

## Councillor Gift Policy

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|--------------------------|------------------------|
| Policy Classification    | - <b>Governance</b>    |
| Policy N°                | - <b>POL/556</b>       |
| Policy Status            | - <b>Adopted</b>       |
| Responsible Service Unit | - <b>Governance</b>    |
| Authorised by            | - <b>Council</b>       |
| Date Adopted             | - <b>20 April 2021</b> |
| Next Review Date         | - <b>30 April 2023</b> |

*This policy is part of a suite of policies adopted by Council or the Executive Management Team (EMT).*

*New or replacement policies can be created and developed within Service Units but can only be added to Council's Policy Register by Strategic Governance following the approval of the policy by Council or the EMT.*

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## **PURPOSE**

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The *Local Government Act 2020* (the Act) requires a Council to adopt a Councillor Gift Policy. The policy must include procedures for the maintenance of a gift register and any matters prescribed in the *Local Government (Governance and Integrity) Regulations 2020* (the Regulations).

This policy establishes guidelines for the acceptance of gifts, benefits or hospitality by Councillors and members of Delegated Committees. The giving and receiving of gifts, benefits and hospitality from a person or organisation may result in a potential conflict of interest or breach of the Act. The objective of this policy is to limit the number of gifts made or accepted and to promote public confidence in the integrity of Council.

In keeping with Council's Public Transparency Policy and the Act's public transparency principles, Councillors will publicly declare certain offers and the acceptance of certain gifts, benefits or hospitality. This policy contains procedures for the maintenance of a gift register which will be published on Council's website.

## **SCOPE OF POLICY**

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This policy applies to all gifts, benefits or hospitality offered to, or received by, Councillors and members of Delegated Committees in exercising their role. A reference to a Councillor in this policy is to be read as a reference to a member of a Delegated Committee.

This policy is to be read in conjunction with the Act, the Regulations, relevant Council policies and the Councillor Code of Conduct.

In applying this policy and in accordance with section 12.4 of the Councillor Code of Conduct, Councillors will take all reasonable steps to ensure that their immediate family members (parents, spouse, children and siblings) do not receive gifts, benefits or hospitality of any kind that may give rise to the appearance of being an attempt to gain favourable treatment by the Councillor.

## **POLICY STATEMENT**

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### **1. Gifts, Benefits and Hospitality**

Central to preserving public confidence in Council is the expectation that Councillors are not unduly influenced, or perceived to be influenced, by their relationships with others when conducting the business of Council and/or acting as a representative of Council.

Councillors may be exposed to a range of circumstances where different types of gifts, benefits or hospitality may be offered. This policy sets out the process for accepting, declining and recording offers of gifts, benefits and hospitality.

#### **Guiding Policy Principles**

Councillors commit to:

- Complying with all legislative and policy obligations in relation to gifts, benefits and hospitality.
- Politely decline in the first instance any offer of a gift, benefit or hospitality, irrespective of value.
- Appropriately manage gifts, benefits and hospitality to avoid potential, actual or perceived conflicts of interest.
- Avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to gain favourable treatment from Councillors or Council.
- Not solicit, demand or request gifts, benefits or hospitality for themselves or any other person, by virtue of their position.
- Not accept monetary gifts (or gifts that can be easily converted to monetary value such as gift cards) of any value (fully disclosed election donations excluded).
- Refuse gifts, benefits and hospitality that may adversely affect the Councillor's or Council's standing or bring them into disrepute.
- Ensure any gifts, benefits and hospitality that is offered is provided for a legitimate business purpose, furthering the business goals, policy objectives and priorities of Council and within reasonable community expectations.
- Report any incidences where a bribe and/or cash is offered in accordance with Manningham's Public Interest Disclosure Procedures.

A gift offer is either token or a non-token in nature.

### 1.1 Token Gift

A token gift, benefit or hospitality is offered as a courtesy or is of inconsequential or trivial value (up to \$50) to both the person making the offer and the individual receiving the offer. Such gift would not be reasonably perceived within or outside the Council as influencing a Councillor or Council or raising an actual, potential or perceived conflict of interest. Examples of token gifts include a box of chocolates, homemade goods, a small souvenir, a cup of coffee.

If the combined total value of token gift offers in the past 12 months from the same individual or organisation exceeds \$50 then it becomes a non-token gift.

Whilst not encouraged, Councillors may accept token gift offers. Token gifts with a value of more than \$20 must be recorded in the Gift Register.

### 1.2 Non-token Gift

A non-token gift, benefit or hospitality is offered with a value of more than \$50.

Non-token gift offers must be politely declined in the first instance. If a non-token gift is to be accepted, it must be managed in accordance with this policy.

