above rule also applies to testamentary gifts made in a Will/codicil of a deceased service user to any Council employee to recognise services provided by that employee to the deceased person.

The only exception to the above is that in the circumstances as set out below, the Personnel Committee of Council, upon receipt of a report recommending meritorious consideration of a particular case, from the Director of Social Services Health and Housing [prepared in consultation with The Section 151 officer and The Monitoring Officer] may determine that it is appropriate for the employee to accept a post mortem gift.

The circumstances are:

1. The gift is made out of the estate of the deceased by a beneficiary who has inherited under a Will or on intestacy or by another person not being a service user or a person covered by the definition in paragraph 13.1 of The Code, and
2. over the age of 18 and
3. has sound capacity of mind to make the same and



4. who is not himself/herself a user of similar Council services and.
  5. Notwithstanding all the above criteria being met in any case the Personnel Committee shall have the absolute discretion to determine the outcome of the case proposed.. They may in so doing take into account such other relevant matters as the age, state of health, mental/physical incapacity of the testator; the length of time the employees have provided services for the donor, the nature of the services provided and the relationship of the employee with the service user, their relatives and other supporters and whether any such person so involved objects to the receipt of such gifts by employees if allowed to do so.
- 5.13. Adherence to these measures will assist employees to minimise any risk of accusation that undue influence has been exercised by an employee over a service user especially one of age, infirmity, dependency and failing mental health.
- 5.14. These provisions are apart from anything contained in paragraph 13 of this Code and shall not override the generality of paragraphs 13 hereafter.

## 13. GIFTS AND HOSPITALITY

- 13.1 The Code of Conduct (Qualifying Local Government Employees) states that employees *must comply with the rules of the Authority on the declaration by employees of hospitality or gifts offered to or received by them, from any person or organisation doing or seeking to do business, or otherwise benefiting or seeking to benefit from a relationship with the Authority. Employees must not accept benefits from a third party unless authorised to do so*<sup>13</sup>
- 13.2. Council's Employees are prohibited from accepting gifts other than those described in Section 13.3. hereafter. The same rules apply to other material benefits advantages and services which are also not to be accepted and are subject to the same rules as for gifts hereafter stated in 13.3. to 13.5.
- 13.3.1. Employees must not accept personal gifts from any source, other than insignificant items of token value, for example (but not limited to) pens, diaries, calendars, corporate ties.
- 13.3.2. Likewise token gifts given to participants at the end of official visits by or to the Council, at conferences or similar events are acceptable.
- 13.3.3. The same applies to modest gifts given by individuals to express gratitude for help given by employees in the proper performance of their official duties, including, for example (but not limited to) bunches of flowers, boxes of chocolates, a bottle of inexpensive wine and where refusal would needlessly upset or offend. However, repeated or costly gifts of this nature must be politely refused.
- 13.4. All offers of gifts, other than those of token value as described in paragraph 13.3.1, 13.3.2, 13.3.3. above, must be declared even when not accepted.

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Source: The Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001  
Paragraph 8 – personal interests

- 13.5. Apart from participating in any concessionary schemes arranged by trade unions or by the Council, employees must not avail themselves of the services of contractors or suppliers engaged by the Council where goods, labour, plant or similar are made available at cost, trade or discount prices. The only exception permissible is where such discounts are generally available to any member of the public.
- 13.6. In relation to the above an employee must ensure that no gifts, material benefits, advantages or services are accepted on the same basis as the above paragraphs by any person with whom the employee is living when he/she knows of such when same are given merely because of the employee's position as employee of the Council and must also declare offers of the same made in accordance with the above rules.
- 13.7. The Council accepts that a reasonable amount of hospitality and reciprocation is acceptable, and on some occasions entirely desirable part of Councils relations with other bodies, including private companies and potential development partners.
- 13.8. Generally it is acceptable for employees to receive hospitality which is in the nature of mere common courtesy i.e. working lunches, hospitality at conferences, seminars and similar events, provided the hospitality is open to all attending and not directed at individual employees and where it is also clear that purchasing decisions are not compromised. (See also 13.13. below)
- 13.9. Other generally acceptable hospitality include attendance at Civic Receptions, launches of partnerships where Council is one of the partners, opening ceremonies for projects in which the Council has been involved or other similar events that involve a partner, contractor or other organisation, when the level of hospitality is appropriate.
- 13.10. Attendance at purely social, sporting or similar functions can only be accepted when it is considered that Council's interests are served by attendance or it is appropriate for Council to be seen to be represented.

- 13.11. Employees who wish to accept any other hospitality than that referred to in 13.8. and 13.9. and specifically for purely social, sporting or similar functions mentioned in 13.10. must have the prior authorisation of their Director prior to accepting such hospitality
- 13.12. Directors consenting to the above, or employees accepting or offered hospitality, must consider at all times how the offer might be viewed by the public and should also be viewed in the context of the offer made, to whom it is made, for what purpose it is made, the benefit it would serve and the current relationship between the person company or body making the offer and the Council. The Employee must be mindful of the timing of any acceptance of hospitality in relation to decisions which Council may be taking affecting those providing the hospitality i.e. for example, whether a contractor has a contract with Council, is a tenderer or potential imminent tenderer for work for the Council or is currently seeking planning permission of Council for a development.
- 13.13. Where visits to view vehicles, equipment, any goods or service delivery or similar are required, or employees attend any demonstrations relating to same including software/IT demonstrations, employees must ensure that the cost of such visits are borne by the Authority to avoid jeopardising the integrity of any subsequent purchasing decision (but may nonetheless accept hospitality as referred to in 13.8. as it is unlikely that purchasing decisions will be thereby compromised).
- 13.14.1. An employee who accepts gifts, material benefits, advantages or services the acceptance of which is not prohibited by 13.1 to 13.6 above is not required to declare acceptance of same to his/her Director. Offers in excess of what is allowed for acceptance must be declared on Form A (referred to in 13.14 following) despite the fact that the employee is prohibited from accepting same.
- 13.14.2. Employees should also use Form A (Appendix 4(a) refers) to notify the Director of offers made in respect of hospitality which an employee is not able to accept under this Code even though the employee has refused the same. Form B (Appendix 4 (b) refers) must be used by employees in cases where prior

authorisation is needed before acceptance of hospitality other than that generally stated to be acceptable in the Code and employees must ensure that the relevant part of Form *B* is duly signed as authorised by the Director prior to any receipt of hospitality or attendance at any function. Forms must be completed contemporaneously and given to the Director as described.

- 13.14.3. A record of all declarations made and all hospitality authorised for acceptance in accordance with this Code, must be kept by the Director.
- 13.15. When hospitality has to be declined, those making the offer should be courteously, but firmly, informed of the procedures and standards operated within the Authority.
- 13.16. The same rules above apply to Corporate Directors save that the authorisation referred to in 13.11. and the record referred to in 13.14.3. shall be dealt with by the Chief Executive.

[**NOTE** for the avoidance of doubt the prohibition on the acceptance of gifts, material benefits, advantages, services or hospitality does not include such things given by Council to its employees hence receipt of these do not need to be authorised or recorded under this Code.]