



Report on the Management of Gifts in the Public Service

Public Service Commission

March 2008

Vision

The Public Service Commission is an independent and impartial body created by the Constitution, 1996, to enhance excellence in governance within the Public Service by promoting a professional and ethical environment and adding value to a public administration that is accountable, equitable, efficient, effective, corruption-free and responsive to the needs of the people of South Africa.

Mission

The Public Service Commission aims to promote the constitutionally enshrined democratic principles and values of the Public Service by investigating, monitoring, evaluating, communicating and reporting on public administration. Through research processes, it will ensure the promotion of excellence in governance and the delivery of affordable and sustainable quality services.

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Foreword

The Public Service is continuously under close scrutiny by the public and the media. Such scrutiny is necessary as public servants are the instruments through which the various mandates of government are executed. In performing their duties they are entrusted with public funds and their actions must therefore be above repute. The unfortunate reality is that public servants are human beings with weaknesses that may be exploited. One measure through which they may be exploited is by accepting gifts, either in a personal capacity or for services rendered.



The Code of Conduct for the Public Service places a prohibition on the receiving of gifts in the Public Service. However, irrespective of the prohibition by the Code of Conduct it is a fact of life that public servants are constantly being showered with gifts, sometimes even without the public servant having the opportunity of refusal, e.g. gifts delivered by courier. There is also a persistent argument that gifts from an Afro-centric perspective has grey areas as in most cultures it is deemed unacceptable not to accept a gift. Therefore, the receipt of gifts could be regarded as a highly emotive issue. Notwithstanding the fact that it could be regarded as an emotive issue, the point that stands out very clearly is that the receipt of gifts by public servants tend to weaken the citizens' trust in the Public Service, as well as destroying the fiber of integrity and good corporate governance within the Public Service. Moreover, it compromises the idea of having an ethically sound Public Service as espoused by our Constitution and which the Public Service Commission (PSC) seeks to promote.

A compounding factor is that there appears to be contradictions, inconsistencies and ambiguities with regard to the current regulatory provisions on the acceptance of gifts in the Public Service. These ambiguities and inconsistencies will give rise to interpretational issues as far as its implementation is concerned. Given the consequences of breaching a regulatory provision it is important that they should be clear and that public servants know and understand it. If the regulatory provisions are not clear and are broken by public servants it would be difficult to hold them accountable. It was against this backdrop that the PSC conducted a survey on the manner in which government departments manage the acceptance of gifts received by public servants.

The PSC is therefore pleased to present this report, with recommendations, in the hope that it will assist departments with the management of gifts received by public servants and thereby promote integrity and professional ethics in the Public Service.

A handwritten signature in black ink, appearing to read 'S. S. Sangweni'.

PROFESSOR SS SANGWENI
CHAIRPERSON

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Acronyms

ENTITIES / ORGANISATIONS

DFA	Department of Foreign Affairs
DME	Department of Minerals and Energy Affairs
DPSA	Department of Public Service and Administration
GCIS	Government Communication and Information System
OPSC	Office of the Public Service Commission
PSC	Public Service Commission
SAMDI	South African Management and Development Institute

OTHER PHRASES AND ITEMS

CEO	Chief Executive Officer
CFO	Chief Financial Officer
Constitution	The Constitution of the Republic of South Africa, Act No. 108 of 1996
DG	Director-General
EA	Executing Authority
HR	Human Resources
HoD	Head of Department
IT	Information Technology
MFMA	Municipal Finance Management Act, No. 56 of 2003
MSCMR	Municipal Supply Chain Management Regulations issued in terms of the MFMA
PFMA	Public Finance Management Act, No. 1 of 1999
PRECCA	Prevention and Combating of Corrupt Activities Act, no. 12 of 2004
PSA	Public Service Act, No. 103 of 1994 (as amended)
PSR	Public Service Regulations, 2001
SMS	Senior Management Service also referred to as 'designated employees' in terms of the Financial Disclosure Framework

Acknowledgements

The Public Service Commission would like to thank the officials and departments who participated in this survey. Special thanks are extended to those officials who, under short notice, availed themselves for the open-ended interviews.



Executive Summary

Introduction

In order to obtain an understanding of the public servants' views regarding the receipt of gifts, as well as to determine the manner in which the receipt of gifts are managed in the Public Service, a survey was conducted amongst public servants at randomly selected national and provincial departments.

The survey was prompted by apparent inconsistencies and ambiguities in the current regulatory provisions pertaining to the receipt of gifts and other hospitalities by public servants. In so doing, the report only deals with gifts offered to public servants in their personal capacity, as opposed to gifts offered to government departments, which are adequately catered for in Treasury Instruction 21.

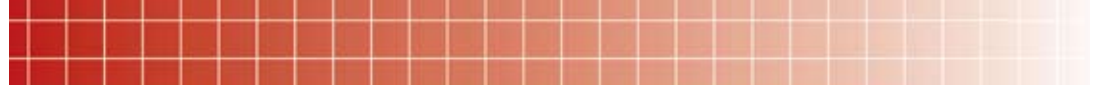
The offering of gifts to and acceptance thereof by public servants is, according to information received, common and widespread. It was and still is, however, extremely difficult to determine the extent of the practice, as gifts accepted are often not declared, *inter alia*, due to fear of reprisal. What is even more difficult to determine in certain circumstances is the motive for the offering of the gift, as well as whether or not the acceptance thereof influenced the public servant in reaching a decision that would affect the giver indirectly and/or even directly.

Methodology

A desktop study was done on the current legal framework regarding the acceptance of gifts in the Public Service, with the aim of ascertaining how departments manage the receipt of gifts by their employees. In addition to the desktop study, a survey questionnaire was developed and circulated, via electronic mail to all heads of human resource (HR) units of selected provincial departments in all nine provinces, as well as to selected national government departments and institutions or entities. The completed questionnaires received were reviewed and analyzed. Moreover, open-ended interviews were conducted with various relevant officials from selected national departments and provincial departments, in five provinces. The interviews were particularly helpful to obtain an understanding of the existing practice, the shortcomings and the problems that officials tasked with the implementation and administration of the gift policy encounter.

Survey results

It needs to be noted that 1172 officials from 13 national departments and 24 provincial departments responded to the survey questionnaire. Moreover, open-ended interviews were conducted with 64 officials from selected national and provincial departments. The survey results show that in terms of the general opinion on the receipt of gifts the majority of the respondents (i.e. 44%) were of the view that public servants should be allowed to receive gifts. This



view is supported by the fact that gifts should be allowed where the gift has nothing to do with a public servant's employment, where the gift consists only of promotional items and where the gift received was for ceremonial purposes and received from representatives of a foreign government. Many respondents (35%) were of the view that public servants should not receive any gifts at all. This is based on the opinion that the receipt of gifts could create a situation for potential conflicts of interest to occur and also that the danger of accepting gifts is that public servants open themselves to possible corrupt practices.

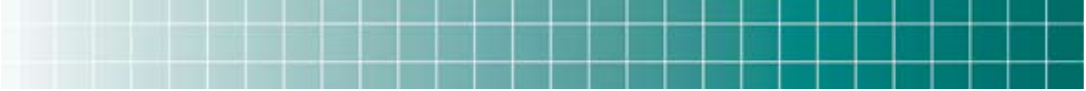
Another category in terms of the general opinion on the acceptance of gifts was to determine the occasions under which public servants should be allowed to receive gifts. In this regard, the survey reveals that the majority (66%) of the respondents were not in favour that public servants should receive gifts at a pre-contract stage. Furthermore, 62% of the respondents were of the view that public servants should not receive gifts directly after the award of a contract to a service provider; and 63% were of the view that public servants should not receive gifts during a stage when a contract with a department is contemplated. The period during which business or a contract is contemplated with a department is seen as very dangerous as it is usually during such a stage that public servants are vulnerable to corrupt practices. Therefore, when departments formulate policies on the acceptance of gifts they should take cognizance of the results of the survey in this regard and recommendations contained in this report.

The majority (56%) of public servants were in favour of the view that a gift policy should cater for Afro-centric and other cultural practices, especially as it is, in some cultures, regarded as disrespectful not to accept a gift. For this reason, 60% of the respondents indicated that they will always accept a gift of a cultural nature. Respondents were of the view that when a policy is formulated on the receipt of gifts there should be clear guidelines in such a policy as to how and when to refuse such gifts gracefully. The policy should incorporate all cultures and it should be fair.

A critical element of managing the receipt of gifts is that they should at least be captured in a gift register and therefore a question was posed in this regard. From the answers received to this question it became apparent that very few departments have gift registers as 27% of the respondents were of the view that gifts were 'never' captured in a register; 1% indicated that gifts were 'rarely' captured in a register; 13% indicated that gifts were 'sometimes' captured in the register; only 1% indicated that gifts were 'often' captured in a register; and only 26% indicated that gifts were 'always' captured in the register.

What emanated from the open-ended interviews and in fact supports the results in terms of the management of gifts with regard to the survey questionnaire is that 65% of the departments visited didn't have a gift policy and a gift register. An analysis of the gift policies received (from those that did have policies) revealed that although most policies cater for the same situations, the policies vary in both comprehensiveness and in content. The differences in the policies reviewed may lead to an untenable situation where public servants, even on one specific level, are not treated equally.

From the open-ended interviews it also came to light that many gifts are currently being received by public servants. One of the gifts involved a R60 000.00 bursary given to the daughter of an official. This bursary was disclosed



but many of the gifts received were not disclosed in a gift register and no approval for such gifts was obtained. By receiving such gifts it is apparent that there is a total disregard to the Code of Conduct for the Public Service.

Recommendations

One of the critical recommendations of this report is that consideration should be given to strengthen the current legal regime to such an extent that the unauthorised offering and accepting of gifts, benefits or any other form of gratification be prohibited with a concomitant criminal sanction, similar to the suggested amendment contained in Section 33 of the Draft Public Administration Management Bill. It is further recommended that the criminal prohibition should not only be in respect of persons or entities who contract with government, but must be wide enough to include any person who 'deals' with government.

Another recommendation is that exceptions based on traditional or cultural considerations are difficult to define, very difficult to police and virtually impossible to prove or disprove. Such exceptions may create further confusion, lead to unequal treatment before the law and may even create opportunities for unscrupulous public servants and others to offer and accept gifts with impunity. However, it is acknowledged that most traditional or cultural gifts are not translatable into monetary value as they are by and large symbolic. Therefore it is recommended that should a public servant receive a gift based on a cultural tradition it should be treated and managed in a culturally sensitive manner without compromising the standards of accountability and transparency.

Finally, if the regulatory provisions permit the receipt of gifts, then it is recommended that consideration be given to the appointment of an Ethics Officer in each department to administer and generally oversee the policy and administration of gifts. With the appointment of Ethics Officers it is recommended that a simple electronic process for declaring gifts be implemented in terms whereof a public servant seeking approval to accept and retain a gift or other benefit or gratification, completes a prescribed form electronically and submits it to the Ethics Officer, who after consideration, submits it directly into a database administered by the PSC.



CHAPTER ONE

INTRODUCTION TO THE RESEARCH

1.1 Background and need for the report

“The issue of gifts in South Africa is an emotive issue because South Africa is characterized by diverse communities with diverse cultures. Because of such diversity the acceptance and non-acceptance of gifts is not as clear. Most western Public Services have a total ban on gifts and gratuities except in exceptional cases.

However, even in countries where there are clear regulations on what constitutes gifts, officials are sometimes placed in awkward situations and have to accept a gift, despite the policy ban. Such situations usually arise when, for example, they are on an official visit or in turn are receiving official visitors, and as a token of appreciation gifts are exchanged. The situation makes it impossible to refuse the gift. Policies have had to cater for such situations. Usually the official may accept, despite the policy ban, and has to immediately register the gift in a gift register. Depending on the gift the official may retain the gift or alternatively it is auctioned within the office.


There is a persisting argument that the issue of gifts from an Afro-centric perspective has grey areas. Let us take the example where a community gives a cow to an official as a gift. In African communities, including South Africa, a cow is highly treasured because usually it is only given to Chiefs and Kings as a present. It also represents a high monetary value. Should the public servant refuse that gift by returning the cow to the community, that community would, because of the cultural significance, be very offended. Essentially, in most cultures it is deemed unacceptable not to accept a gift.”

In the South African Public Service measures or regulations are in place to regulate the receipt of gifts. In this regard it needs to be mentioned that the Code of Conduct for the Public Service stresses that a public servant should not use his/her position to obtain private gifts or benefits. It further emphasizes that the acceptance of any gifts or item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the performance of an employee's duties may only be accepted with the express written approval of the Head of Department.²

Furthermore, the Regulations on the Financial Disclosure Framework prescribe that members of the Senior Management Service (SMS) must disclose gifts with a value of R350.00 or more. This implies that SMS members may receive gifts without the approval of the Head of Department. The only obligation is that it must be disclosed. This appears to be in contradiction with the Code of Conduct which stresses that no gifts must be received without the approval of the Head of Department, which may cause huge problems for departments. Therefore, there appears to be contradictions and ambiguities in the current regulatory provisions pertaining to the receipt of gifts and other hospitalities by public servants because the Financial Disclosure Framework provides that SMS members may receive gifts without approval as long as those gifts of R350.00 in value or more are disclosed whereas the Code of Conduct provides that a public servant should not accept gifts without approval. In the absence of a clear principle it would be difficult to safeguard the current regulatory provisions.

¹ Report on Managing Conflicts of Interest in the Public Service issued by the PSC in 2006

² See Section C.5.3 of the Code of Conduct for the Public Service



Inherent to promoting good ethical behaviour is the regulation of the receipt of gifts in the Public Service. *“Virtue and good ethical behaviour in the public sector is not inherently resident in the minds of public officials. The lure of the lap of luxury at state expense must be perennially interrogated through codes of ethics. For where morality has failed, the law now has to rush in to fill the void”* (President Thabo Mbeki).³ One of these laws is our Constitution. Since the advent of South Africa’s democracy, ethics in the Public Service is regulated by the supreme legislation, namely the Constitution. The PSC is mandated by Section 195 of the Constitution to promote and maintain the democratic values and principles governing public administration. As custodians of good governance, the PSC is obliged to exercise its powers and functions without fear, favour or prejudice in the interest of the maintenance of effective and efficient public administration and a high standard of professional ethics in the Public Service.

It is against this background that the PSC deemed it necessary to do a survey on how departments manage the acceptance of gifts by public servants. Pursuant to the findings of such a survey it was imperative for the PSC to recommend a consistent policy between the various regulatory provisions.

1.2 Objectives of the report

The PSC through this report seeks to promote accountability and transparency by:

- Assessing how departments interpret and manage the acceptance and non-acceptance of gifts;
- Establishing whether government departments have a system for managing the acceptance of gifts by public servants in an accountable and transparent manner; and
- Exploring mechanisms or approaches to improve the management of gifts by public servants in South Africa.

1.3 Research methodology

The survey was done during the period 1 July 2007 to 31 January 2008. As a starting point a desktop study was undertaken on the current legal framework regarding the receipt of gifts in the Public Service with the aim of ascertaining how departments manage the acceptance or non-acceptance of gifts by their employees. Part of this desktop study involved analyzing and reviewing the gifts policies and gifts registers of selected national and provincial departments. Other relevant information on the management of gifts such as Codes of Conduct, reports by the PSC and topical articles were also consulted.

