

CP5.1 GIFTS AND HOSPITALITY POLICY (staff handbook section 4.2)

1. OVERVIEW

A policy on the acceptance of gifts and hospitality is important not only because of the matter of the reputation of Transport Focus, but also because failure to adhere to the rules may result in criminal proceedings if bribery and/or corruption is suspected.

The principal statute dealing with bribery and corruption is the **Bribery Act 2010** (the Act).

The Act provides severe penalties for individuals and organisations found guilty 'beyond reasonable doubt' of bribery, a form of corruption.

Whilst the emphasis of our policy on gifts and hospitality has historically been on gifts and hospitality *received*, the Act introduces offences of *bribing others* and, through them, other organisations.

You should be aware of the provisions of the Act; it is no defence in law to say you were unaware of them. A summary of the main provisions is included at Annex A. This policy develops the provisions of the Act, providing both general and specific guidance and unashamedly errs on the side of caution. You should note therefore that contravention of this guidance may result in disciplinary action even if the law itself is not broken.

It is however a defence under the Act (for bodies corporate indicted for bribery) for Transport Focus to prove that it has adequate procedures in place to prevent such improper conduct. Transport Focus reviews these arrangements from time to time, but the passing onto the police and / or Director of Public Prosecutions of any evidence of actual or potential wrongdoing under the offences created by the Act should be assumed by the Board and staff to be an absolute given.

Perceptions and reality

Notwithstanding the legal / criminal issues, perceptions of misconduct can be allayed via good judgement and following the rules. For example, a working lunch or dinner with a TOC Senior Manager/Director may be a proper way of doing business, provided that no extravagance or suspicion of misconduct is involved. Likewise, it may be reasonable to represent Transport Focus at a social function or event organised by outside persons or bodies, provided that there is a demonstrable benefit to the organisation, and therefore the passenger in doing so. This is particularly relevant where any costs associated with attendance fall upon Transport Focus (e.g. travel / overnight accommodation).

With regard to the acceptance of gifts, everyone must be equally mindful of the public perception of acceptance. Of particular concern are gifts or favours which are, or appear to be, sufficiently substantial that individuals or the organisation might be accused of being influenced by their acceptance. A similar concern is that we might appear to be endorsing the products or services of the donor.

2. GENERALLY APPLICABLE RULES

- 2.1 Board members and staff should treat with great caution any offer of any gift, favour or hospitality made to them by any representative of the transport industry specifically, or the wider business community more generally. There may well be occasions where Transport Focus could be inhibited in its activities if restraint in such matters is not maintained. There are certain hard rules about the acceptance or refusal of specific hospitality or tokens of goodwill, but there are more general rules that apply to both staff and members under this policy:
- 2.2 Each individual Board member and employee is **personally** responsible for all decisions connected with the offer or acceptance of gifts and hospitality and for avoiding the risk of damage to public and government confidence in the work of the Passengers Focus.
- 2.3 Under no circumstances may gifts or hospitality be accepted on behalf of staff or Board members by their spouses, partners or their children.
- 2.4 Breaches of the specific rules in relation to offers/acceptance of gifts and hospitality are regarded as misconduct, and will be dealt with under the specific provisions of the Membership Code or Staff Handbook.
- 2.5 **Under no circumstances must cash or cheques in any currency be accepted, and any such offer should always be reported to the Accounting Officer and Audit Committee via form GH1**

3. SPECIFIC RULES

3.1 Minor gifts

Section No: 5.1 (SH4.2)
 Title: Gifts and Hospitality Policy
 Version No: 3 Nov 10

These may be defined as items of inconsequential monetary value and carry a branded or promotional message; they include, but are not limited to, pens, diaries, calendars, mouse pads, key fobs and posters.

Such gifts may be accepted.

3.2 Gifts offered by overseas organisations

Provided there is no real or perceived commercial interest, gifts may be accepted but, using reasonable judgement, and where appropriate. Such gifts will be offered for charity raffle

Form GH1 to be completed. Appropriate entries made in the gifts and hospitality register

3.3 Gifts offered at the time of business transactions or contract awards

No such gifts should be accepted under any circumstances.

All offers must be reported to the CEO / Accounting Officer and Audit Committee on form GH1. They should be refused, or returned, as appropriate, explaining the Board's policy

3.4 Gifts offered on the conclusion of business transactions or contract awards

No such gifts should be accepted under any circumstances

All offers must be reported to the CEO / Accounting Officer and Audit Committee on form GH1. They should be refused, or returned, as appropriate, explaining the Board's policy

3.5 Other gifts

These might include, but are not limited to: bottles of wine or spirits; cinema or theatre tickets; travel tickets; hampers.

Using reasonable judgement, and where appropriate, such gifts may be accepted on behalf of the organisation but only subject to the approval of a Director, and may not be retained by any one individual. Such gifts will be offered for charity raffle.

Form GH1 to be completed and authorised in advance or immediately subsequently. Appropriate entries made in the gifts and hospitality register, including treatment of any such gift

3.6 Benefits

These are less easy to define, but offers of benefits to other public servants / appointees have included, (but are not limited to): free use of company sporting or other facilities; use of a discounted shopping card provided by company; provision of

goods or services at a reduced price; free membership of a local club or facility; participation in a foreign trip, either free or reduced rate; option to buy a car at a favourable price. No such offers should be accepted under any circumstances.

