

## GIFTS AND BENEFITS

### PREFACE

Our reputation for integrity and professionalism can only be achieved and maintained if the community and agencies are confident that staff of the Ombudsman are not influenced by gifts, benefits or bribes.

It is therefore essential that we try to avoid any real or perceived attempts to improperly influence us in the performance of our functions by the acceptance of bribes and gifts or benefits.

It is often not a question of whether a gift or benefit is or was an attempt to influence a public official, but what a reasonable ‘impartial observer’ would think. Things which could influence the perception of a gift or benefit being improper would include:

- the scale, lavishness or expense/cost/value
- the frequency of occurrence, and
- the degree of openness surrounding the occasion or gift.

Relevant considerations would include such things as:

- the nature of our main functions and the individual staff member
- the relationship between or potentially between, the giver/offerer and the Office and/or individual staff member
- the type of gift or benefit offered or given, and
- the frequency or regularity of gifts or offers from the same source.

Staff should also not take advantage (or seek to take advantage) of their status or position with, or functions performed for, the Ombudsman in order to seek or obtain unauthorised or unfair benefit for themselves or for any other person or body. This includes seeking such advantage:

- as an inducement or reward for some decision, action or inaction, priority or delay that favours or is against the interests of any person or body, or
- whose receipt (or any expectation of receipt) would in any way tend to influence you to show, or not to show, favour or disfavour to any person or body in relation to the affairs or business of the Ombudsman (see ss.249B and 249H of the *Crimes Act 1900*).

In many circumstances, however, the acceptance of token gifts and benefits is either unavoidable or appropriate. Being transparent and accountable about the receipt of all gifts and benefits is the best way to avoid perceptions of improper influence.

### PURPOSE

This policy establishes a common understanding of appropriate conduct expected of all staff working in this office in relation to the acceptance of gifts and benefits.

### RESPONSIBILITY

This policy applies to the Ombudsman and all staff of the office, whether by way of appointment, secondment, contract, temporary arrangement or on a fee-for-service basis. Any individual having employee functions or acting in an employee capacity, including a volunteer, is a member of staff for the purpose of this policy.

## **LEGISLATIVE FRAMEWORK**

*Public Sector Employment and Management Act 2002*

*Independent Commission Against Corruption Act 1988*

*Crimes Act 1900*

## **DEFINITIONS**

*Benefit* – A non-tangible item of value (eg. preferential treatment such as queue jumping or access to confidential information, access to private boxes at sporting venues). For the purposes of this policy, gifts and benefits are treated in the same way and considered to be interchangeable.

*Bribe* – A gift or benefit offered to or solicited by a member of staff to influence that person to act in a particular way.

*Gift of influence* – A gift that is intended to generally ingratiate the giver with the recipient for favourable treatment in the future.

*Gift of gratitude or gift of appreciation* – A gift offered to an individual or the Office in appreciation of performing specific tasks or for exemplary performance of duties. Gifts to staff who speak at official functions would be considered gifts of gratitude.

*Token gift* – A gift that is offered in business situations to the Office or a staff member representing the Office. Such gifts are often small office or business accessories (e.g. pens, calendars, folders) that contain an agency or company logo. They are usually products that are mass-produced and usually given to all customers or meeting participants rather than as a personal gift.

*Ceremonial gift* – An official gift from one agency to another. Such gifts are often provided to a host agency when conducting official business with delegates from another organisation, or delegations from overseas. Although these gifts may sometimes be offered to express gratitude, the gratitude usually extends to the work of several people in the agency, and therefore the gift is considered to be for the agency, not a particular individual.

*Gift register* – A register maintained by the Manager Corporate, of all declared gifts.

*Moderate hospitality* – Free or subsidised meals or beverages provided to staff infrequently (and/or reciprocally) by individuals and representatives of other agencies associated with meetings or visits in connection with official functions. Modest hospitality does not extend to meals above nominal value.

*Nominal value* – For the purposes of this policy, a value that is equal to or less than \$25.

## **POLICY STATEMENT**

### ***1. Acceptance of any gift or benefit aimed to influence your duties is prohibited***

We should never expect to get anything extra for doing what we are paid to do. We should not seek or accept any payment, gift or benefit intended or likely to influence, or that could be reasonably perceived by an impartial observer as intended or likely to influence us:

- to act in a particular way (including making a particular decision)
- to fail to act in a particular circumstance, or
- to otherwise deviate from the proper exercise of our official duties.

### ***2. Attempts at bribery must be resisted and immediately reported***

You must refuse to accept any gift or benefit that you believe is offered as a bribe to take or not take any action. You must report any such attempt immediately to your Team Manager or Statutory Officer. Where relevant, the police should be notified and a section 11 notification made to the ICAC.

Any staff member who becomes aware of another staff member soliciting gifts or benefits or accepting a bribe must immediately report that fact or suspicion to a Team Manager or Statutory Officer who will advise the Ombudsman. The Ombudsman will consider appropriate action and report the matter to the ICAC by way of a section 11 notification.