In addition to the desktop study a survey questionnaire was developed and circulated, via electronic mail to all heads of human resources (HR) units of selected provincial departments in all nine provinces, as well as to selected national government departments and institutions or entities. The questionnaire encapsulated issues such as officials’ general opinion on gifts, cultural sensitivities, the management of gifts (i.e. governance), problems that could be encountered with the receipt of gifts and general recommendations related to the management of gifts. The completed questionnaires received were then reviewed and analyzed.

³ Statement made by President Thabo Mbeki (then Executive Deputy President) at the Anti-Corruption Conference: Cape Town, 10 November 1998

Moreover, open-ended interviews were conducted with various relevant officials from selected national departments and provincial departments, in five provinces.⁴ The interviews were particularly helpful to obtain an understanding of the existing practice, the shortcomings and the problems that officials tasked with the implementation and administration of the gift policy encounter.

1.4 Limitations of the report

One of the limitations of this report is that it only deals with gifts offered to public servants in their personal capacity, as opposed to gifts offered to government departments, which are adequately catered for in Treasury Instruction 21.

Secondly, it needs to be noted that the survey was limited to randomly selected national and provincial departments. The departments who participated in the survey are listed in table 1. One problem experienced was that several of the completed questionnaires received revealed that some of the officials completed the forms in a blasé manner, e.g. marking the option “always” in response to all questions, and thereby providing contradictory answers. This resulted that some of the answers to the questions on the questionnaire had to be discarded and could therefore not be considered for statistical purposes.

TABLE 1: DEPARTMENTS THAT RESPONDED TO THE SURVEY QUESTIONNAIRE

NATIONAL DEPARTMENTS	PROVINCIAL DEPARTMENTS	
	Department	Province
Department of Correctional Services	Local Government, Housing & Traditional Affairs	Free State
Department of Education	Public Works, Roads and Transport	Free State
Department of Foreign Affairs	Public Safety and Security	Free State
Department of Housing	Sport, Arts, Culture, Science & Technology	Free State
Department of Minerals and Energy	Treasury	Free State
	Economic Development	Gauteng
Department of Provincial and Local Government	Education	Gauteng
	Housing	Gauteng
Department of Science and Technology	Community Safety	Gauteng
	Roads and Transport	Gauteng
Department of Social Development	Public Works	KwaZulu Natal
	Transport & Community Safety & Liaison	KwaZulu Natal
GCIS	Local Government & Housing	Limpopo
SAMDI	Sports, Arts and Culture	Limpopo

⁴ See Appendix A for a list of officials and departments which participated in the open ended interviews.

NATIONAL DEPARTMENTS	PROVINCIAL DEPARTMENTS	
	Department	Province
The Presidency	Roads and Transport	Limpopo
Office of the Public Service Commission	Economic Development, Environment and Tourism	Limpopo
	Office of the Premier	Mpumalanga
	Local Government and Housing	Mpumalanga
	Public Works	Mpumalanga
	Office of the Premier	Northern Cape
	Health	North West
	Local Government and Housing	North West
	Transport and Public Works	Western Cape
	Local Government and Housing	Western Cape



CHAPTER TWO

OVERVIEW AND
INTERPRETATION OF THE
CURRENT REGULATORY
PROVISIONS REGARDING THE
RECEIPT OF GIFTS

2.1 Introduction

In this chapter the report deals with the current regulatory provisions with specific reference to the receipt of gifts in the Public Service. In doing so, an overview as well as an interpretation of the current provisions is given. In this regard, the chapter seeks to highlight the apparent inconsistencies in the regulations as well as the impact of the interpretation of the regulations on the said inconsistencies. The reader is cautioned that it is dangerous to place emphasis on any singular legal provision, without understanding the context thereof, as well as the underlying principles.

2.2 Regulatory provisions considered

The Public Service Act, Act No. 103 of 1994 (as amended) (PSA)⁵ provides for the *organisation and administration of the Public Service of the Republic, the regulation of the conditions of employment and matters connected therewith.*" Section 31 of the PSA specifically prohibits an officer or employee to receive any other unauthorised remuneration, allowance or other reward, in connection with the performance of work in the Public Service. Funds received contrary hereto, shall be paid into the Revenue Fund.

The Code of Conduct for the Public Service⁶ obliges an employee to serve the public in an unbiased and impartial manner; to refrain from abusing her or his position in the Public Service to promote or prejudice the interest of any political party or interest group. An employee should further refrain from favouring relatives and friends in work-related activities. The Code of Conduct⁷ further obliges an employee to refrain from using her or his official position to obtain private benefits for herself or himself during the performance of her or his official duties. It also prohibits public servants from accepting any gifts or benefits when offered, as these may be construed as bribes.

Chapter 3 of the Public Service Regulations (PSR) deals with the financial disclosures of members of the Senior Management Service (SMS). It provides that every member of the SMS shall, before the end of each financial year, disclose to the relevant Executing Authority (EA) particulars of all her or his registrable interests in respect of the preceding year, inclusive of consultancies and retainerships, sponsorships, gifts and hospitality from a source other than a family member.⁸ In particular with regard to gifts and hospitality from a source other than a family member, the SMS member shall furnish a description and the value and source of a gift with a value in excess of R350.00, a description and the value of gifts from a single source which cumulatively exceed the value of R350.00 in a financial year, and hospitality intended as a gift in kind.⁹ A SMS member who fails to disclose such an interest or when disclosing an interest, wilfully provides incorrect or misleading details, is guilty of misconduct.¹⁰

⁵ The Public Service Act, Act No. 103 of 1994 (as amended)

⁶ Regulation C.2.1, C.2.7 & C.3.3 of Chapter 2 of the Public Service Regulations, 2001 issued in terms of Section 41 of the PSA.

⁷ Regulation C.5.3 of Chapter 2 of the PSR

⁸ Regulation D (d), (e) & (f) of Chapter 3 the PSR

⁹ Regulation E (f) of Chapter 3 of the PSR

¹⁰ Paragraph H of Chapter 3 of the PSR

SMS members are obliged to display the highest possible standards of ethical conduct to ensure that they minimise conflicts of interest and that they put the public interest first in the performance of their duties.¹¹ The employment contracts for both Heads of Department (HoD) as well as members of the SMS have clauses that oblige them to comply with the prescribed Code of Conduct. SMS members should further undertake to observe the utmost good faith in their dealings with the employer:

Below in table format (Table 2) are the pertinent regulatory provisions, inclusive of comparative and suggested legislation:

TABLE 2: REGULATORY PROVISIONS CURRENTLY APPLICABLE TO THE RECEIPT OF GIFTS.

PROVISIONS	CONTENT
CURRENT APPLICABLE REGULATORY PROVISIONS	
Public Service Act, No. 103 of 1994 (as amended)	
Section 31: Unauthorised remuneration (Section 31(1)(a)(i))	If any remuneration, allowance or other reward is received by a public servant in connection with the performance of his or her work in the public service otherwise than in accordance with the provisions of the PSA, that officer or employee shall, pay into revenue an amount equal to the amount of any such remuneration, allowance or reward or, where it does not consist of money, the value thereof as determined by the HoD in which he or she was employed.
(Section 31(1)(a)(iii))	The EA may approve that the officer or employee retains the whole or a portion of the said remuneration, allowance or reward.
Public Service Regulations	
Chapter 2 (Code of Conduct) (C.2.2, C.2.7, C.3.3, C.4.6, C.4.10, C.5.3))	A public servant must serve the public in an unbiased and impartial manner. (C.2.2) A public servant shouldn't abuse her or his position to promote or prejudice the interest of any interest group. (C.2.7) A public servant must refrain from favouring relatives and friends in work-related activities. (C.3.3) A public servant must recuse from any official action or decision-making process which may result in improper personal gain, and this should be properly declared by the employee. (C.4.6) A public servant must, in the course of duty, report fraud, corruption, nepotism, maladministration and any other act which constitutes an offence, or which is prejudicial to the public interest. (C.4.10) A public servant must refrain from using her or his official position to obtain private benefits during the performance of duties <i>nor may she or he accept any gifts or benefits when offered, as these may be construed as bribes.</i> (C.5.3)
Chapter 3 (Financial Disclosure) (D. (d), (e) & (f))	Kinds of interests to be disclosed: A SMS member must disclose (and register) consultancies, retainerships, sponsorships, gifts and hospitality from a source other than a family member.

¹¹ Regulation A of Part VII of Chapter 4 of the PSR

PROVISIONS	CONTENT
Public Service Regulations (continued)	
SMS Handbook Chapter 6 (10) (Disclosure of financial and other private interests)	<p><i>Senior managers must not solicit or accept any bribe or other improper inducement. Only in exceptional circumstances should gifts be accepted (where the gift is offered as part of a formal exchange of gifts). (10.7)</i></p> <p><i>Senior managers may accept unsolicited gifts or moderate acts of hospitality. Accepting such gifts or benefits is essentially a matter of judgement for the individual concerned. In such instance they must be satisfied that their position will not in any way be compromised by acceptance. (10.8)</i></p> <p><i>Senior managers are required to disclose details with regard to gifts and hospitalities with a value in excess of R350. They must further disclose any material advantage that they received from any source e.g. any discount prices or rates that are not available to the general public. (10.9)</i></p>
(10.7, 10.8, 10.9) (Chapter 7: (Paragraphs 8, 9, 19 & 31 of Annexure A)	<p>A SMS member will be guilty of misconduct if she or he:</p> <ul style="list-style-type: none"> • <i>Steals, bribes or commits fraud. (Para 8)</i> • <i>Accepts any compensation in cash or otherwise from a member of the public for performing her or his duties without written approval from the department. (Para 9)</i> • <i>Contravenes the Code of Conduct for the Public Service. (Para 19)</i> • <i>Commits a common law or statutory offence while on state premises. (Para 31)</i>
Financial Disclosure Framework: Gifts and hospitality from a source other than a family member	<p>SMS members must disclose the following details with regard to gifts and hospitality:</p> <ul style="list-style-type: none"> • <i>A description and the value and source of a gift with a value in excess of R350,</i> • <i>A description and the value of gifts from a single source which cumulatively exceed the value of R350 in the relevant 12 month period; and</i> • <i>Hospitality intended as a gift in kind.</i> <p><i>All personal gifts within the family and hospitality of a traditional or cultural nature need not be disclosed.</i></p>
Treasury Regulations	
Regulation 21: Acceptance of gifts, donations and sponsorships to the State (21.2.1, 21.2.2, 21.2.3)	<p><i>The EA may approve the acceptance of any gift, donation or sponsorship to the state, whether such gifts, donations or sponsorships are in cash or kind. (21.2.1)</i></p> <p><i>All cash gifts, donations or sponsorships must be paid into the relevant revenue fund. (21.2.2)</i></p> <p><i>Where it is not apparent for what purpose a gift, donation or sponsorship should be applied, the relevant EA may decide how it must be utilised. (21.2.3)</i></p>
Prevention and Combating of Corrupt Activities Act, No. 12 of 2004 (PRECCA)	
Section I: Definitions Gratification	<p><i>Gratification includes (a) money, whether in cash or otherwise; (b) any donation, gift, loan, fee, reward, valuable security, property or interest in property of any description, whether movable or immovable, or any other similar advantage; (c) the avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantage; (d) any office, status, honour, employment, contract of employment or services, any agreement to give employment or render services in any capacity and residential or holiday accommodation; (e) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part; (f) any forbearance to demand any money or money's worth or valuable thing; (g) any other service or favour or advantage of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and includes the exercise or the forbearance from the exercise of any right or any official power or duty; (h) any right or privilege; (i) any real or pretended aid, vote, consent, influence or abstention from voting; or (j) any valuable consideration or benefit of any kind, including any discount, commission, rebate, bonus, deduction or percentage.</i></p>

PROVISIONS	CONTENT
Prevention and Combating of Corrupt Activities Act, No. 12 of 2004 (PRECCA) (continued)	
Section 3: General offence of corruption	The offering and / or acceptance of any gratification is prohibited in broad terms. The offer or acceptance must amount to the <i>illegal, dishonest, unauthorised, incomplete, or biased exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation; or the abuse of a position of authority; or a breach of trust; or the violation of a legal duty or a set of rules; designed to achieve an unjustified result; or must amount to any other unauthorised or improper inducement to do or not to do anything.</i>
Section 4: Corruption regarding public officials	Section 4 is similar in the content of its prohibition to section 3. It, however, further defines the phrase in order to act to include <i>voting at any meeting of a public body; performing or not adequately performing any official functions; expediting, delaying, hindering or preventing the performance of an official act; aiding, assisting or favouring any particular person in the transaction of any business with a public body; aiding or assisting in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person in relation to the transaction of any business with a public body; showing any favour or disfavour to any person in performing a function as a public officer; diverting, for purposes unrelated to those for which they were intended, any property belonging to the state which such officer received by virtue of his or her position for purposes of administration, custody or for any other reason, to another person; or exerting any improper influence over the decision making of any person performing functions in a public body.</i>
Section 10: Unauthorised gratification	Section 10 relates to the receiving by or offering to party to an employment relationship of an unauthorised gratification. It contains the following rider: <i>in respect of that party doing any act in relation to the exercise, carrying out or performance of that party's powers, duties or functions within the scope of that party's employment relationship.</i>
REGULATIONS APPLICABLE ELSEWHERE IN THE PUBLIC SECTOR	
Municipal Supply Chain Management Regulations	
Regulation 46: Ethical standards (46(2)(c), 46(2)(e), 46(6))	<p>An official or other role player involved in the supply chain management <i>may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member; partner or associate of that person (46(2)(c)).</i></p> <p>The official <i>must declare to the accounting officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member; partner or associate of that person (46(2)(d)).</i> Regulation 46(2)(c) does not apply to gifts less than R350 in value (46(6)).</p>
Regulation 47: Inducements, rewards, gifts and favours (47(1)(b), 47(2), 47(3))	<p>No provider or prospective provider of goods or services to a municipality or municipal entity <i>may either directly or through a representative or intermediary promise, offer or grant any reward, gift, favour or hospitality to any official or any other role player involved in the supply chain management (47(1)(b)).</i></p> <p>The accounting officer must promptly report any alleged contravention of regulation 47(1) to the <i>National Treasury for considering whether the offending person should be listed in the National Treasury's database of persons prohibited from doing business with the public sector (47(2)).</i></p> <p>Regulation 46(2)(c) does not apply to gifts less than R350 in value (47(3)).</p>

LEGISLATIVE AMENDMENTS	
Public Service Amendment Bill	
Section 1: Definitions Gratification	"Gratification" means gratification as defined in section 1 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004).
PROVISIONS	CONTENT
Draft Public Service Administration Bill	
Section 33: Conduct of employee or former employee participating in awarding of work to service providers	<p>If a contract is concluded, or extended, with a service provider to provide services or goods to a public administration institution a public servant who was involved in the procurement process may not within 12 months after such individual or body was so contracted receive any gratification from such individual or body. (33(1)(c)(iii)).</p> <p>A service provider may not grant any gratification to such a public servant (33(2)(b)).</p> <p>Any person who contravenes subsections (1) & (2) is guilty of an offence and liable to a fine or to imprisonment not exceeding 12 months or both such fine and imprisonment (33(6)).</p> <p>Upon conviction the court may, in addition to any punishment, impose on the person a fine not exceeding the monetary value of any proceeds derived from the commission of the offence (33(7)).</p>