1.3 A gift can be any item of value — money, voucher, entertainment, travel, commodity, services, property — that a person or organisation provides.

1.4 All non-token gifts, benefits and hospitality received must be recorded in the Gift Register.

1.5 When deciding whether to accept a gift, benefit or hospitality, Councillors should give consideration to the GIFT test and HOST test shown at Attachments 1 & 2.

## 2. Gifts received on behalf of Council

2.1 Councillors may be involved in conferences, community, cultural or industry events where official gifts are presented or exchanged.

2.2 Clause 12.5 of the Councillor Code of Conduct provides that any gifts received on behalf of Council become the property of Council. For transparency and accountability purposes, these gifts will be recorded in the Gift Register with a notation to this effect.

2.3 Where a gift is offered in a public forum and refusal would be obviously discourteous or acceptance would not cause any potential, perceived or actual conflict of interest, the gift may be accepted and referred to the CEO and/or Group Manager Governance and Risk to determine the appropriate course of action.

### **3. Hospitality**

- 3.1 From time to time, Councillors may receive invitations of hospitality to attend various functions and events. Hospitality is considered a gift unless the hospitality was reasonable and attendance at the function or event was in an official capacity in your role as Councillor.
- 3.2 Hospitality is considered reasonable if it is of a standard and type that an independent observer would consider appropriate and not excessive.

#### Examples

##### Reasonable hospitality:

- a modest working lunch at another organisation's premises
- a cup of coffee at a café (unless a conflict of interest exists)

##### Unreasonable hospitality:

- a 'fine dining' working lunch
- an offer of a free spot at an industry golf day

- 3.3 It is the responsibility of Councillors to be attentive to the cumulative value of any such offers and their associated perceptions of favouritism or conflicts of interest.
- 3.4 This policy does not apply to attendance and participation at Council funded or sponsored events, where the full cost of hospitality is paid by Council.

### **4. Anonymous Gifts**

- 4.1 In accordance with section 137 of the *Local Government Act 2020*, a Councillor must not directly or indirectly accept a gift for their benefit where the amount or value is equal to or exceeds the gift disclosure threshold, unless—
- 4.1.1 the Councillor knows of or is given the name and address of the person making the gift; and
- 4.1.2 the Councillor reasonably believes that the name and address provided are true.
- 4.2 If for any reason a Councillor finds themselves in possession of a gift and they do not know the name and address of the person who gave the gift, the Councillor can dispose of the gift to Council within 30 days to avoid committing an offence under the Act.
- 4.3 A Councillor who is found guilty of breaching section 137 of the Act must pay to the Council the amount or value of the gift accepted.

## **5. Conflict of Interest**

- 5.1 The *Local Government Act 2020* and Manningham's Governance Rules set out the framework for identifying and disclosing conflicts of interest.
- 5.2 Councillors are prohibited from accepting a gift that creates a conflict of interest (actual, potential or perceived).
- 5.3 Councillors should be aware that any gift, benefit or hospitality in the amount of \$500 or more received from one source over a five year period will give rise to a conflict of interest.
- 5.4 Councillors must disclose all conflicts of interest in accordance with the provisions of the Act and Manningham's Governance Rules.
- 5.5 Councillors may seek advice from the CEO or other appropriate officers if they need assistance determining if they have a conflict of interest, but must take full responsibility to identify, manage and disclose any conflicts of interest.
- 5.6 If a Councillor identifies that they have a conflict of interest with a gift, benefit or hospitality received they must complete a Disclosure of Conflict of Interest Form in addition to the Gift Disclosure Form and forward it to the Group Manager Governance and Risk to record in the register.

## **6. Attempts to Bribe**

- 6.1 A Councillor who receives an offer of a gift, benefit or hospitality they believe is an attempt to bribe must refuse the offer. It is important that the Councillor act immediately to minimise any potential for negative consequences, by taking the following steps:
  - terminate the interaction with the person making the offer;
  - report the matter to the CEO to place on record your refusal of the offer;
  - lodge a public interest disclosure in accordance with Manningham's Public Interest Disclosure Procedures.
- 6.2 A Councillor who believes another person within the Council may have solicited or been offered a bribe which they have not reported, must notify the CEO or report the matter in accordance with Manningham's Public Interest Disclosure Procedures.

## **7. Procurement and Tender Processes**

- 7.1 Councillors are prohibited from accepting any gifts, benefits or hospitality from a current or prospective supplier made during a procurement or tender process by a person or organisation involved in the process.
- 7.2 Where a gift is received or there are irregular approaches from suppliers, Councillors are required to notify the Mayor and CEO to record their refusal and any action.