**3. *Acceptance of gifts of money is strictly prohibited***

In no circumstances must any staff member accept a gift of money in connection with their official duties.

**4. *All gifts and benefits need to be declared***

All gifts and benefits apart from moderate hospitality need to be declared and recorded in the Ombudsman Gift Register. This includes gifts and benefits that are offered to you but which you refuse.

This extends to any gift or benefit offered to a family member that arises in connection with your official duties or could be perceived to be connected with your official duties by a reasonable observer.

The policy applies at all times including Christmas and other cultural or religious occasions where gifts or benefits may be offered.

**5. *Approval must be obtained from a Team Manager or Statutory Officer to keep any gift or benefit***

Once you declare a gift or benefit, you're Team Manager or Statutory Officer will either endorse the action you have already taken with respect to its disposal or direct you to take specific disposal action. You must abide by that decision or seek the Ombudsman's permission for any alternative course of action. Details of your declaration including the endorsement or otherwise of your team manager or statutory officer is to be forwarded to the Manager Corporate for recording in the Gifts Register.

**6. *Acceptance of gifts or gratitude or appreciation of nominal value are generally permitted***

It is generally permissible for staff to accept and keep gifts or benefits of nominal value given in gratitude or appreciation for work done so long as the business relationship between you and the gift giver has been completed and you are unlikely to make any decision in the future that involves that person or organisation. If there is any doubt about the intention of the gift giver or the value of the gift, then you should discuss the issue with your Team Manager and seek their direction on how the gift is to be disposed of.

**7. *Inadvertent acceptance of gifts of appreciation or gratitude above nominal value***

In circumstances where a gift or benefit with a nominal value greater than \$25 is inadvertently accepted by a staff member and may not be easily returned, it must be immediately declared. Examples would include: a wrapped gift not opened in the presence of the giver, gifts accepted for cultural, protocol or other reasons where returning the gift would be inappropriate, anonymous gifts and gifts received in a public forum where attempts to refuse or return it would cause significant embarrassment or offence.

Decisions on whether such gifts may be kept by the staff member will be made on a case by case basis. If the value of the gift is marginally above the nominal value of \$25, it may be kept by the receiver so long as there is no suggestion that it is a gift of influence. If the value is significantly greater than \$25, the gift must become the property of the Office and must be disposed of by other means.

**8. *Restrictions on accepting cumulative gifts of nominal value***

If you are offered more than two gifts of appreciation or gratitude with a nominal value of less than \$25 within a six month period by the same person or organisation, they will be regarded as a cumulative gift that will need to be shared with other staff or donated. In such circumstances, consideration should also

be given to whether the 'serial giving' is an attempt to influence you. This should be discussed with your Team Manager or Statutory Officer.

### ***9. Acceptance of prizes***

Any gift or benefit that is won as a result of entering a competition while engaging in official duties (eg. lucky door prizes at seminars) must be declared. If the Ombudsman's Office has a purchaser business relationship with the organisation that provided the prize or has or is likely to exercise any of its investigation or scrutiny powers in relation to that organisation, then acceptance of the prize may lead to a perception of improper influence. In such circumstances, the prize should be publicly declined. If those circumstances do not apply, the prize becomes the property of the Office and a decision on its disposal will be made by the respective Team Manager or Statutory Officer. Generally, the prize should be shared among the Team or used as a prize at a future Team or Office function.

### ***10. Acceptance of gifts and benefits associated with procurement is prohibited***

Staff employed in purchasing decisions should not accept any gift or benefit from potential suppliers and should refuse any such offers. This does not include modest hospitality such as tea, coffee or sandwiches offered during meetings.

### ***11. Disposal of gifts or benefits arising from purchase incentive schemes***

Any gift or benefit that is obtained as a result of a purchase incentive scheme belongs to the Office and must be only used for official purposes. Its use should not be restricted to the officer responsible for making the purchase.

### ***12. Accepting token gifts and hospitality at work related functions***

There is no requirement to declare receipt of token gifts and modest hospitality including food and beverages that are provided by another agency or individual as part of normal work related activities including interviews, business meetings conference and seminars where they are given to all participants.

However, if the token gift has more than a nominal value of \$25 or the hospitality is significantly more than we would offer in similar circumstances and/or there is any suggestion or reason to possibly perceive that it may be offered in an attempt to influence your duties, it must be declared.

Any offer of free or subsidised travel and accommodation to attend a meeting or conference either as a participant or presenter needs to be declared and approved by a supervising Team Manager or Statutory Officer before acceptance.

### ***13. Provision of gifts and benefits to others***

It is acceptable practice for staff of our Office to offer modest hospitality to individuals and representatives of other agencies who visit our Office for work related activities. It is also acceptable to give tokens of appreciation to individuals who have given non-paid presentations to our staff. Such gifts must be approved by a Team Manager or Statutory Officer and should be of a nominal value of \$25 or less.

It is also acceptable to give ceremonial gifts to visiting delegations from overseas agencies. These should generally be of a nominal value of \$25 or less or otherwise approved by the Ombudsman.