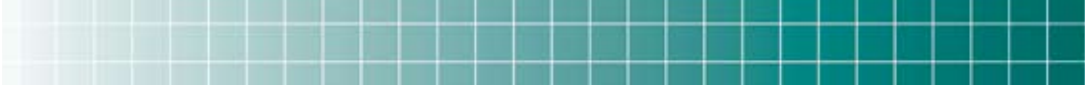
2.3 Interpretation of the regulatory provisions

Through the centuries Courts and other administrators of legislation have been confronted with legislation that is in conflict with other legislation or that is impractical (impossible) to give effect to, similar to the regulatory provisions pertaining to the receipt of gifts in the Public Service addressed through this survey. The golden rule of interpretation is to establish the intention of the legislator. The Courts have developed few principles (presumptions) to assist in the interpretation of laws, e.g. the legal presumption against the legislator making contradictory, inconsistent, absurd or repugnant laws. Lord Watson in *Salomon v Salomon and Co Ltd*¹² made the following pertinent observation: "*Intention of the Legislature* is a common but very slippery phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the Legislature probably would have meant, although there has been an omission to enact it." However, where the discrepancy is too great "... the remedy lies in an amending Act."¹³

In terms of Section 30 of the PSA a public servant may not receive, other than his official remuneration, any remuneration, allowance or other reward in connection with the performance of his or her work in the Public Service. If he/she receives such remuneration, allowance or reward, the same, or the equivalent monetary value thereof, shall be paid into the Revenue Fund. The EA may approve the retention of the said remuneration, allowance or reward by the official. The only reasonable inference to be drawn from the aforesaid is that an official may not accept gifts, unless approved by the EA. If any provision in any subservient legislation, e.g. the PSR, Code of Conduct and SMS Handbook, is inconsistent and irreconcilable with the aforementioned principle contained in PSA, it would, in the view of the PSC, be null and void. However, the issue of privacy should be recognized. In this respect it needs to be noted that a person may receive a gift from a friend whom he/she has supported through marital or other problems. If it can be proven that the friend did have those problems and the official did assist him/her for which a

¹² [1897] AC 22 (HL) at page 38

¹³ (Lord Simonds in *Magor and St Mellons Rural District Council v Newport Corporation* [1950] 2 All ER 1226 (CA) at page 1236.



gift was received then certainly the view is that such an official should not be penalised. Therefore, the context in which a gift is given and the intention are key parameters when judgement is considered over the receipt of gifts.

In terms of paragraph C.5.3 of the Code of Conduct an employee should not use her or his position to obtain private benefits for herself or himself during the performance of her or his official duties nor does she or he accept any gifts or benefits when offered, as these may be construed as bribes. This paragraph aligns with Section 30 of the PSA.

The position, as enunciated by the aforesaid two provisions¹⁴, is clear: public servants are not allowed to accept any gifts, benefits or rewards, without the express consent of the EA. The overriding provision regarding the acceptance of gifts is the criminal prohibition contained in sections 3, 4 and 10 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 (PRECCA).

However, in terms of Chapter 3 of the PSR¹⁵, SMS members shall disclose to the relevant EA, particulars of all her or his registrable interests, inclusive of consultancies, retainerships, sponsorships, gifts and hospitalities, above an amount of R350.00 per occasion or cumulatively, from a source other than a family member. The receipt of personal gifts within the family and hospitality of a traditional or cultural nature, do not even need to be disclosed. The provision allowing the receipt of certain gifts (benefits) as contained in Chapter 3 of the PSR is, *prima facie*, inconsistent with, and even contradictory to, the PSA and paragraph C5.3 of the Code of Conduct contained in the PSR.

The provisions of the paragraphs 10.7, 10.8 and 10.9 of the SMS Handbook¹⁶ compound the confusion even further. It allows senior managers to accept unsolicited gifts or moderate acts of hospitality, leaving the acceptance for the discretion (judgement) of the individual concerned. Contrary to the aforesaid, Chapter 7¹⁷ of the SMS Handbook makes the acceptance of any compensation in cash or otherwise from a member of the public or another member/employee for performing her or his duties, without written approval from the department, an act of misconduct.

Therefore the first important question to answer in respect of the interpretation of the current regulatory provisions pertaining to the receipt of gifts in the Public Service is whether the conflicting provisions regarding the acceptance of gifts can be reconciled. The only reasonable, logical and non-absurd interpretation of all of the aforesaid provisions, read together, is therefore as follows: **No public servant may accept gifts or other benefits, without the express consent of the EA, except for senior managers who, on their own discretion, may accept unsolicited gifts, moderate acts of hospitality, and hospitality of a traditional or cultural nature, unconnected with the performance of their work in the Public Service, without any monetary limit. The senior managers are obliged to disclose unsolicited gifts and moderate acts of hospitality above a monetary value of R350.00, but are not obliged to disclose hospitality of a traditional or cultural nature of any monetary value.**

A few issues (questions) arise from the aforesaid interpretation:

- Is this really what the true intention of the legislator was?
- Is this in line with the principles contained in the Constitution, e.g. equality?

¹⁴ Section 30 of the PSA and paragraph C.5.3 of the Code of Conduct

¹⁵ Paragraph C.1 read with D

¹⁶ Issued in terms of Chapter 6 of the SMS Handbook

¹⁷ Paragraph 9 of Annexure A of Chapter 7

- Is this in line with Government's policies and strategies on the prevention of corruption?
- Is it fair that only senior managers should receive such benefits? What is the position of non-SMS officials acting as senior managers?
- Is there really ever a situation where a public servant would receive a gift or benefit from a person or institution that has dealings with that official's department, where such a gift or benefit would be unconnected to the official's performance of work in the Public Service? How would such be proved or disproved? The old cliché 'there is no free lunch' has a ring of truth to it!
- Did the legislator really intend that it would be only left to a senior manager's conscience to decide whether or not to accept a gift or benefit?
- Was it the true intention of the legislator that senior managers could accept gifts of any monetary value?
- What is the interpretation of a **moderate** act of hospitality?
- What is hospitality of a traditional or cultural nature? Would this necessitate a different set of rules for different traditions and different cultures? Is the phrase traditions only to be understood in a cultural context or is there room for other traditions, e.g. in the corporate or sporting societies?

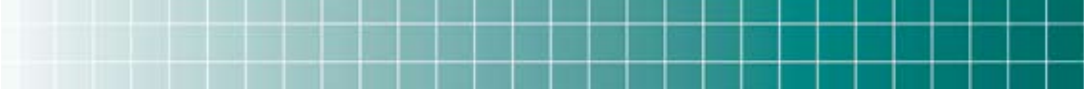
Two extreme hypothetical examples may illustrate the absurd results of a strict interpretation of the current legal position:

- Senior manager X oversees the supply of water to a rural community. In line with the cultural traditions of the community the *kgosi* (chief) donates a prize bull worth R10 000.00 to X. The community would be offended if X rejects the offer. X accepts the offer, without either seeking approval or disclosing the gift, as he is exempted from doing so. Y, a junior official, in X's department, and actually the person who has put in a lot of unclaimed overtime, and personal expenses to ensure that the project was delivered to the community on time, properly, and within budget, is offered a blanket, handmade by women of the community, and valued at R200.00, with a much greater sentimental value to Y. The community would be offended if Y rejects the offer. Y accepts the gift, but seeks approval from the EA to retain the blanket. Whilst X's conduct is devoid of any negative consequences, Y may be disciplined for misconduct.
- Junior official A is a keen and very able golfer. He and his senior manager B, a very occasional golfer (hacker), are invited to a golf day sponsored by a supplier, valued at R500.00. A requests permission from his EA to accept the invitation. His request is denied. A decides to take annual leave for the day and to pay the fees. Over and above the aforesaid the organizers of the golf day hands out golf shirts and a sleeve of golf balls, personalized with the organiser's logo and valued at about R300.00, to everybody teeing off. The shirt would further contribute to officials of the golf club and other golfers to recognize the participants on the golf day. B accepts his shirt and balls. A, in an attempt not to offend the organizer, also accepts his shirt and balls, but later requests permission from his EA. B duly declares the golf invitation as it exceeds the R350.00 limit, but not the shirt and the balls, as such are valued below the R350.00 limit. Whilst B's conduct is devoid of any negative consequences, A may be disciplined for misconduct.

2.4 International perspectives¹⁸

Public servants in the Kingdom of Nepal are allowed to receive gifts. However, strict conditions are set for the

¹⁸ From a Report on Managing Conflicts of Interest in the Public Service, issued by the PSC in July 2006



receipt of gifts. In this regard the Code of Conduct for The Civil Servants of the Kingdom of Nepal provides that: *"A civil servant or a member of his/her family shall not accept any kind of gift, present or demand donation from any person or take loan from a person related to official duty if it is likely to prejudice the official duty in any way. A prior approval of His Majesty's Government must be taken to accept such gift, present and donation or take loan. If a civil servant receives any gift or present from a foreign government or its representative, he or she shall report the matter to His Majesty's Government and shall do as per the decision of His Majesty's Government"*.¹⁹

In Germany an integrated system of rules and regulations manages conflicts of interest in the Public Service. It is required from German Civil servants to decline any rewards or gifts. Permission is required for the acceptance of gifts connected to public office.

Canada's approach has been to establish broad and clear standards based on a set of principles. It establishes clear rules of conduct and post-employment practices to minimize the possibility of conflicts arising between the private interests and public duties of civil servants, including limitations on the acceptance of gifts, invitations to special events and post employment activities.

Moreover, in Tanzania simplified government programmes and procedures are applied to minimize opportunities for the receipt of gifts and for corruption to occur. Some of these simplified programmes involve minimizing and or controlling areas of discretion regarding the receipt of gifts. In this regard clear written guidelines are published for the notification of all public servants. Moreover, the public are made aware of available mechanisms that offer speedy and effective reviews of contentious decisions regarding the receipt of gifts. The prevention of corruption is enhanced by paying public servants a wage in line with reasonable needs and expectations. The National Anti-Corruption Strategy and Action Plan for Tanzania stresses that: *"Rewards and achievements, with good performance being recognized, are implemented. This is done with the aim of reducing the receipt of gifts by public servants and thereby promoting the fight against corruption. Where gifts/hospitalities with a value above a minimum are received in the course of performing public duties, public servants are required to disclose it"*.²⁰

2.5 Summary

It is clear that there are contradictions, inconsistencies and ambiguities in the current legislation. The current legal position is therefore clearly in need of amendment. The Public Service Amendment Bill, and more particularly the Draft Public Administration Management Bill with its penal clause, if enacted, will go a long way in eliminating the current apparent ambiguities and inconsistencies and in levelling the proverbial 'playing field', as well as adding real value to the national anti-corruption strategies.

The survey will, however, not only focus on addressing the current apparent inconsistencies in the regulatory provisions, but will also attempt to recommend a solution that is not only fair to all public servants, but more importantly, is in the best interest of South Africa and all its inhabitants, inclusive of a society free of corruption.

¹⁹ Section 7 (1) (2) of the Code of Conduct for The Civil Servants of The Kingdom of Nepal.

²⁰ See The National Anti-Corruption Strategy and Action Plan for Tanzania at: www.google.org/search/AfricanSearch.



CHAPTER THREE

FINDINGS AND ANALYSIS OF THE SURVEY

3.1 Introduction

In the previous chapter it was pointed out that there are many ambiguities and inconsistencies in the current regulatory provisions. These ambiguities and inconsistencies will give rise to interpretational issues as far as its implementation is concerned. Given the consequences of breaching a regulatory provision it is important that they should be clear and that public servants know and understand it. If the regulatory provisions are not clear and are broken by public servants it would be difficult to hold them accountable. It was against this backdrop that the survey was conducted.

The methodology in conducting the survey was highlighted in chapter one of this report. In this chapter the results in terms of the survey questionnaire as well as the results of the open-ended interviews are given.²¹

The questionnaire had as its objective to obtain the opinion of public servants on various aspects regarding the issue of gifts being offered to, and accepted by public servants as well as to obtain information regarding the current practice, governance issues and challenges associated with the receipt of gifts. Public servants were also requested to make recommendations and to suggest solutions that could improve the current situation. Although fewer completed questionnaires were received than expected, and although some of the questionnaires received were also not satisfactorily completed, the survey yielded some useful results. The open-ended interviews were informative, as it encouraged open and healthy debate. Copies of gift registers were also received during the interviews.

3.2 Results of the survey questionnaire

In terms of the receipt of gifts by public servants the survey questionnaire focussed on five particular issues. These issues were:

- Public officials' general opinion on the receipt of gifts;
- Current practices associated with the receipt of gifts;
- Issues associated with the management of gifts (governance);
- Problems that could be encountered with the receipt of gifts; and
- Recommendations regarding the management of gifts in a department.

3.2.1 General opinion on the receipt of gifts

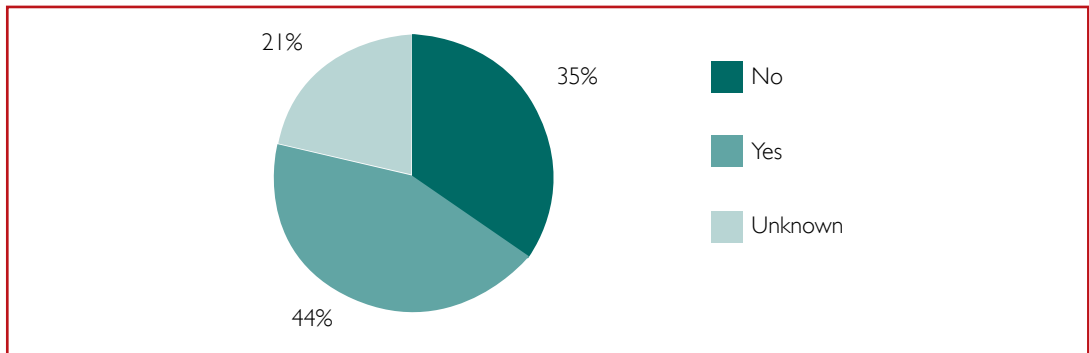
In terms of the general opinion on the receipt of gifts public servants were requested to indicate whether or not they should receive gifts. In addition to this, public servants were also requested to indicate the occasions upon which they should receive gifts as well as expressing a view on whether or not a monetary limit should be placed on the receipt of gifts. The purpose of these questions was to obtain a general viewpoint on public servants' perception on the receipt of gifts.

²¹ The said national and provincial departments which participated in the open-ended interviews are listed in Appendix A.

3.2.1.1 Acceptability of public servants receiving gifts

The results of the survey questionnaire show that the majority (44%) of the respondents were of the view that public servants should in principle be permitted to receive gifts.²² Although the majority were in favour of receiving gifts, a large proportion (21%) were apparently undecided, indicated as *Unknown*²³ in the figure below.

Figure 1: Should public servants receive any gifts?