## **8. Regulatory Processes**

- 8.1 Where a regulatory process is underway such as a planning permit application, a Councillor is prohibited from accepting any gift, benefit or hospitality from any individual or group that may be involved with the regulatory activity.

## **9. Biannual Personal Interest Returns**

- 9.1 Details of any gifts received in the period since lodging a Personal Interest Return, where the value equals or exceeds the gift threshold must be declared in Biannual Personal Interests Returns in accordance with the requirements of the Act.

## **10. Disclosure Procedure**

- 10.1 Councillors must record the receipt of a gift, benefit or hospitality using the following procedure:
- In the interests of transparency and to assist with monitoring the frequency and nature of gifts, all gifts, benefits and hospitality received, above the value of \$20, must be recorded in the Gift Register.
  - Within 5 business days of the offer complete a Gift Registration Form and forward to the Councillor Support Team for recording in the Gift Register.
  - The following details are to be included —
    - Councillor's name; and
    - date gift, benefit or hospitality was received; and
    - a detailed description of the gift, benefit or hospitality received; and
    - the value of the gift, benefit or hospitality, or where the value is unknown, an approximate value; and
    - the name of the person or organization that provided the gift, benefit or hospitality; and
    - if a non-token gift has been received on behalf of Council, a notation that it is the property of the Council.



## **11. Gift Register**

- 11.1 The Gift Register will be maintained by the Governance team and reported to the Audit & Risk Committee every 6 months.
- 11.2 The Gift Register will be made publicly available on Council's website.

## **12. Training**

- 12.1 Council will ensure that all Councillors and members of Delegated Committees receive induction and refresher training regarding the principles, accountabilities and requirements of this policy.

## **13. Administrative Updates**

- 13.1 From time to time, circumstances may change leading to the need for minor administrative amendments to this policy. Where an update does not materially alter this policy, such a change may be made administratively.
- 13.2 Examples of minor administrative amendments include changes to names of Manningham Council departments or a minor amendment to legislation that does not have material impact on the policy position.
- 13.3 Where any change or update may materially change the intent of this policy, it must be considered by Council.

## **RESPONSIBILITY**

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Day to day operation of the policy will over seen by the Group Manager Governance and Risk or their delegate.

Responsibility rests with individual Councillors to ensure all reportable gifts are disclosed for inclusion in the Gift Register.

## DEFINITIONS

| Term                 | Definition   |
|----------------------|--|
| Benefit              | Something that is of value to the receiver, such as invitations to sporting, cultural or social events, access to discounts and loyalty programs, honorary memberships, accommodation or leisure holidays or other advantage offered to an individual, their friend, associate or relative. The value of a Benefit may be difficult to define in dollars, but as they are valued by the individual, they may be used to influence the individual's behaviour.  |
| CEO                  | Chief Executive Officer of Manningham City Council including any person acting in this role.   |
| Conflict of interest | <p>A general or material conflict of interest as defined in the Act. The conflict may be:</p> <p><b>Actual:</b> there is a <b>real conflict</b> between an employee's public duties and private interests.</p> <p><b>Potential:</b> a Councillor has private interests that <b>could conflict</b> with their public duties. This refers to circumstances where it is foreseeable that a conflict may arise in future and steps should be taken now to mitigate that future risk.</p> <p><b>Perceived:</b> the public or a third party could form the view that a Councillor's private interests could improperly influence their decisions or actions, now or in the future.</p> |
| Council              | Manningham City Council  |
| Family Member        | A spouse or domestic partner of the relevant person, a parent, grandparent, sibling, child, grandchild, step-parent, step-sibling or step-child of the relevant person or of their spouse or domestic partner; or any other relative that regularly resides with the relevant person.  |
| Gift                 | <p>Defined in section 3 of the Act as:</p> <p>"any disposition of property otherwise than by will made by a person to another person without consideration in money or money's worth or with inadequate consideration, including—</p> <ul style="list-style-type: none"> <li>(a) the provision of a service (other than volunteer labour); and</li> <li>(b) the payment of an amount in respect of a guarantee; and</li> <li>(c) the making of a payment or contribution at a fundraising function;"</li> </ul>  |