## **PROCEDURE**

1. Staff should use the decision making guide below to assist them to decide whether or not to refuse any gift or benefit.

2. All declarations of gifts or benefits offered or accepted must be made by using the Ombudsman Gift Declaration which is found on the template register.
3. Complete and then submit the declaration to your Team Manager or Statutory Officer.
4. The Team Manager or Statutory Officer will either endorse the disposal action you have already taken or direct you on how to dispose of the gift or benefit in accordance with principles set out in this policy.
5. All such decisions will be recorded in the Register which resides in the custody of the Manager Corporate.
6. The Manager Corporate will review the register every six months to ensure compliance with this policy.

### **DECISION MAKING GUIDE**

The attached decisions making guide from the ICAC publication *Managing Gifts and Benefits Management in the Public Sector Toolkit*, June 2006 can assist you to make initial decisions about whether it is appropriate to refuse a gift or benefit. In all circumstances, any gift or benefit that is subsequently accepted must be declared and disposed of in accordance with this policy.

### **OMBUDSMAN APPROVAL**

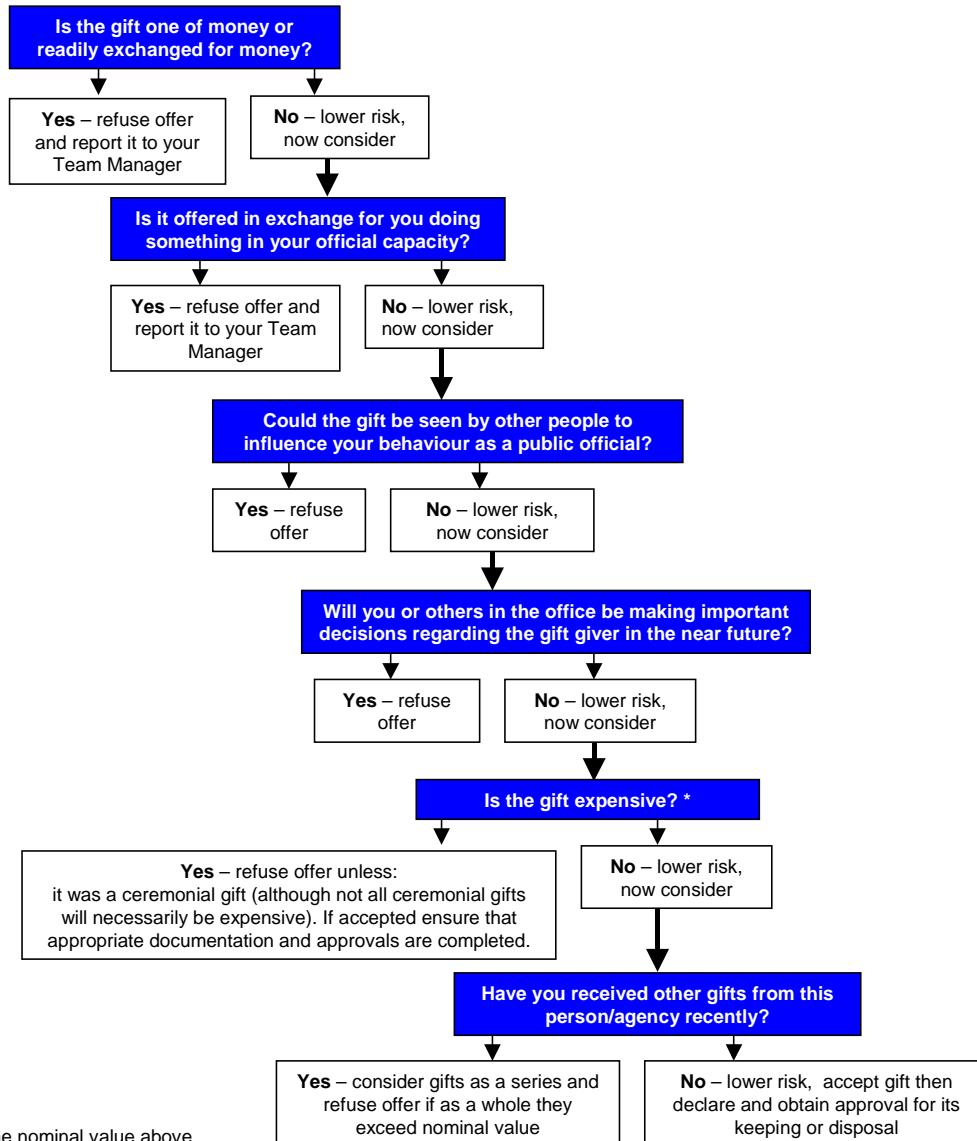


Bruce Barbour

**OMBUDSMAN**

## Decision-making guide<sup>1</sup>

Always check and comply with The Ombudsman's gifts and benefits policy. In addition it may be useful to consider the following general issues. Once a decision has been made about whether or not it might be appropriate to accept a gift, declare the gift or offer using the Ombudsman Gift Register.



\* The nominal value above which gifts should not be accepted for our office is \$25