Many respondents (35%) were of the view that public servants should not receive gifts. This is based on the opinion that the receipt of gifts could create a situation for potential conflicts of interest to occur and also that the danger of accepting gifts is that public servants open themselves to possible corrupt practices. This opinion is in line with the requirement of the Code of Conduct for the Public Service which provides that: *“an employee shall not, without prior written approval of the Head of Department obtain or accept gifts, benefits or item of monetary value from any person for himself or herself during the performance of duties as these may be construed as bribes.”*²⁴ However, in terms of the majority view that public servants should receive gifts, the opinion is that gifts should be received under the following circumstances:

- Where the gift has nothing to do with a public servant's employment;
- Where the gift is intended as a gesture of goodwill and/or a token of appreciation;
- Where the gift consists of a promotional item, e.g. pens or calendars; and
- Where the gift is of a ceremonial nature from representatives of foreign governments.

3.2.1.2 Occasions under which public servants should be allowed to receive gifts

The next category in terms of the general opinion on the receipt of gifts was to determine the occasions under which public servants should be allowed to receive gifts. In this regard, the survey reveals that the majority (66%) of the respondents were not in favour that public servants should receive gifts at a pre-contract stage (see Figure 2). Furthermore, 62% of the respondents were of the view that public servants should not receive gifts directly after the award of a contract to a service provider; and 63% were of the view that public servants should not receive gifts during a stage when a contract with a department is contemplated. Respondents to the questionnaire also indicated that public servants should be allowed to receive gifts during festive seasons (29%), and on occasions when

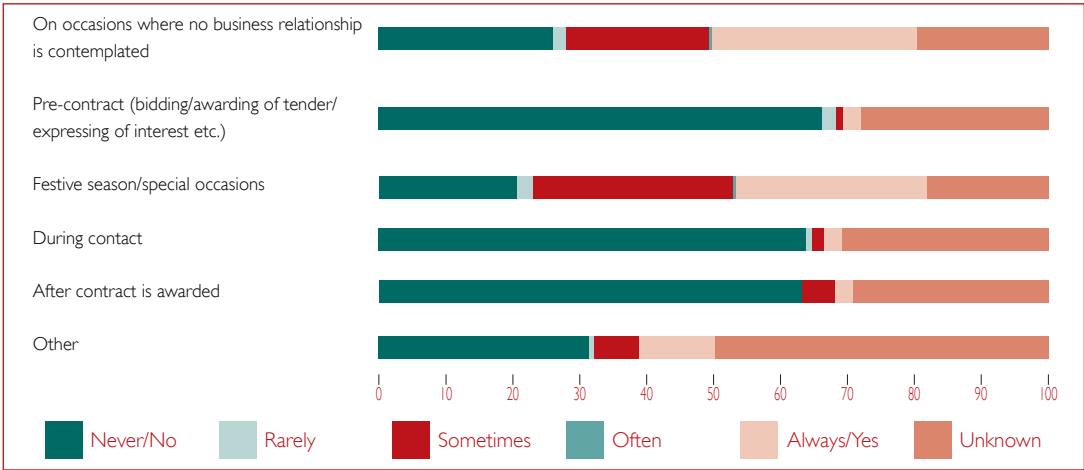
²² The result of the questionnaire in this regard is depicted in figure 1.

²³ The phrase *Unknown* as depicted in all the graphs, indicates that the recipient either did not have a particular viewpoint, or that he / she didn't enter an answer, or that his / her answer was not clear, or that he / she in fact indicated that they did not know the answer.

²⁴ See Section C.5.3 of the Code of Conduct for the Public Service

no business relationship is contemplated with a department (30%). The period during which business or a contract is contemplated with a department is seen as very dangerous as it is usually during such a stage that public servants are vulnerable to corrupt practices. Therefore, when departments formulate policies on the acceptance/no-acceptance of gifts they should take cognisance of the results of the survey in this regard.

Figure 2: Occasions under which public servants should be allowed to receive gifts.



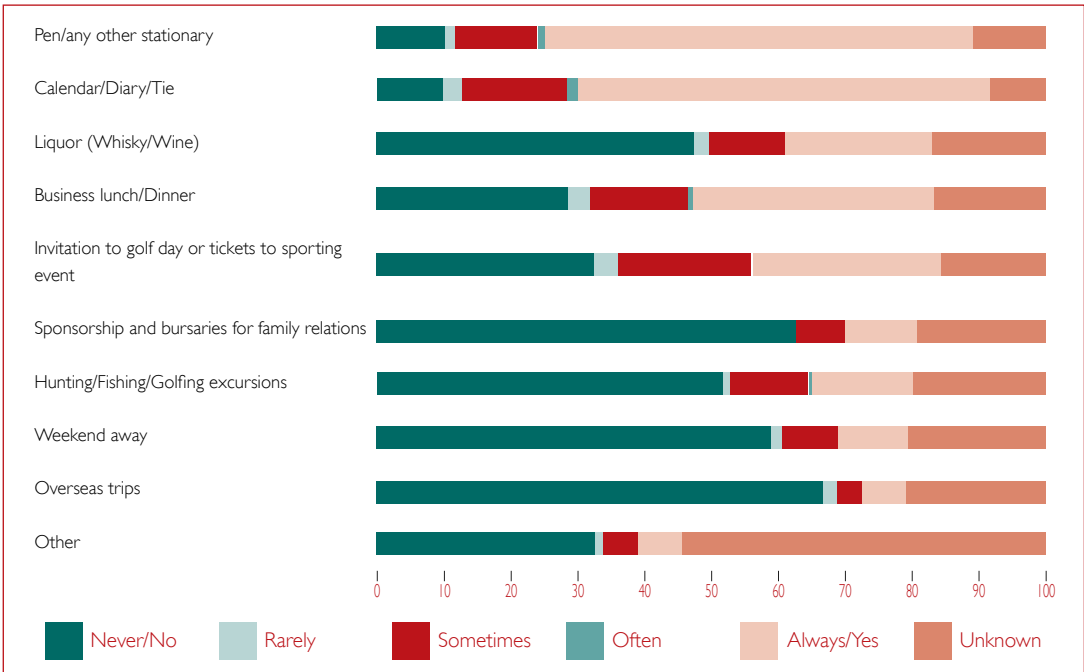
3.2.1.3 Gifts that are acceptable to public servants

The majority (52%) of public servants viewed the receipt of personal gifts as acceptable, as opposed to 19% who viewed it as unacceptable; with the balance being undecided. On the specific type of gifts the percentage of persons that viewed such as acceptable, were as follows:

- pens and stationery (66%);
- calendars, diaries and ties (63%);
- liquor (22%);
- lunch or dinner (36%);
- invitation to golf days and sporting events (29%);
- sponsorships and bursaries for family relations (11%);
- hunting or fishing or golfing excursions (16%);
- weekend away (11%); and
- overseas trips (6%).

Figure 3 depicts results of the survey questionnaire with regard to gifts that are acceptable.

Figure 3: Types of gifts that are acceptable to public servants.



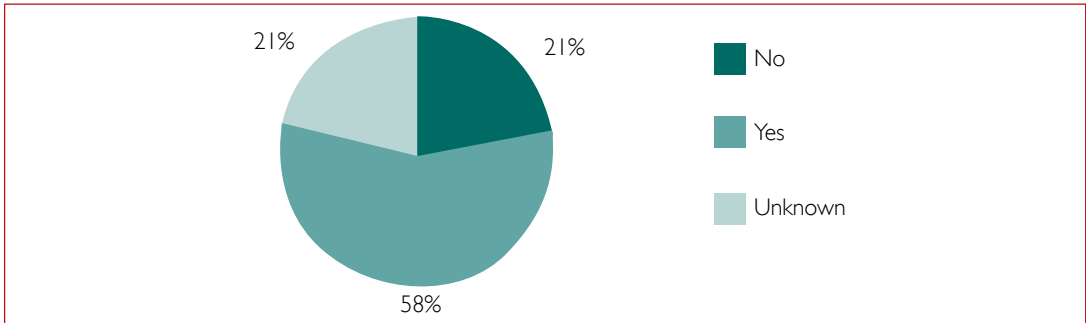
In terms of the results of the survey, gifts that are notably unacceptable are weekend excursions, overseas trips and sponsorships for family relations. Such gifts are deemed to be very expensive and the view is that the more expensive the gift the greater the opportunity of bribing the receiver. Therefore, by accepting an expensive gift the public servant has a greater chance of compromising his/her position. This compromising position may either involve refraining from putting the public interest first, not committed to timely service and/or serving the public in a bias manner. Therefore, the impact of accepting expensive gifts is that the public servant has a serious chance of involving himself/herself in corrupt practices.

In order to minimize becoming involved in corrupt practices the view that was consistently expressed throughout the questionnaires is that gifts such as television sets and gifts that are more than R200.00 in value should, after an official having received it, be handed over to the Department where the official is employed. By doing this, the management of the receipt of gifts is advocated. The view of managing the receipt of gifts is shared by respondents who are of the opinion that all gifts received should be captured in a gift register that ought to be managed by a HoD.

3.2.1.4 Monetary limits on gifts

The majority (58%) of public servants were in favour of a monetary limit on gifts, if such were allowed, as opposed to 21% who were against a monetary limit; with the balance (21%) being undecided. Figure 4 depicts results of the survey questionnaire in this regard. The primary that emanated from these results is that the monetary limit would depend on the nature of the gift and the frequency of the receipt thereof. The monetary limits proposed by the respondents ranged from R10.00 to R5000.00.

Figure 4: Monetary limits on gifts.



3.2.1.5 Periodical limitation on gifts

The majority (51%) of public servants were not in favour of limiting the number of gifts per period such as one gift per annum, as opposed to 36% who were in favour of such limitation; with the balance (13%) being undecided.

From the survey results it is evident that gifts should not be restricted to one gift per annum as the view is that it is generally known that gifts could be given on the birthday celebration of an official and also during a festive time period within the same year. Therefore, some officials were of the view that three gifts per annum would be an acceptable norm. In this respect, the nature and occasion for giving the gift should be taken into account. The reason for allowing more than one gift per annum would be that gifts should not be returned to the giver as it could be regarded as offensive. Those who are in favour of placing a periodical limitation on the receipt of gifts (i.e. 36%) were generally of the opinion that no gifts should be allowed.

3.2.1.6 Gifts of a cultural nature

The majority (56%) of public servants were in favour of the view that a gift policy should cater for Afro-centric and other cultural practices, especially as it is, in some cultures regarded as disrespectful not to accept a gift. It was for this reason that 60% of the respondents indicated that if a gift of a cultural nature is offered to them they would accept it. A minority (29%) held the opposite view, with the balance (11%) being undecided.

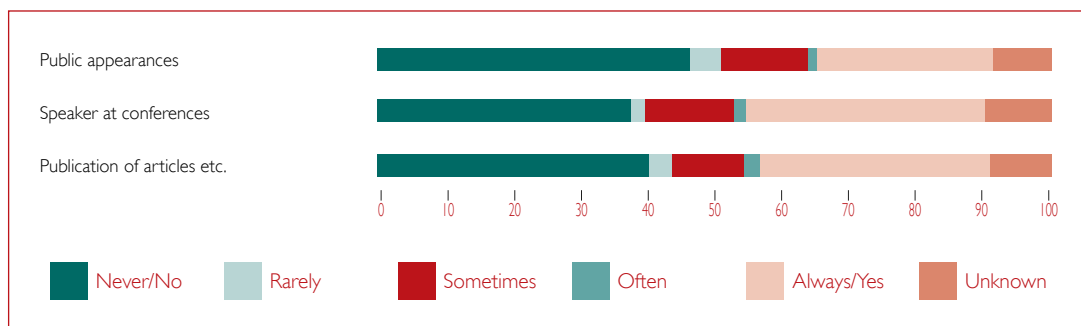
One view for advancing the idea that a policy on gifts should cater for Afro-centric and other cultural practices is that it could be regarded as disrespectful for not accepting such gifts. However, respondents were of the view that when a policy is formulated on the receipt of gifts, there should be clear guidelines in such a policy as to how and when to refuse such gifts gracefully. The policy should incorporate all cultures and it should be fair.

The conflicting view that was advanced is that a policy should not cater for gifts of a cultural nature as any gift should be regarded as a gift and therefore no cultural value should be attached to a gift. The point to understand in this regard is that what may be regarded as a cultural gift for one person may not be regarded as a cultural gift for another person and therefore the receipt of all gifts should be treated without any cultural connotation.

3.2.1.7 Remuneration and honorarium

The majority (45%) of public servants were not in favour of remuneration or honoraria for public appearances, whilst 26% were in favour. With regard to remuneration or honoraria for speaking at conferences 35% were in favour, whilst 38% not. With regard to remuneration or honoraria for the publication of articles speaking at conferences 34% were in favour, whilst 41% not. The balance of the respondents held views between the extremes, i.e. either in favour or against. Figure 5 depicts results of the survey questionnaire in this regard.

Figure 5: Remuneration and honorarium.



Although the majority (45%) of public servants were not in favour of remuneration or honoraria for public appearances, in terms of the comments that were received there is a perception, especially from those that are in favour; that public officials should be compensated for appearances and the presentation of their articles at conferences. The reason for this view is that it could serve as an incentive for public servants whilst their skills are retained within the Public Service. However, the opinion is that the receipt of such remuneration should be disclosed prior to receiving it, it should be approved by the EA and it should be limited to a certain number per annum.

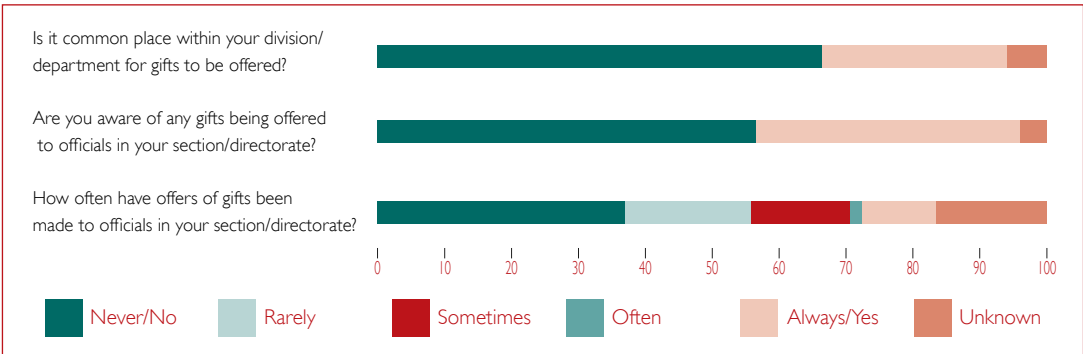
3.2.2 Current practices

In terms of the current practices with regard to the receipt of gifts, a focus was placed on the frequency of gifts currently being offered, types of gifts being offered, occasions on which gifts are being offered and how the receipt of gifts are currently managed in a department.

3.3.2.1 Frequency of gifts offered

The majority (65%) of public servants were of the view that gifts are not commonly offered to officials in their department or division, whilst 28% held an opposite view; with the balance of 7% not expressing a view. The figure below depicts results of the survey questionnaire in this regard.