## Policy Register Councillor Gift Policy

| Term                      | Definition  |
|---------------------------|---|
| Gift Disclosure Threshold | \$500 or a higher amount or value prescribed by the Regulations.  |
| Hospitality               | Is the friendly reception and entertainment of guests. Hospitality may range from free light refreshments at a business meeting to discounted expensive restaurant meals, sponsored travel or offers of subsidised accommodation.   |
| Non-token gift            | A gift, benefit or hospitality worth more than \$50.  |
| Official capacity         | A Councillor is acting in an official capacity if they are exercising their powers or performing their responsibilities under the Act and their attendance at the event or function is related to providing good local governance for the municipality.   |
| Policy                    | <i>Councillor Gift Policy</i>   |
| Public Duty               | The responsibilities and obligations that a Councillor has to members of the public in their role as a Councillor.  |
| Register                  | <i>Gift Register</i>  |
| Regulations               | <i>Local Government (Governance and Integrity) Regulations 2020</i>   |
| Gift Register             | A public record of all declarable gifts, benefits and hospitality.  |
| The Act                   | <i>Local Government Act 2020</i>  |
| Token Gift                | <p>A gift, benefit or hospitality offered as courtesy or is inconsequential or trivial in value (&lt; \$50) to both the person making offer and the individual. Such a gift would not be reasonably perceived within or outside the Council as influencing a Councillor or Council or raising an actual, potential or perceived conflict of interest (excludes cumulative offers valued at \$50 or more from the same source over a 12 month period).</p> <p>In the event that a gift might reasonably be perceived to influence, or appear to influence the recipient, it cannot be defined as a token gift.</p> |
| Value                     | Means the face value or estimated retail value.   |

## **RELATED POLICIES**

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Manningham Councillor Code of Conduct  
Manningham Council Governance Rules  
Council Expenses Policy  
Public Interest Disclosure Procedures

## **RELATED LEGISLATION**

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*Local Government Act 2020*  
*Local Government (Governance and Integrity) Regulations 2020*  
*Public Interest Disclosures Act 2012 (Vic)*

## **SUPPORTING RESEARCH AND ANALYSIS**

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Victorian Public Sector Commission Gifts, Benefits and Hospitality Resource Suite  
Local Government Victoria – Draft Conflict of Interest Guide (2020)  
Engage Victoria Resources  
Victorian Government Department of Health and Human Services Gifts, Benefits and Hospitality Policy (GIFT Test table, HOST Test table and Quick Guide Flow Chart)

## **DOCUMENT HISTORY**

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|                                   |  |
|-----------------------------------|--|
| <b>Policy Title:</b>              | Councillor Gift, Benefits and Hospitality Policy |
| <b>Responsible Officer:</b>       | Senior Governance Advisor                        |
| <b>Next Review Date:</b>          | 30 April 2023                                    |
| <b>To be included on website?</b> | Yes  |

| <b>Last Updated</b> | <b>Meeting type? - Council or EMT</b> | <b>Meeting Date</b> | <b>Item N°</b> |
|---------------------|---------------------------------------|---------------------|----------------|
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|                     |                                       |                     |                |

**ATTACHMENT 1**

The **GIFT** test is a good reminder of what to think about when deciding whether to accept or decline an offer of a gift, benefit or hospitality.

|          |                  |  |
|----------|------------------|--|
| <b>G</b> | <b>Giver</b>     | <p><i>Who is providing the gift, benefit or hospitality and what is their relationship to me?</i></p> <p>Could the person or organisation benefit from a decision I make?</p>  |
| <b>I</b> | <b>Influence</b> | <p><i>Are they seeking to influence my decisions or actions?</i></p> <p>Has the gift, benefit or hospitality been offered to me publically or privately?</p> <p>Does its timing coincide with a decision I am about to make?</p>     |
| <b>F</b> | <b>Favour</b>    | <p><i>Are they seeking a favour in return for the gift, benefit or hospitality?</i></p> <p>Has the gift, benefit or hospitality been offered honestly? Would accepting it create an obligation to return a favour?</p>               |
| <b>T</b> | <b>Trust</b>     | <p><i>Would accepting the gift, benefit or hospitality diminish public trust?</i></p> <p>How would the public view acceptance of this gift, benefit or hospitality?</p> <p>What would my colleagues, family or associates think?</p> |

