



The Bar Council

## Gifts and Entertainment

<b>Purpose:</b>	To advise barristers in relation to the giving and acceptance of gifts and entertainment
<b>Scope of application:</b>	All practising barristers
<b>Issued by:</b>	The Ethics Committee
<b>Reissued:</b>	February 2019
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<b>Status and effect:</b>	<b>Please see the notice at end of this document. This is not “guidance” for the purposes of the BSB Handbook I6.4.</b>

1. It is not uncommon for a client to give a gift to their counsel. The Handbook offers the following guidance:

*“gC19 If you are offered a gift by a current, prospective or former client, professional client or other intermediary, you should consider carefully whether the circumstances and size of the gift would reasonably lead others to think that your independence had been compromised. If this would be the case, you should refuse to accept the gift.*

*gC20 The giving or receiving of entertainment at a disproportionate level may also give rise to a similar issue and so should not be offered or accepted if it would lead others reasonably to think that your independence had been compromised.”*

2. The Core Duty to maintain independence [CD4] is central to the decision whether to accept or refuse a gift or entertainment. The issue is whether accepting the gift or entertainment from the client might affect your relationship with them such as to undermine the overriding duty you owe to the court to act with independence in the interests of justice [rC3] or reasonably be seen by the public to undermine your independence [rC8].

3. The Handbook rightly does not prescribe a specific value above which a gift should be refused, though clearly a valuable gift is more likely to be seen as compromising your independence than a gift of modest value. A gift which is proportionate to the circumstances of the case is less likely either to undermine your independence or be perceived as doing so. Factors relevant to that assessment might include:

- a. The value of the gift;
- b. The work undertaken for the client, even a gift of some significant value may not be disproportionate in a substantial long running matter;
- c. The stage your work on their case has reached,
  - i. if your involvement in the case has ended, then accepting a gift from the client at that stage is less likely to bring your independence in the completed case into question. You should, however, consider the impact that accepting such a gift might have on your independence should you receive further instructions from the client in the future.
  - ii. whilst your work for the client is ongoing there is a greater risk that any gift or entertainment will either undermine your independence or be perceived by the public as doing so.

4. Gifts of money or the equivalent should be refused as they may reasonably be seen as compromising your independence in breach of Rule 8 [see gC18.3 and gC17].

5. In the event that you do consider a gift to be excessive or disproportionate to the work done such that it might undermine your independence or otherwise embarrass you, or be perceived by the public to do so, it should be returned with a suitable note of thanks either to the client direct or through the instructing solicitor.

### **Giving gifts or entertaining**

6. The Handbook provides more defined guidance in relation to giving gifts:

*“gC18 The following may reasonably be seen as compromising your independence in breach of Rule 8 (whether or not the circumstances are such that Rule rC10 is also breached):*

*.1 offering, promising or giving:*

*.a any commission or referral fee (of whatever size) – note that these are in any case prohibited by Rule rC10 and associated guidance; or*

*.b a gift (apart from items of modest value), to any client, professional client or other intermediary; or*

*.2 lending money to any such client, professional client or other intermediary;*

*gC20 The giving or receiving of entertainment at a disproportionate level may also give rise to a similar issue and so should not be offered or accepted if it would lead others reasonably to think that your independence had been compromised.”*

7. In light of this guidance when giving a gift there is no assessment of proportionality as there is with receiving gifts, only modest gifts are likely to escape criticism.

8. As with accepting entertainment, providing proportionate entertainment to a client, professional client or other intermediary is acceptable. However, if proportionate entertainment or hospitality is to be provided to a firm of solicitors or other intermediary for promotional purposes it is better offered by chambers than on an individual basis.

### **Giving gifts to your clerks**

9. Giving the occasional gift to your clerk, for instance at Christmas or on their birthday, is a longstanding tradition at the bar. However, it is important that any gift is proportionate and of modest value. The need for restraint is to ensure that it does not result in any advantage or perceived advantage to the giver in terms of allocation of work or access to work opportunities.

10. Every chambers will have a written policy on equality and diversity [rC110]. The policy must ensure, inter alia, that the affairs of chambers are conducted in a manner which is fair and equitable for all members of chambers, and that there is a fair distribution of work among its members [rC110i].

11. Within the equality and diversity policy many chambers will have a policy in respect of the giving of gifts to clerks and staff. Some for example may prohibit individual gift-giving and have introduced a centralised Christmas/annual bonus scheme in lieu. Other policies may provide guidance in relation to the value or nature of any gift. Perhaps more important than the terms of any chambers policy on gift-giving is the fact that there is such a policy. The existence of a written rule or guidance brings transparency and certainty and is the best protection against any member being thought of as seeking or receiving an advantage from the giving of a gift.

12. If your chambers do not have a policy in relation to giving gifts to clerks and other staff then the giver ought to consider whether the level of the proposed gift is appropriate and will not compromise the receiver or be perceived as doing so in light of the above considerations.

### **Important Notice**

This document has been prepared by the Bar Council to assist barristers on matters of professional conduct and ethics. **It is not “guidance” for the purposes of the BSB Handbook I6.4, and neither the BSB nor a disciplinary tribunal nor the Legal Ombudsman is bound by any views or advice expressed in it.** It does not comprise – and cannot be relied on as giving – legal advice. It has been prepared in good faith, but neither the Bar Council nor any of the individuals responsible for or involved in its preparation accept any responsibility or liability for anything done in reliance on it. For fuller information as to the status and effect of this document, please see [here](#).