Figure 6: Frequency of gifts offered



The respondents to the questionnaire expressed the view that the offering of gifts in their departments is rare. This could be the reason why 56% of the respondents indicated that they are not aware of gifts being offered to colleagues in their directorates. In terms of the gifts that are being received the respondents indicated that such gifts are usually in the form of diaries and calendars which are being received at the end of a year from service providers whom their departments interact with.

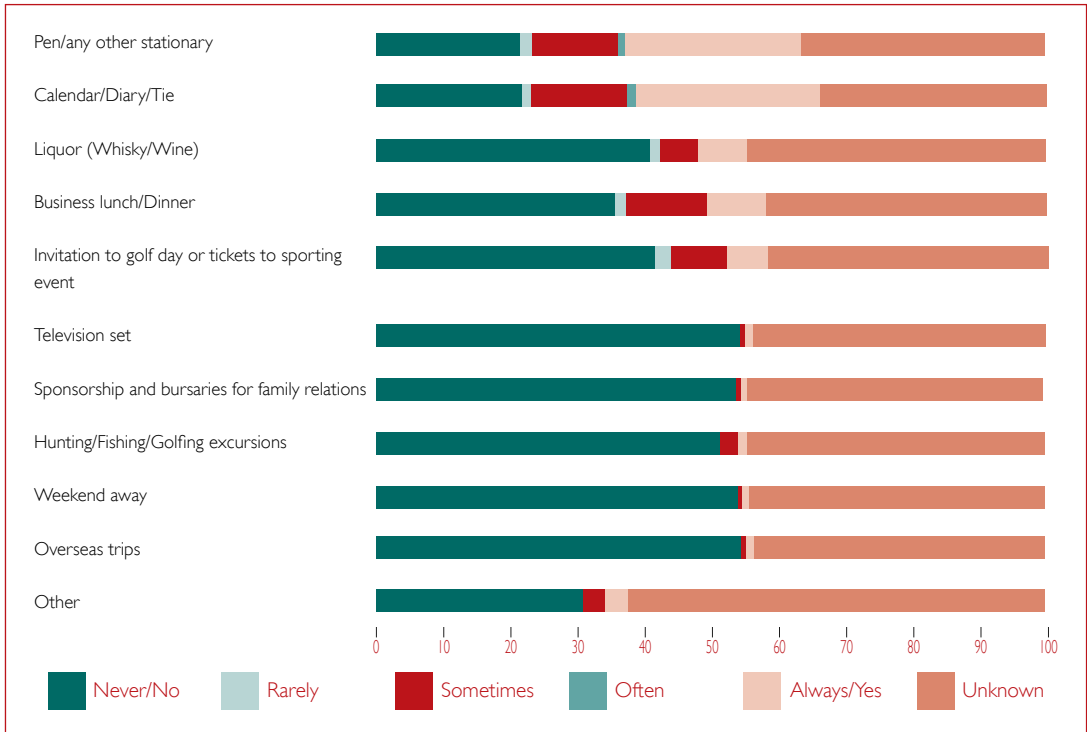
3.2.2.2 Types of gifts offered

With regard to the specific types of gifts that are offered, the percentages of public servants that had knowledge of such, were as follows:

- pens and stationery (28%);
- calendars, diaries and ties (28%);
- liquor (13%);
- lunch or dinner (22%);
- invitation to golf days and sporting events (15%);
- sponsorships and bursaries for family relations (2%);
- hunting or fishing or golfing excursions (4%);
- the weekend away (2%);
- overseas trips (2%); and
- a television set (2%).

Figure 7 depicts results of the survey questionnaire in this regard.

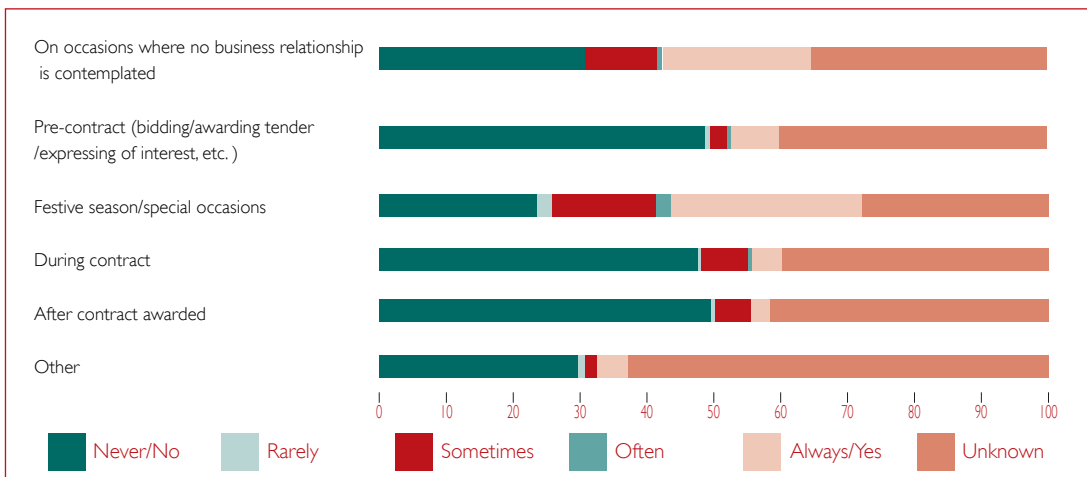
Figure 7: Types of gifts offered



3.2.2.3 Occasions on which gifts are offered

A small number of public servants were aware of gifts being offered at a pre-contract stage (8%) and after award of the contract (9%), but a larger number was aware of gifts offered on occasions when no business relationship is contemplated (23%) and during the festive season or on special occasions (32%). The figure below depicts results of the survey questionnaire in this regard.

Figure 8: Occasions on which gifts are offered

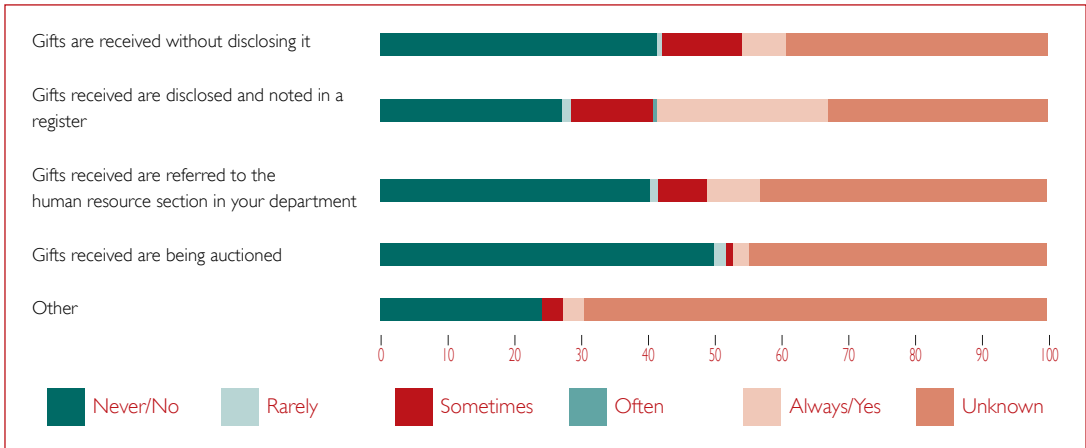


Departments need to be aware that the survey reveals that gifts are being offered to officials before a contract is awarded as well as after a contract has been concluded. Receiving gifts at these stages is dangerous as it could lead to conflicts of interest and possible corrupt practices.

3.2.2.4 Management of gifts

One of the critical questions in the survey questionnaire related to the disclosure of gifts by departments. A critical element of managing the receipt of gifts is that it should at least be noted in a gift register. In relation to this question, it became apparent that very few departments have gift registers as 27% of the respondents were of the view that gifts were 'never' noted in a register; 1% indicated that gifts were 'rarely' noted in a register; 13% indicated that gifts were 'sometimes' captured in the register; only 1% indicated that gifts were 'often' captured in a register; and only 26% indicated that gifts were 'always' captured in the register; whilst 32% 'did not know'. The figure below depicts results of the survey questionnaire with regard to the management of gifts. The issue of gift registers will be elaborated upon in the next section.

Figure 9: Management of gifts



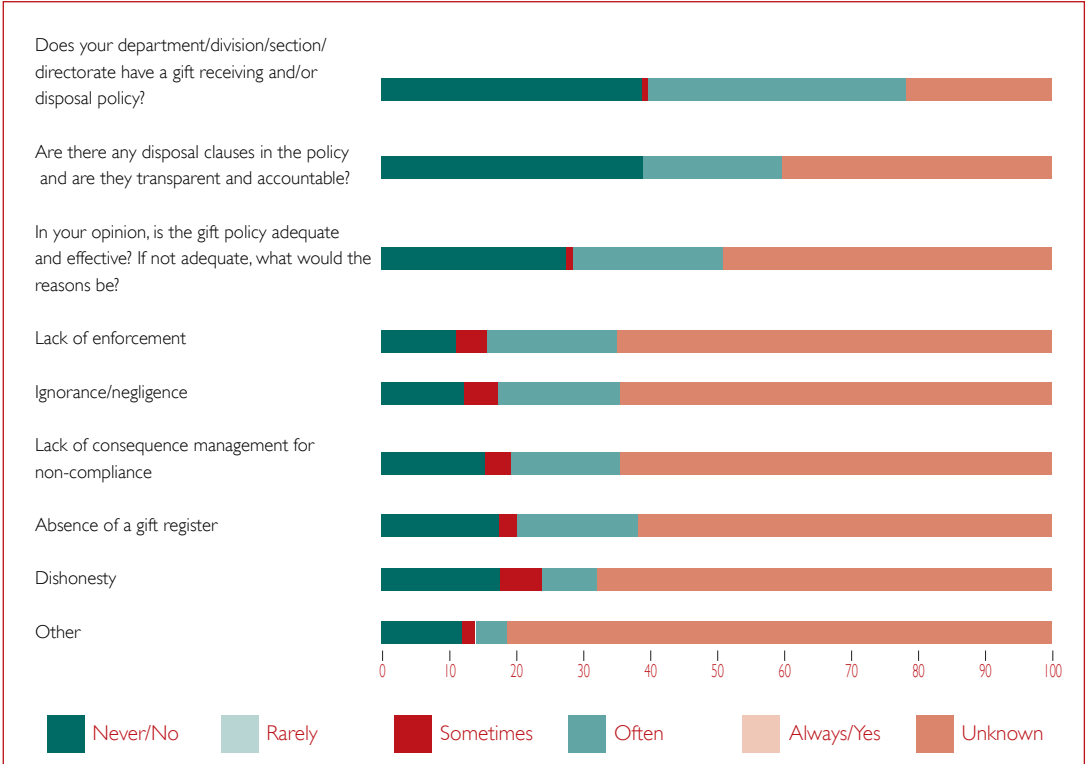
3.2.3 Governance

For the purpose of this report the issue of governance deals with the management of gifts in departments. The focus was to ascertain whether departments have gift policies and gift registers as this is seen as critical to good governance and effective management of gifts.

3.2.3.1 Policies and registers regarding gifts

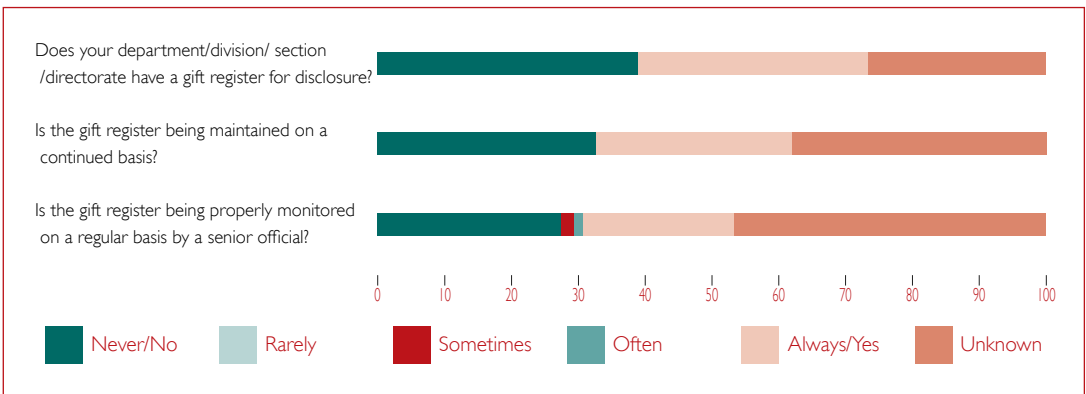
An equal percentage (39%) of respondents indicated their department have a gift policy, as opposed to those who indicated that their department didn't have a gift policy; with the balance of 22% not knowing whether or not their department had a gift policy. The figure below depicts results of the survey questionnaire with regard to gift policies.

Figure 10: Policies regarding gifts



The minority (34%) of respondents indicated their department had a gift register; as opposed to those (39%) who indicated that their department didn't have a gift register; with the balance 27% not knowing whether or not their department had a gift register. With regard to the monitoring of the gifts register, only 22% of the respondents indicated that the gift register was properly monitored on a regular basis by a senior official. The figure below depicts results of the survey questionnaire with regard to the gift registers.

Figure 11: Gift registers



The results of the survey on whether departments have gift policies and gift registers are disturbing as it would appear that more than half of the government departments do not have gift policies and gift registers. This relates to a serious lack of managing the acceptance of gifts received by public servants. The inference could also be made that if there is no gift policy and gift register in a department it could be accepted that departments do not monitor the acceptance of gifts by officials in their departments. Even in cases where departments do have a gift policy and a gift register respondents indicate that there is a serious lack of management and monitoring regarding the implementation of the policy and adherence to registering the receipt of gifts in the gift register. Some of the respondents also indicated that the existence of a gift policy and a gift register is not communicated to officials and therefore there is a lack of awareness of such policy and register. The conclusion that could be made is that if departments are aware that officials receive gifts they should at least monitor the practice and implement measures that would promote the effective management of the receipt of gifts by officials.

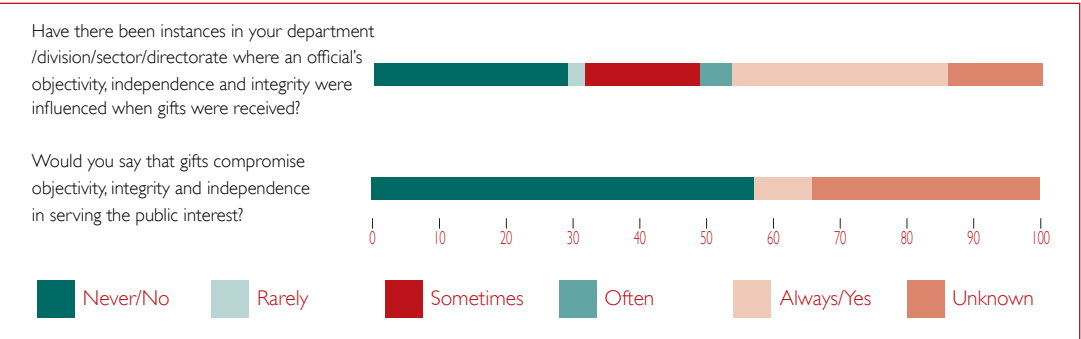
3.2.4 Threats and risks

The perception is that the receipt of gifts poses a threat to objectivity, integrity and independence. Through the survey the PSC wanted to find out to what extent public officials believe this statement is true and what gifts poses the greatest threats to public servants.