## Policy Register Councillor Gift Policy

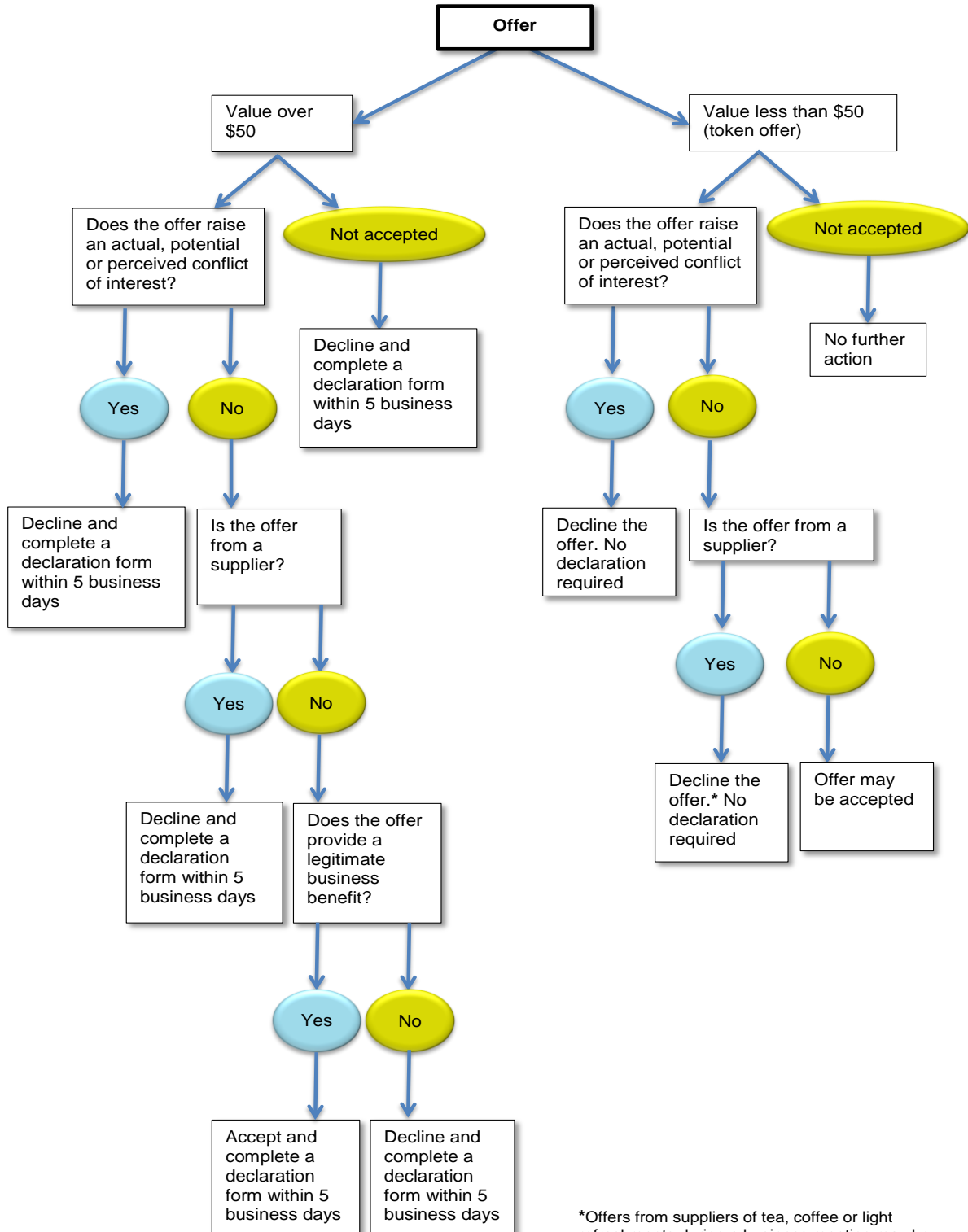
### ATTACHMENT 2

The **HOST** test is a good reminder of what to think about when deciding whether to provide an offer of a gift, benefit or hospitality.

|          |                    |   |
|----------|--------------------|---|
| <b>H</b> | <b>Hospitality</b> | <p><i>To whom is the gift, benefit or hospitality being provided?</i></p> <p>Will recipients be external business partners, or individuals of the host organisation?</p>  |
| <b>O</b> | <b>Objectives</b>  | <p><i>For what purpose will hospitality be provided?</i></p> <p>Is the hospitality being provided to further the conduct of official business? Will it promote and support government policy objectives and priorities? Will it contribute to staff wellbeing and workplace satisfaction?</p>   |
| <b>S</b> | <b>Spend</b>       | <p><i>Will public funds be spent?</i></p> <p>What type of hospitality will be provided? Will it be modest or expensive, and will alcohol be provided as a courtesy or an indulgence? Will the costs incurred be proportionate to the benefits obtained?</p>   |
| <b>T</b> | <b>Trust</b>       | <p><i>Will public trust be enhanced or diminished?</i></p> <p>Could you publicly explain the rationale for providing the gift or hospitality? Will the event be conducted in a manner which upholds the reputation of the public sector? Have records in relation to the gift or hospitality been kept in accordance with reporting and recording procedures?</p> |

## Quick Guide Flow Chart

## ATTACHMENT 3



\*Offers from suppliers of tea, coffee or light refreshments during a business meeting may be accepted.