Form GH1 to be completed, and reported to the CEO / Accounting Officer and Audit Committee

3.7 Hospitality – business hours

The most likely kind of hospitality in these circumstances would comprise working lunches, buffets, breakfasts etc.

Hospitality provided by commercial parties with whom Transport Focus has a relationship may be accepted if the reason is legitimate Transport Focus business, and there is no obvious reason why Transport Focus should not return the favour if the opportunity arose.

Alcohol should, as a general rule, be avoided on such occasions

Form GH1 to be completed. Appropriate entries made in the gifts and hospitality register

3.8 Hospitality – social hours

Such offers may include cocktail parties, receptions, dinners, dinner dances, and award ceremonies. As a general rule, associated offers of overnight accommodation and travel should not be accepted

Hospitality provided by commercial parties with whom Transport Focus has a relationship may be accepted if the reason is the promotion of such relationships with a tangible passenger benefit, and the acceptance plus any associated costs to Transport Focus are proportionate and pre-authorized by the CEO/AC.

Form GH1 to be completed and authorised in advance. Appropriate entries made in the gifts and hospitality register, and signed off by the CEO/AC.

Annex A

The legislation in detail

Section 1 of the Act makes it an offence to promise or give financial or other advantage to someone where (a) it is intended to induce that person to do something improper or reward them for so doing, or (b) it is known or believed that to accept such a bribe would in itself be wrong.

It makes no difference whether the person being bribed carries out the improper activity or it is carried out by someone else.

Section 2 makes it an offence to request, agree to receive or accept a financial or other advantage:

- Intending that a function or activity should be performed improperly
- If the request, agreement or acceptance is improper
- As a reward for improperly performing a function or activity
- Where a function or activity is performed improperly in anticipation or as a consequence of a request, agreement to receive or acceptance of a financial or other advantage

Relevant functions and activities are set out as:

- Any function of a public nature
- Any activity connected with a business
- Any activity performed in the course of a persons employment
- Any activity performed on behalf of another body or person

At least one of the following conditions must also apply:

- The person performing the function or activity is expected to do so in good faith;
- The person performing the function or activity is expected to perform it impartially
- The person performing the function or activity is in a position of trust by virtue of performing it

Territorial considerations

A function or activity is relevant even if it:

- Has no connection with the UK
- Is performed outside the UK

Improper performance and expectation

- A relevant function or activity is performed improperly if it performed in breach of a relevant expectation
- A relevant expectation is what a reasonable person in the UK would expect it to be (and disregards non-written/codified local custom and practice in non UK jurisdictions)

Penalties

- On summary conviction (in a magistrates court) up to a £5,000 fine and up to a year in prison, or both
- On conviction on indictment (in the Crown Court) unlimited fine and up to ten years in prison

Annex B – Aide Memoire

	Nature of favour	Applies to	Transport Focus policy	Internal admin	External admin
3.5	Other Gifts (b)	Board Members And All Staff	Using reasonable judgement, and where appropriate, such gifts may be accepted on behalf of the organisation but only subject to the approval of a Director, and may not be retained by any one individual. See also paragraph 2.5	Form GH1 to be completed and authorised in advance or immediately subsequently. Appropriate entries made in the gifts and hospitality register, including treatment of any such gift	Appropriate 'thank you' If returned or refused, explain why.
3.6	Benefits (c)		No such offers should be accepted under any circumstances.	Form GH1 to be completed, and reported to the CEO / Accounting Officer and Audit Committee	Such offers to be refused, explaining the Board's policy
3.7	Hospitality – business hours (d)		Hospitality provided by commercial parties with whom Transport Focus has a relationship may be accepted if the reason is legitimate Transport Focus business, and there is no obvious reason why Transport Focus should not return the favour if the opportunity arose.	Form GH1 to be completed. Appropriate entries made in the gifts and hospitality register.	Appropriate 'thank you' may be made subsequently
3.8	Hospitality – social hours (e)		Hospitality provided by commercial parties with whom Transport Focus has a relationship may be accepted if the reason is the promotion of such relationships with a tangible passenger benefit, and the acceptance plus any associated costs to Transport Focus are proportionate and pre-authorised by the CEO/AC.	Form GH1 to be completed and authorised in advance. Appropriate entries made in the gifts and hospitality register, and signed off by the CEO/AC.	Appropriate 'thank you' may be made subsequently

Definitions

- (a) minor gifts are items of inconsequential monetary value and carry a branded or promotional message; they include, but are not limited to, pens, diaries, calendars, mouse pads, key fobs and posters.
- (b) such gifts might include, but are not limited to: bottles of wine or spirits; cinema or theatre tickets; travel tickets; hampers.
- (c) offers of benefits *have included*, but are not limited to: free use of company sporting or other facilities; use of a discounted shopping card provided by company; provision of goods or services at a reduced price; free membership of a local club or facility; participation in a foreign trip, either free or reduced rate; option to buy a car at a favourable price.
- (d) the most likely kind of hospitality in these circumstances would comprise working lunches, buffets, breakfasts etc. Alcohol should, as a general rule, always be **avoided** on such occasions
- (e) such offers may include cocktail parties, receptions, dinners, dinner dances, and award ceremonies. As a general rule, associated offers of overnight accommodation and travel should **not** be accepted
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Form GH1 is available on the intranet and via the corporate services team