3.2.4.1 Threats to objectivity, integrity and independence

The majority of respondents (33%) were of the view that gifts 'always' compromise the objectivity, integrity and independence of public servants, whilst 29% was of the view that gifts 'never' compromise the objectivity, integrity and independence; 14% of respondents didn't express an opinion. The figure below depicts results of the survey questionnaire in this regard.

Figure 12: Threats to objectivity, integrity and independence



Respondents to the questionnaire commented that the acceptance of gifts could lead to bribery, because it can influence the decision making of a public servant thereby resulting in favouritism. Once this is the case the objectivity of a public servant becomes blurred thereby compromising the integrity of a public servant. The reason for this is that the giver of the gift in some way or another always expects some sort of favoured treatment. In addition to compromising the integrity of a public servant, the general public opinion is that by accepting gifts corruption is

being promoted because of the influence that the receipt of gifts could exert. The public expect of public servants to serve them without the notion of expecting something in return. Therefore, by not accepting gifts the perception of public servants being corrupt is being reduced.

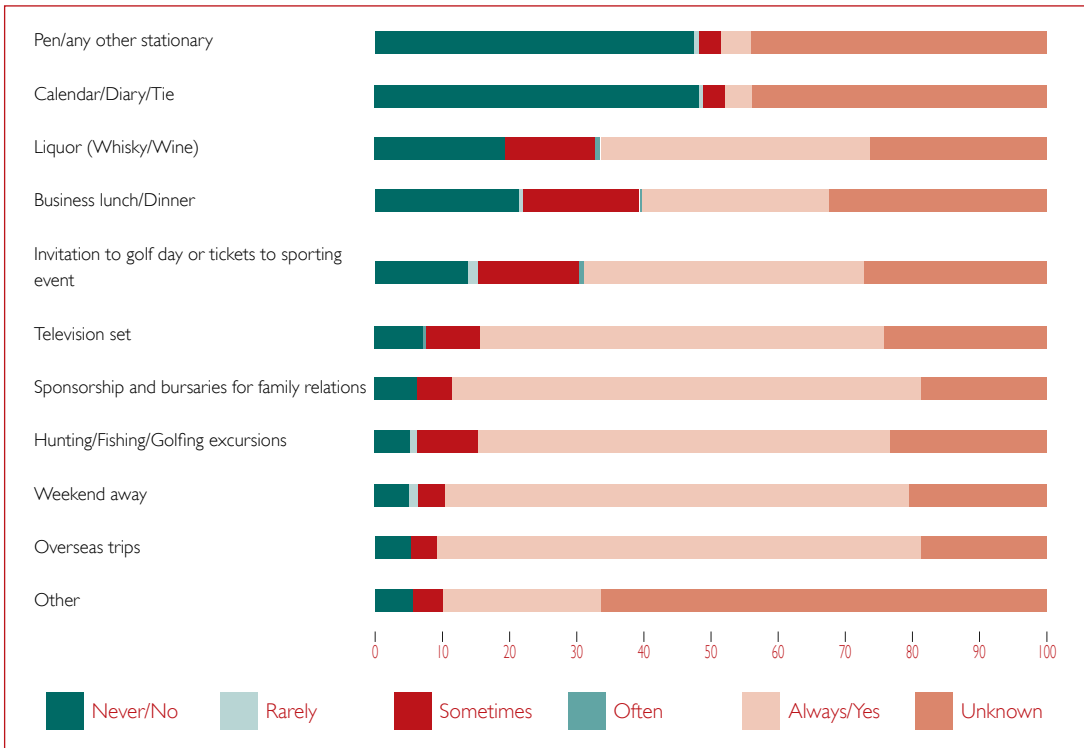
3.2.4.2 Gifts that pose the greatest threats

The types of gifts that pose the greatest threat, according to the respondents, were, in descending order, as follows:

- Overseas trips (72%);
- sponsorships and bursaries for family relations (70%);
- the weekend away (68%);
- hunting or fishing or golfing excursions (61%);
- a television set (59%);
- invitation to golf days and sporting events (41%);
- liquor (41%); lunch or dinner (27%);
- pens and stationery (5%); and
- calendars, diaries and ties (4%).

Figure 13 depicts results of the survey questionnaire in this regard.

Figure 13: Gifts that pose the greatest threats



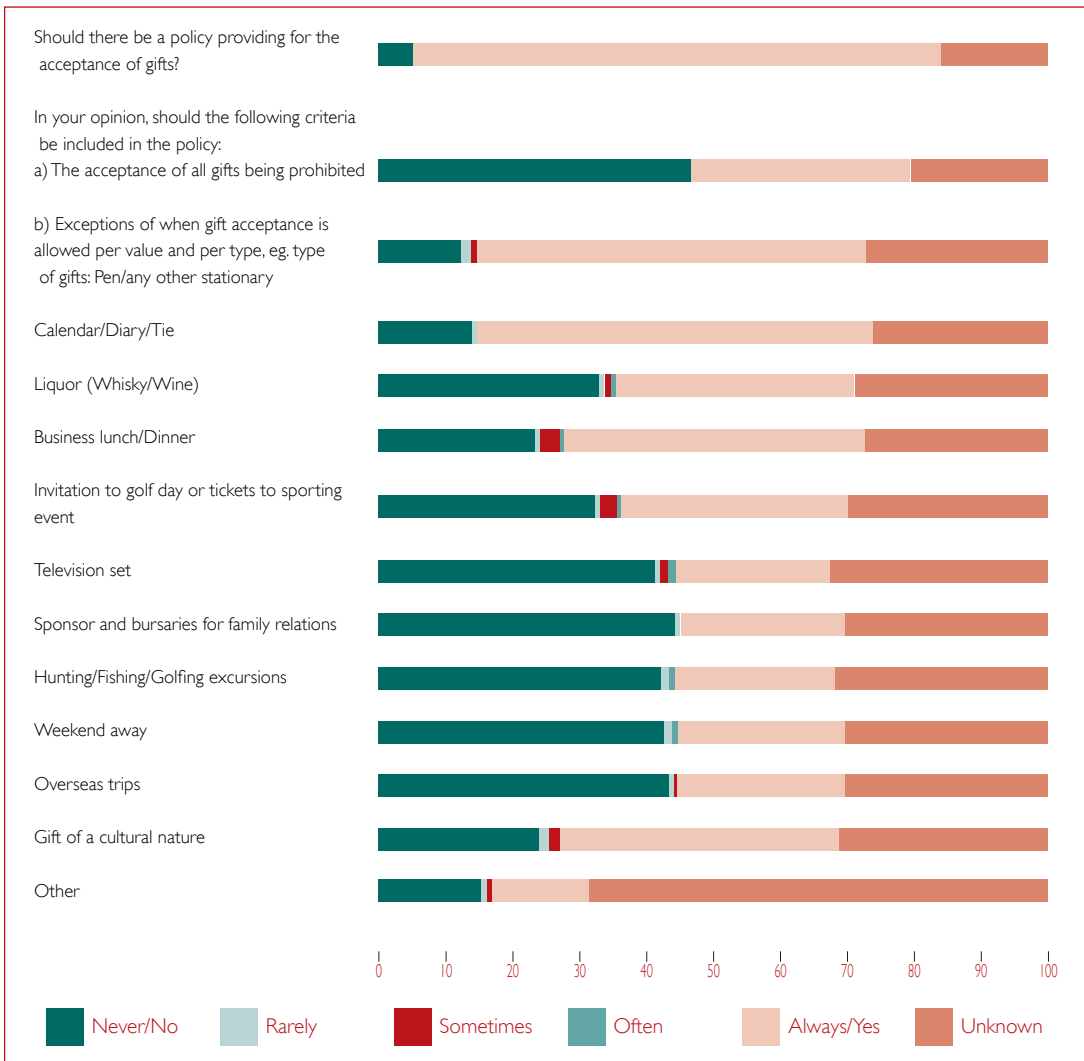
3.2.5 Recommendations

This part of the survey was aimed at seeking the participants' view on what could facilitate the effective management of gifts in their departments. In this regard, the need for a policy, disposal of gifts and the need for independent monitoring were concentrated upon.

3.2.5.1 Need for a gift policy

An overwhelming majority of respondents (79%) were in favour of a policy providing for the receipt of gifts, whilst only 6% was opposed to it; and the balance (15%) not expressing a view. The figure below depicts results of the survey questionnaire in this regard.

Figure 14: The need for a gift policy

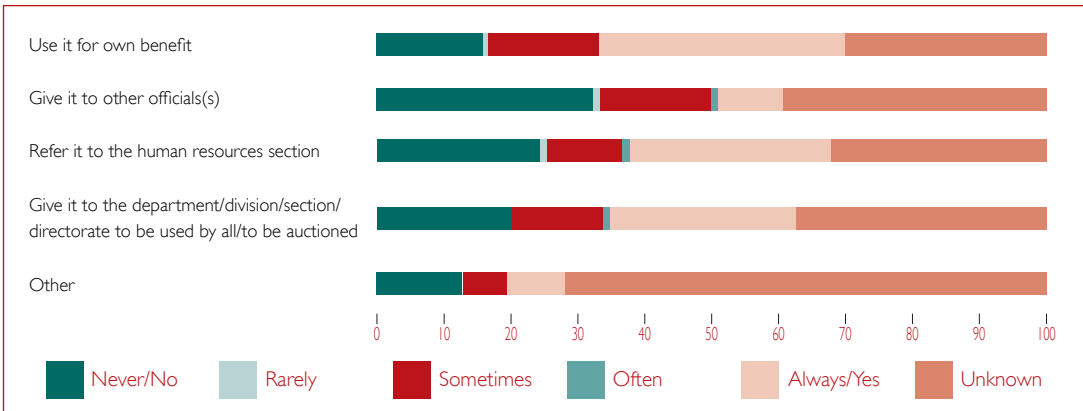


It is evident from the survey that the majority of the respondents were of the view that departments should have a policy on the administration of gifts. The policy should be well-communicated to all public servants in a department and it should provide for clear-cut measures regarding the acceptance or non-acceptance of gifts in a department. Those that were opposed to having a policy are of the view that public servants should not be receiving gifts at all and therefore there would be no need for a gift policy.

3.2.5.2 Disposal of gifts

The majority of respondents (36%) were in favour of using gifts for personal benefit, whilst only 16% was not in favour of using gifts for personal benefit. Figure 15 depicts results of the survey questionnaire with regard to the disposal of gifts.

Figure 15: Disposal of gifts



In terms of the survey, the general view is that gifts should be used for personal benefit because it is after all the official who received the gift. Some of the respondents (30%) indicated that this matter should be referred to the human resources division. A further comment was that ceremonial gifts may be displayed in a department. In terms of the results of the survey regarding the disposal of gifts it would appear that the referring of gifts to the human resources division and displaying of gifts in a department is seen as an integral part of managing the receipt of gifts by public servants.

3.2.5.3 Independent monitoring of gifts

A slight majority of respondents (45%) were in favour of an independent body administering the reporting and monitoring of gifts, whilst 43% was opposed to such a notion; with the balance (12%) not expressing any view.

Whilst the majority was of the view that an independent institution should monitor the administration of gifts in departments, caution was expressed that it may have a high toll on the human resources as well as the financial resources capacity of such an institution. However, irrespective of such constraints it may be worthwhile if an independent institution such as the PSC monitors the acceptance of gifts as it would promote the perception of integrity in government.

3.2.5.4 Obligatory reporting of gifts

The majority of respondents (67%) were in favour of a legal prescription which obliges officials to report the acceptance of gifts by other officials, whilst 19% was opposed to such a legal prescription; with the balance (14%) not expressing any view. The reason why officials would be against such a legal prescript is that it may be detrimental to working relationships and cause friction in the workplace.

3.3 Results of the open-ended interviews

In addition to having survey questionnaires, open-ended interviews were also held with officials from randomly selected national and provincial departments. The aim was to ascertain how these departments administer the acceptance/non-acceptance of gifts.

3.3.1 Acceptability of public servants receiving gifts

From the open-ended interviews it became apparent that the general view is that public servants should receive gifts. However, the acceptance/non-acceptance of gifts should be monitored appropriately. For the management of gifts to occur effectively, the following should be taken into account:

- a culture of honesty should be bred amongst public servants;
- only personal, non-work related, gifts should be allowed, but not gifts from a service provider that has tendered on a contract; and
- detailed regulations should be in place to monitor the acceptance/non-acceptance of gifts.

3.3.2 Current practices regarding the receipt of gifts

During the interviews it came to light that it is an open secret in some departments that service providers offer gifts before and after tenders are being awarded. This is a potentially dangerous situation as the questionnaires revealed that 66% of public servants indicated that they are not in favour of colleagues receiving gifts during such occasions as the susceptibility of corrupt practices is very high. Furthermore, it came to light that gifts are received throughout the year from overseas delegations, during conferences, and also during the festive season. By receiving these gifts it is apparent that there is a total disregard to the Code of Conduct. Gifts that are currently being received by officials are:

- chess sets and ornaments;
- T-shirts and umbrellas;
- boxes of wine and whiskey;
- tickets to events;
- air tickets and the cost of overnight stays in hotels;
- paintings;
- gift vouchers;
- television sets, radios, binoculars, cameras, watches and filo-faxes;
- pen sets, diaries, calendars, chocolates and flowers;
- ties, sport bags;

- sponsorships to year-end functions, lunches and dinners;
- invitations to golf days; and
- a R60 000.00 bursary given to the daughter of a Chief Director.

3.3.3 Governance

This part of the survey was aimed at determining how departments currently manage the acceptance/non-acceptance of gifts and what measures are in place to secure the administration of gifts. It came to light that 65% of the departments visited did not have a gift policy and a gift register. An analysis of the gift policies received (from those that did have policies) revealed that although most policies cater for the same situations, the policies vary in both comprehensiveness and in content. The differences in the policies reviewed may lead to an untenable situation where public servants, even on a specific level, are not treated equally. These differences may even be unconstitutional, as it may not conform to the equality principle stated in section 9 of the Constitution.²⁵

Apart from having gift policies those interviewed indicate that general measures should be in place to administer the acceptance/non-acceptance of gifts in a department. From the interviews it was evident that departments currently have the following measures in place to administer the acceptance/non-acceptance of gifts:

- Administrative staff/secretaries are rotated to capture the receipt of gifts in a register.
- Official gifts received are displayed within the departments.
- When gifts are received from a service provider, a letter is drafted to the service provider, acknowledging the gift. A letter is also drafted to the HoD to inform him/her about the gift received.
- Should the department or an official receive cash, it is reported to the HoD and then paid into the revenue fund.
- The Head of Risk Management of some departments manages the receipt of gifts and record it in a register.
- When gifts are received it is handed to the DG's office for safekeeping, until the DG has made a decision on the disposal thereof.

3.3.4 Solutions and recommendations

During the interviews some officials indicated the following recommendations and solutions:

- There must be a single gift policy for the whole of government.
- The Code of Conduct must be revised as it is too wide in its description regarding the receipt of gifts.
- The Financial Disclosure Regulations should not put a monetary value on the disclosure of gifts.

²⁵ Section 9 of the Constitution: Act No 108 of 1996

3.4 Summary of the findings of the survey

In summary, the primary findings of the survey questionnaire revealed the following:

- The majority of the respondents (44%) indicated that public servants should receive gifts.
- The majority of the respondents (37%) were of the view that, if gifts are allowed, it should be capped with a monetary limit per gift.
- A majority (27%) of the respondents were of the view that a gift policy should cater for Afro-centric and other cultural practices.
- Only 38% of the respondents were aware of gifts having been offered to their colleagues.
- A large number (33%) of the respondents were of the opinion that gifts 'always' compromise objectivity, integrity and independence.
- A large number of respondents (45%) were in favour of reporting gifts to an independent body, who should also monitor the management of gifts in departments.
- The majority of respondents (67%) of the participants were in favour of legal prescripts compelling public servants to report gifts accepted by other officials.

In terms of the open-ended interviews the following came to light:

- (i) The majority of the departments interviewed didn't have a gift policy and or a gift register (65%). A large percentage of respondents (22%) to the questionnaire indicated that they did not know whether their department had a gift policy and register.
- (ii) The interviews held confirmed, to a large extent, the sentiments of the participants to the questionnaires. It appeared as a general observation of all the interviews held, that the receiving and accepting of gifts by public servants is a common occurrence. It further appeared that not all gifts received are disclosed.
- (iii) It is clear; also as a general observation of all the interviews held, as well as from the analysis of the completed questionnaires, that the current regulatory regime regarding the receipt of gifts in the Public Service has conflicting and unclear provisions.
- (iv) A need for regulatory reform to ensure clarity and consistency was also a common theme amongst the participants in the survey.



CHAPTER FOUR

RECOMMENDATIONS

4.1 Introduction

It is clear that there are inconsistencies in the current regulatory provisions regarding the receipt of gifts by public servants. It is further clear that the current legislation is being interpreted and managed differently by the various government departments.

There is a real risk that unscrupulous public servants may exploit the said regulatory inconsistencies and vagueness to their own personal advantage, as well as to the improper advantage of others, and to the prejudice and detriment of the interest of South Africa and its law abiding citizens. A case can also be made out for strengthening the current prohibitory provisions in order to send a clear message to prospective offenders that improper conduct with regard to either the offering or acceptance of gifts would not be tolerated.

The recommendations contained in this report are made against the aforesaid background and on the basis that the suggested legislative amendments²⁶ have not yet been enacted.

4.2 Detailed Recommendations

In addition to recommending amendments to the current regulatory provisions to ensure clarity and certainty and a uniform practice throughout the Public Service other recommendations such as the strengthening of the current regulatory provisions, recommendations dealing with the acceptance of cultural gifts, the appointment of Ethics Officers and the disclosing of gifts, are made.

4.2.1 Strengthening the current regulatory provisions

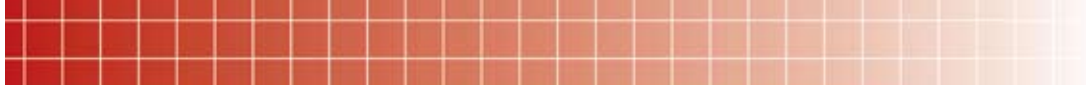
Consideration should be given to strengthen the current regulatory provisions to such an extent that the unauthorised offering and accepting of gifts, benefits or any other form of gratification be prohibited with a concomitant criminal sanction, similar to the suggested amendment contained in Section 33 of the Draft Public Administration Management Bill. It is further recommended that the criminal prohibition should not only be in respect of persons or entities who contract with government, but must be wide enough to include any person who 'deals' with government.

4.2.2 Recommendations regarding gifts of a cultural nature

The issue of gifts in South Africa is an emotive issue because South Africa is characterized by diverse communities and cultures. Because of such diversity the acceptance and non-acceptance of gifts is not always very clear.²⁷ During the open-ended interviews it came to light that there should be no differentiation between the receipt of gifts of a cultural nature and other gifts. The reason being is that exceptions based on traditional or cultural considerations are difficult to define and virtually impossible to prove or disprove. Such exceptions may further create confusion, lead to unequal treatment before the law and may even create opportunities for unscrupulous public servants and others to offer and accept gifts with impunity. However, it is acknowledged that most traditional or cultural gifts are

²⁶ *The Public Service Amendment Bill and the Draft Public Service Administration Bill.*

²⁷ *Report on Managing Conflicts of Interest in the Public Service published by the PSC in 2006.*



not translatable into monetary value as they are by and large symbolic. Therefore it is recommended that should a public servant receive a gift based on a cultural tradition it should be treated and managed in a culturally sensitive manner without compromising the standards of accountability and transparency. Importantly, the public servant should disclose such a gift in line with the gift policy applicable to the relevant department. Should a public servant decide not to receive the gift he/she may request the person or community offering the gift to show appreciation by submitting a letter of commendation to the said public servant's superior or EA.

4.2.3 Appointment of Ethics Officers

The PSC wants to reiterate a recommendation made in a previous report²⁸ that consideration be given to the appointment of an Ethics Officer. In the current context such an Ethics Officer would assist an employee when in doubt, follow-up on 'whistle blowing' items, monitor the gift register, follow-up on trends, set internal controls to monitor acceptance of gifts and provide ongoing ethical awareness initiatives to employees of a department. Some departments do have officials dealing with ethics promotion. Where this is not the case departments should take the necessary steps to ensure the appointment of Ethics Officers.

4.2.4 Gift registers

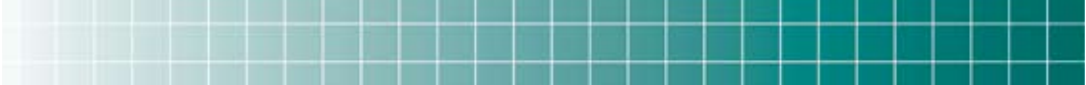
In order to effectively monitor the receipt of gifts by public servants, the PSC recommends that each department should have a gift register. The results of the survey showed that 65% of the departments that participated in the survey did not have gift registers. This is a matter of serious concern as it is indicative of a lack of transparency in terms of the receipt of gifts and more importantly, should gifts not be openly disclosed by public servants the citizens' trust in government is weakened. Therefore, for monitoring the receipt of gifts it is recommended that all departments should have a gift register.

4.2.5 Disclosure of gifts

Declaration mechanisms should be reconsidered. If legislation permits the receipt of gifts in certain circumstances, it should be considered whether declarations should not also be made, over and above to the supervisor; to both an official designated by the Head of the Department, ideally the Ethics Officer; and the PSC. The advantages of such a process clearly outweigh any disadvantages. If, by way of analogy, one is to have regard to the massive reporting structure and volumes that the Financial Intelligence Centre, established in terms of the Financial Intelligence Centre Act, no. 38 of 2001, deals with, the reporting by public officials to a single reporting authority, in respect of gifts received can be achieved. Members of the SMS are currently, in any case, obliged to disclose gifts received, as part of the Financial Disclosure Framework.

Consideration should further be given to simplify the declaration process, by creating a simple electronic process, whereby a public servant seeking approval to accept and retain a gift or other benefit or gratification, completes a prescribed form electronically and submits it to the Ethics Officer, who after consideration submits it directly into the OPSC's database. One of the advantages of such a database is, *inter alia*, that trends and practices can be

²⁸ Report on the Management of Conflicts of Interest through Financial Disclosures, published by the PSC in 2007



identified and monitored. This may assist in future inquiries regarding the receipt of gifts and other benefits by public officials, similar to the present inquiry. It may also assist law enforcement agencies in their fight against corruption by identifying corrupt persons who have dealings with public servants.

4.2.6 Raising awareness

Departments should invent programmes and activities to minimize opportunities for the receipt of gifts and for corruption to occur. Such programmes and activities may include creating external awareness of government policies regarding the offering and the receipt of gifts through:

- brochures;
- providing information on departmental websites; and
- highlighting aspects of gift policies in tender bulletins.

Through such programmes, corporates doing business with government might become more alert of the dangers of offering gifts and bribes to public servants especially during the procurement of tenders.

4.2.7 Revision of the Code of Conduct for Public Servants

A revision of the Code of Conduct in terms of the receipt of gifts is recommended. By taking into account the different interpretations of the current regulatory provisions dealing with the receipt of gifts as pointed out earlier in the report, it is recommended that Section C.5.3 of the Code of Conduct for Public Servants should be revised as follows:

“No public servant may accept gifts or other benefits, without the express consent of the EA, except for senior managers who, on their own discretion, may accept unsolicited gifts, moderate acts of hospitality, and hospitality of a traditional or cultural nature, unconnected with the performance of their work in the Public Service, without any monetary limit. The senior managers are obliged to disclose unsolicited gifts and moderate acts of hospitality above a monetary value of R350.00, but are not obliged to disclose hospitality of a traditional or cultural nature of any monetary value”.

4.2.8 Options for amending the PSA

In order to clarify and strengthen the current legal position, it is recommended that consideration be given to amend the PSA, possibly by inserting one of the three recommended options, as section 31A.²⁹ The three options are stipulated in table 3.

²⁹ Caution should be exercised to amend all the other relevant legislation e.g. the PSR in line with the chosen option.

TABLE 3: THREE OPTIONS FOR LEGISLATIVE AMENDMENT

Option 1 :The blanket prohibition
<p>31A Offences in respect of the offering, receiving and reporting of gifts</p> <p>(1) No person who has any business or dealings with a government department may promise, offer or grant any reward, gift, favour, hospitality, benefit or gratification to a public servant, including to any close family member, partner or associate of that public servant, who is employed in that department.</p> <p>(2) A public servant may not solicit any reward, gift, favour, hospitality, benefit or gratification, directly or indirectly, including to any close family member, partner or associate of that public servant from any person who has any business or dealings with the department in which the public servant is employed.</p> <p>(3) The accounting officer to whom a report has been made in terms of subsection (3) must promptly report any alleged contravention of subsection (1) to the National Treasury for considering whether the offending person should be listed in the National Treasury's database of persons prohibited from doing business with the public sector:</p> <p>(4) Any person who has been solicited by a public servant and who has any business or dealings with the department in which that public servant is employed must promptly report any alleged contravention of subsection (2) to his/her Executing Authority.</p> <p>(5) Any person who contravenes subsection (1), (2), (3), (4), (5) or (6) is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding 12 months or both such fine and imprisonment.</p> <p>(6) This section does not apply to a reward, gift, favour, hospitality, benefit or gratification received from another government department.</p> <p>(7) For purposes of this section: "gratification" means gratification as defined in section 1 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004); "business or dealings" means any involvement whatsoever, including prospective and expected involvement, and it also includes 'dealing' as defined in section 1 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004); "public servant" includes any other person acting on behalf of the government.</p>
Option 2 :An encompassing monetary limit
<p>Option 2 would be the same as option one, but adding the following subsection:</p> <p>(8) This section does not apply to a reward, gift, favour, hospitality, benefit or gratification less than R350 in value.</p>
Option 3 :A detailed policy
<p>Option 3 would also be the same as option one, but adding the following subsection:</p> <p>(8) This section does not apply to the offering or acceptance of any reward, gift, favour, hospitality, benefit or gratification done in terms of the Public Service Regulations.³⁰</p>

4.3 Summary

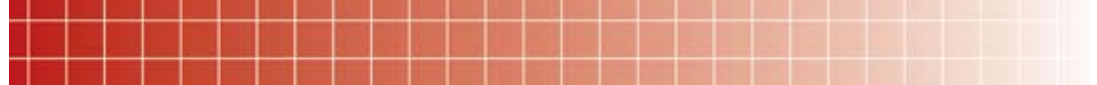
In order to support the national strategies against corruption, as well as to achieve legislative clarity and equality, three options for amending the current legislative regime are recommended, all with the basis of criminalising certain practices with regard to the offering of gifts to, or the accepting of gifts by public servants. Compulsory reporting of certain undesirable practices by public servants, as well as members of the public, is also recommended.

³⁰ A detailed recommended draft gift policy is annexed as Appendix B. It is also recommended that a procedure manual be developed to stipulate the process to be followed when a gift is offered.



CHAPTER FIVE

CONCLUSION



There appears to be inconsistencies/discrepancies in the current legislative framework that governs the receipt of gifts by public servants. It is clear that the current legislative framework is in need of improvement, albeit only to remove the apparent inconsistencies/discrepancies/contradictions. The main question to be decided upon is to what extent amendments should cater for the receipt of gifts, if any.

The receipt of gifts by public servants also appears to be an emotive and subjective issue, with some proponents advocating a policy whereby gifts can generally be accepted, whilst, on the other end of the scale, some proponents advocating a no gift, zero-tolerance attitude. It is clear that cultural and personal traits, as well as, in some instances self-interest, influence the different opinions.

Whatever stance is adopted, there will always be a number of difficult situations that do call for wisdom, e.g. where the refusal of a gift would offend the giver or would embarrass the receiver.

The Constitution, together with other legislation, e.g. the Public Service Act, obliges public servants to display a high standard of professional ethics. This may undoubtedly be compromised by the receipt of gifts, in a personal capacity, especially from a person that has dealings with the Department in which the said public servant is employed. On the other hand, it is a fact of life that public servants are constantly showered with gifts; sometimes even without the public servant having the opportunity of refusal, e.g. gifts delivered by courier.

It is trusted that this report has, at least, reflected the various diverse opinions and highlighted the complexity of the issue. It is also trusted that this report sparks the necessary debate that is needed to resolve the issue.

Whatever course of action is decided upon, it should promote South Africa's national interests, inclusive of anti-corruption policies and strategies, as well as being fair to public servants and the public at large.



APPENDIX A

LIST OF DEPARTMENTS ENGAGED IN INTERVIEWS

List of departments engaged in interviews

NO.	PROVINCE	DEPARTMENT
1	National	SA Management and Development Institute
2	National	Presidency
3	National	Minerals and Energy Affairs
4	National	Transport
5	National	Housing
6	National	Education
7	National	SA Police Services
8	North West	Education
9	North West	Sports, Arts and Culture
10	North West	Transport, Roads and Community Safety
11	North West	Developmental Local Government and Housing
12	Limpopo	Economical Development, Environment & Tourism
13	Limpopo	Local Government and Housing
14	Limpopo	Roads and Transport
15	Limpopo	Sports, Art and Culture
16	Mpumalanga	Public Works
17	Mpumalanga	Local Government and Housing
18	Mpumalanga	Safety and Security
19	Mpumalanga	Office of the Premier
20	Gauteng	Housing
21	Gauteng	Community Safety
22	Gauteng	Health
23	Gauteng	Public Transport, Roads and Works
24	Free State	Public Safety, Security and Liaison
25	Free State	Sports, Arts and Culture
26	Free State	Local Government and Housing
27	Free State	Public Works, Roads and Transport
28	Free State	Provincial Treasury



APPENDIX B

RECOMMENDED DRAFT POLICY

POLICY ON THE ACCEPTANCE OF GIFTS WITHIN THE PUBLIC SERVICE³¹

1. INTRODUCTION

Gifts for the purpose of this policy will be defined as the receipt of physical presents, awards, rewards, hospitality, donations, money, sponsorships, commissions or any other benefit or gratification that is received by an employee in his or her official capacity. This policy includes all items received by public servants that have a residual or resale value, but does not exclude other remuneration.

“Gratification” means gratification as defined in section 1 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004).

“Gifts” excluded from this policy – those received from family members or friends in a personal capacity which cannot be linked to an employee’s employment within the Public Service or his or her official capacity or official involvement with the other party.

In terms of regulation C 5.3 of Chapter 2 (The Code of Conduct for the Public Service) of the Public Service Regulations an employee should not use his or her official position to obtain private gifts or benefits for him or herself during the performance of his or her official duties nor does he or she accept any gifts or benefits when offered as these may be construed as bribes.

When a person is employed as a Public Servant, such an appointment carries a very special meaning. It clearly implies that such an employee sells his or her labour to the State and will be remunerated from taxes collected from the society at large and that the employee shall then provide the public with the best possible service in a professional and dedicated manner. It must be clearly understood by both public servants and the society at large that, unless it is officially required that a member of the public should pay an additional amount for a specific service, no further payments be it in cash or in kind should be made.

The public service interacts closely with various other role-players, e.g. the private sector, non-governmental organisations, state owned enterprises, organised labour, and foreign governments. The relationships, if managed correctly, are healthy and should be encouraged. The conduct of public servants should always be in line with the Code of Conduct and in the best interest of the public service and the public.

2. PURPOSE

2.1 *The purpose of this document is to ensure that all employees in the public service have clear guidelines on administrative procedures to be followed on the offering, acceptance and disposal of gifts, awards, rewards, donations, sponsorships and hospitality, not only by individuals, but government departments and institutions as well. The improper acceptance of gifts and hospitality can lead to accusations of bias and even corruption, potentially leading to investigations and possible corrective action and charges.*

2.2 *It is not feasible that a comprehensive set of rules be drawn up to cover every situation. The situation context must be borne in mind, specifically the relationship between the Department, the organisation*

³¹ The recommended gift policy is inserted merely for illustrative purposes to indicate what should (could) be included in a recommended policy. The policy is based on the DME / DFA - policies, but includes elements of other policies. The recommended draft policy is further done on the basis that it is decided not to have a single central gift register and reporting mechanism for the public service. Irrespective of the format that the new recommended policy would take, it should be elevated to legal binding status throughout the public service.

concerned and the role of the individual in that relationship. However, improper acceptance of a gift or hospitality will be viewed in a serious light and may, apart from any other consequences, lead to internal disciplinary action.

3. AUTHORISATION

3.1 *The following statutory provisions have a bearing on this matter:*

3.1.1 *The Code of Conduct for the Public Service*

3.1.2 *The Public Service Act, No 103 of 1994 (as amended)*

3.1.3 *The Public Service Regulations*

4. PRINCIPLES

4.1 *It is often standard business practice within the private sector to offer gifts and hospitality to current and potentially future clients. The acceptance of such gifts and hospitality may be accepted under certain conditions.*

4.2 *Any acceptance of an offer of a bribe or a commission must however be viewed as illegal and may result in criminal action.*

4.3 *Public servants must take great care not to be placed in a situation where their actions might be construed to be improper; may indicate bias towards an organisation or person, or indicate favouritism towards any organisation or person.*

4.4 *The acceptance of gifts or hospitality by public servants should be the exception and not the rule. If doubt exists about the propriety of the gift or hospitality then it must be refused.*

4.5 *The basis for remuneration of officials is their pay and any allowances to which they might be entitled. This must not be supplemented by the acceptance of gifts or hospitality for the work that they perform.*

4.6 *If, due to the relationship of an official to a contractor, supplier, consultant, or a person to whom services are rendered by the Department, a relative or friend is offered a gift or hospitality, this must be refused.*

4.7 *Under no circumstances should an official of a Department attempt to solicit a gift from a contractor, supplier, consultant or a person to whom services are rendered by the Department.*

5. SCOPE OF APPLICATION

5.1 *This policy applies to all public servants.*

6. ACCEPTANCE OF GIFTS AND AWARDS BY EMPLOYEES

6.1 *Public servants should as a general rule not accept gifts, nor should relatives or friends of the official accept gifts, where the gift has been given because of the giver's official relationship with the official or with the Department itself. The following special circumstances should apply:*

6.1.1 *Trivial Gifts*

Seasonal gifts such as diaries or calendars and inexpensive promotional items may be retained. Gifts of over R350-00 should be refused. Gifts with a retail value of less than R350-00 may only be accepted and retained where they can be considered occasional gifts and the acceptance and retention thereof would not give rise to public concern. If an official of the department is unsure of the appropriateness of accepting a gift, his/her direct supervisor should consult the relevant director of Human Resources or the Office of the Public Service Commission.

6.1.2 Where refusal may offend

Non-trivial gifts should as a matter of course be refused. However, circumstances may arise where the refusal of a gift may give offence or might prejudice the business interest of the Department. An example may be a gift from a foreign government, or a token of appreciation for a public appearance. In such circumstances, pending the approval of the direct supervisor, the gifts may be accepted and if possible put on display in the workplace.

6.1.3 Retention of Gifts

It may sometimes be appropriate to retain a gift for display purposes in the workplace. An example may be in the case of a pending reciprocal visit by the donor.

6.1.4 Gifts from Colleagues

Personal gifts from colleagues of other government departments may be accepted as tokens of friendship or appreciation. These may be accepted when they are gifts of a purely personal nature and where the receipt thereof does not breach the spirit or principles set out in this policy.

6.1.5 Awards or Prizes

Officials may be considered for an award or a prize, on merit, as a result of endeavours in their field. The individual may accept such an award or prize on condition that it is recorded.

6.1.6 Per-diems

Officials are encouraged to contribute to the academic excellence of their field, and may as a result of this, write and publish academic articles in recognised journals. The standard practice is for the journal to grant a per-diem to the person whose article is reviewed by peers and subsequently published.

6.1.7 Other Incentives

Other favours or considerations may be offered by a company or an organisation which cannot be clearly defined as either a gift or an offer of hospitality. Any offer of using special discount or reduced cost to acquire goods or services by a contractor, supplier or consultant must be declined. Similarly, offers of using outlets not available to the general public must be declined.

However, for all the above, if officials accept such gifts, it must be immediately recorded in the Gifts and Hospitality Book of the Department.

7. REWARDS, COMMISSION OR REIMBURSEMENT FOR SERVICE OR TRANSACTION

- 7.1 *No offer that could be construed as a reward, commission, reimbursement or personal favour for a service or transaction which is, or might be performed as part of an individual's official duties, or which may in any way benefit the organisation offering the reward, reimbursement or personal favour, may be accepted.*

8. OFFERS OF HOSPITALITY TO INDIVIDUALS

- 8.1 *It is common practice for suppliers, service providers or persons to whom services are rendered by a Department to offer officials one form or another of hospitality. This may range from working breakfasts, lunches or dinners, to invitations to sporting or cultural events. Officials should, when deciding on whether or not to accept such offers, deliberate on the appropriateness or propriety of such offers. The principles as set out above should be carefully considered when making a decision in this regard. A number of guidelines are set out below:*
- 8.1.1 *If the Department is invited and an individual is formally nominated to attend, the invitation may be accepted.*
- 8.1.2 *Hospitality that includes overnight accommodation paid for by the organisation making the offer, should as a general rule not be accepted.*
- 8.1.3 *Invitations to a breakfast, lunch or dinner with an organisation should only be considered if the purpose is to discuss business and it can be justified that the acceptance thereof is in the interest of the Department.*
- 8.1.4 *Acceptance of a purely social invitation, such as a sporting event, may be accepted, except if attendance thereof would interfere with the service delivery of the Department, or could be misconstrued or would prejudice the interests of the Department.*
- 8.1.5 *Repeated invitations from one source should be considered inappropriate and be politely declined.*
- 8.1.6 *Invitations and offers such as holidays, as well as the use of vehicles and equipment must be refused and reported.*
- 8.1.7 *No individual should be seen to be favouring one organisation over others.*

However, for all the above, if officials accept such gifts, it must be immediately recorded in the Gifts and Hospitality Book of the Department.

9. DONATIONS WHICH MAY BE ACCEPTED

- 9.1 *For the purposes of this document, donations will be defined as official resources that flow from the national or international donor community to the Department in the form of grants; technical co-operation and financial co-operation, where the Department is held at least partially responsible or accountable for the management of such resources. Such donations should be regulated in terms of the donation policy.*
- 9.2 *Any donations that are made toward individual employees are regarded as gifts and are therefore dealt with in terms of Paragraph 6 of this policy.*

10. ACCEPTANCE OF OUTSIDE APPOINTMENTS BY OFFICIALS OF THE DEPARTMENT WHILE IN THE EMPLOY OF THE STATE

- 10.1 *It is common practice for members, and particularly senior members of the Public Service to be offered an appointment of an organisation outside of the Public Service. This may be to the Board of an organisation, the Faculty Board of an academic institution or an appointment to a prominent social or cultural organisation. The following conditions will apply and should be read with the Policy on Remunerated work outside the Public Service: -*
- 10.1.1 *No employee may receive any additional remuneration to serve on a board/committee of a Public Service organisation/entity or association. Such service shall be deemed to be part of an employee's official duty.*
- a) *Unless it is otherwise provided for in his or her conditions of employment -*
- i) *every employee shall place the whole of his or her time at the disposal of the State;*
- ii) *no officer or employee shall perform or engage himself or herself to perform work outside his or her employment in the public service, without **prior approval** granted by the Executing Authority, whether during or outside of working time, or whether on or off the premises,*
- iii) *no officer or employee may claim any additional remuneration in respect of any official duty or work which he or she performs voluntarily or is required by a competent authority to perform, and*
- iv) *No employee may continue to: -*
be a director or officer or member of any company or corporation;
carry on, or be directly associated with, or interested in, any other business; and/or
hold any other office or position, whether competing with the business of the Public Service or not after his or her date of appointment in the Public Service.
- b) *If any remuneration, allowance or other reward is received by an employee in connection with the performance of work outside his or her employment in the Public Service, that employee shall, subject to the provisions of the Section 31 of the Public Service Act, pay into revenue an amount equal to the amount of any such remuneration, allowance or reward or, where it does not consist of money, the value thereof as determined by the Director-General or Head of the Department, by what title he / she is referred to. If he or she does not do so, it shall be recovered from him or her by the Director-General by way of legal proceedings or in such other manner as the Treasury may approve, and be paid into revenue.*
- 10.2 *Any offer made after appointment must therefore be declared in writing to the relevant Head of the Branch, via the individual supervisor and may not be accepted without obtaining written approval (through HR) from the Director-General. This is of particular application to those appointments that may be coupled to any form of financial remuneration.*
- 10.3 *Specific issues that should be considered by the Department on deciding whether or not the individual may accept an appointment are listed here under: -*
- 10.3.1 *The appointment should not cause justified public concern, raise suspicion or lead to allegations or impropriety.*
- 10.3.2 *The appointment should not run contrary to the interests of the Department.*
- 10.3.3 *The appointment should not raise questions.*

- 10.3.4 *The appointment should not raise concern about a particular organisation gaining an improper advantage over its competitors due to either the body of knowledge held by the individual, or gaining information that is considered propriety information by the Department or a contractor, supplier or consultant to the Department. This may include technical information which competitors may consider to be their trade secret.*

11. RECORDING OF GIFTS, AWARDS, REWARDS, HOSPITALITY, OR OTHER REMUNERATION IN THE GIFTS AND HOSPITALITY REGISTER

- 11.1 *In order to ensure proper procedure and propriety in the receiving of gifts, awards, rewards, hospitality, donations or other remuneration, it is in the interests of the employee and the department that such interaction be recorded, inclusive of gifts refused together with the reasons for the refusal. This is especially necessary to counter suspicion of improper conduct, corruption and bias. All offers of the above must be presented to The Head of the employee's Directorate and if approved and accepted be recorded in the Register.*
- 11.2 *Each Branch / Regional Office shall maintain a "Gifts and Hospitality Register" for recording all offers of gifts and hospitality to and from officials of the department that are under their control. The following information must be reflected: -*
- (a) The source of the hospitality / donor of the gift.*
 - (b) The venue and type of hospitality / description of the gift.*
 - (c) The names of the persons receiving the hospitality / gift.*
 - (d) The names of the persons or company giving the hospitality / gift.*
 - (e) Whether the hospitality / gift was accepted / retained.*
 - (f) A valuation of the gift must be provided.*
 - (g) The estimated maintenance cost for a gift received (if applicable) should be recorded.*

12. DISPOSAL

- 12.1 *Any gifts received contrary to this policy should be disposed of based on the instruction of the Executive Authority in terms of the disposal policy.*

13. ENFORCEMENT

- 13.1 *The success of this policy will depend on the consideration and cooperation of all personnel. All employees share the responsibility for adhering to and enforcing the policy. Any conflicts should be brought to the attention of the appropriate supervisor and if necessary, the Director: Human Resource and Efficiency Management.*
- 13.2 *Non compliance with this policy will be regarded as a serious transgression, which could lead to a charge of misconduct.*

APPENDIX C

LIST OF REFERENCES

F.1 Legislation

Code of Conduct for the Public Service contained in Chapter 2 of the PSR
Constitution of the Republic of South Africa, Act no. 108 of 1996
Draft Public Administration Management Bill of 15 August 2007, and the Draft Single Public Service Bill
Financial Intelligence Centre Act, no. 38 of 2001
Municipal Finance Management Act, no. 56 of 2003
Municipal Supply Chain Management Regulations issued in terms of section 168 of the MFMA
Prevention and Combating of Corrupt Activities Act, no. 12 of 2004
Public Finance Management Act, no. 1 of 1999 ("the PFMA")
Public Service Act, no. 103 of 1994 (as amended)
Public Service Amendment Bill [B31B – 2006]
Public Service Commission Act, no. 46 of 1997
Public Service Regulations, 2001, issued in terms of section 41 of the PSA.
SMS Handbook issued in terms of regulation 1 D of chapter 4 of the PSR
Treasury Regulations promulgated in terms section 78 of the PFMA, no. 1 of 1999

F.2 Gift policies

Acceptance of Gifts, Sponsorships Donations and Awards by Individuals, 2005, Department of Foreign Affairs
Acceptance of Gifts Policy, 2003, Department of Transport (National)
Donations, Gifts and Sponsorships Policy of the Department of Community Safety: Gauteng Province
Gifts Policy, OPSC
HR Policy, Free State Province, including Chapter 7: Acceptance of Gifts
Interim Policy Donations, South African Police Services
Policy on the Acceptance of Gifts within the Department of Minerals and Energy
SAMDI Policy on Gifts

F.3 Other publications

Lord Lloyd of Hampstead, Introduction to Jurisprudence, 4th Edition, 1979
PSC, Report on Managing Conflicts of interest in the Public Service, issued in July 2006

F.4 Table of cases

Magor and St Mellons Rural District Council v Newport Corporation [1950] 2 All ER 1226 (CA)
Salomon vs. Salomon and Co Ltd [1897] AC 22 (HL)

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