

**ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS**

<b>1. Meeting:</b>	<b>Licensing Board</b>
<b>2. Date:</b>	<b>Wednesday 3<sup>rd</sup> September 2014</b>
<b>3. Title:</b>	<b>Determination of Licensing Issues - House to House Collections</b>
<b>4. Programme Area:</b>	<b>Neighbourhoods and Adult Services</b>

**5. Summary**

This report is to update members on the current guidance issued by NALEO (National Association of Licensing and Enforcement Officers), Institute of Fundraising and Cabinet Office (Office for Civil Society) in relation to the determination of applications for House to House Collections.

The report also details information regarding appeals made against the decision to refuse applications dealt with by Licensing Board which are currently pending with the Cabinet Office (Office for Civil Society).

**6. Recommendations**

That member's note the content of the report and take regard of the guidance issued when determining applications for House to House Collections within the Borough.

## 7. Proposals and Details

The licensing of charitable door to door collections is principally governed by the House to House Collections Act 1939 together with the House to House Collections Regulations 1947. With the exception of a limited number of major national charities which hold national exemptions issued by the Cabinet Office, the majority of charitable door to door collectors must first all obtain a licence from the relevant licensing authority.

Under the 1939 Act, a licensing authority may refuse to grant a licence, or where a licence has been issued revoke it, if it appears to the authority that:-

1. The total amount likely to be applied for charitable purposes as the result of the collection (including any amount already so applied) is inadequate in proportion to the value of the proceeds likely to be received including any proceeds already received);
2. Remuneration which is excessive in relation to the total amount aforesaid is likely to be, or has been, retained or received out of the proceeds of the collection by any person;
3. The grant of a licence would be likely to facilitate the commission of an offence under Section Three of the Vagrancy Act 1824, or that an offence under that section has been committed in connection with the collection;
4. The applicant or the holder of the licence is not a fit and proper person to hold a licence by reason of the fact that he has been convicted in the United Kingdom of any offences specified in the Schedule to this Act, or has been convicted in any part of her Majesty's dominions of any offence conviction for which necessarily involved a finding that he acted fraudulently or dishonestly, or of an offence of a kind the commission of which would be likely to be facilitated by the grant of a licence;
5. The applicant or the holder of the licence, in promoting a collection in respect of which a licence has been granted to him, has failed to exercise due diligence to secure that persons authorised by him to act as collectors for the purposes of the collection were fit and proper persons, to secure compliance on the part of persons so authorised with the provisions of regulations made under this Act, or to prevent prescribed badges or prescribed certificates of authority being obtained by persons other than persons so authorised; or
6. The applicant or holder of the licence has refused or neglected to furnish to the Authority such information as they may have reasonably required for the purpose of informing themselves as to any of the matters specified in the foregoing paragraphs.

The Charities Acts 1992 and 2006 place three obligations on Charities with regards to charitable collections:-

- 1 The trustees have a legal duty to act in the best interest of the organisation.
- 2 If a partnership is formed with an external organisation, a contract is required, setting out the benefits and obligations of each party.
- 3 If a commercial party gains financially from the partnership, a solicitation statement is needed. The statement must name the benefiting charity and outline a financial amount that the charity will receive. This statement can be written or verbal, but must be made before a donation is made.

These obligations are there to protect charities best interests and ensure that the public are aware of the true benefit to the charity and can make an informed decision of who to donate to.

### **What constitutes as Charitable Purpose**

Under the 1939 Act a licence can be refused if the proportion of proceeds going for 'charitable purpose' is inadequate.

The 1939 Act defines 'charitable purpose' as any charitable, benevolent or philanthropic purpose, whether or not the purpose is charitable within the meaning of any rule of law. Section Two of the Charities Act 2006 also defines 13 purposes which are considered charitable and are:-

The prevention or relief of poverty;  
The advancement of education;  
The advancement of religion;  
The advancement of health or the saving of lives;  
The advancement of citizenship or community development;  
The advancement of the arts, culture, heritage or science;  
The advancement of amateur sport;  
The advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;  
The advancement of environmental protection or improvement;  
The relief of those in need by reason of youth, age, ill –health, disability, financial hardship or other disadvantage;  
The advancement of animal welfare;  
The promotion of the efficiency of the Armed Forces of the Crown, or of the efficiency of the Police, Fire and Rescue Services or Ambulance Services;

Any other purposes within subsection 4, which are:-

Any purposes not contained within the above definitions but recognised as charitable purposes under existing Charity Law or by virtue of Section 1 of the Recreational Charities Act 1958;

Any purposes that may reasonably be regarded as analogous to, or within the spirit of, any purposes falling within any of those paragraphs or the paragraph above; and

Any purposes that may reasonably be regarded as analogous to, or within the spirit of, any purposes which have been recognised under Charity Law as falling within the paragraph above or this paragraph.

### **What is not a Charitable Purpose**

Profit making businesses (including fundraising arms of charities) are not charitable purposes.

### **Relevance of Percentages when considering applications**

In the case of door to door collections the Cabinet Office advice that each case must be considered on its own merit, setting an arbitrary minimum percentage of the total value of the goods going to the Charity is problematic. Such figures usually bear no resemblance to the amount of proceeds raised for the actual charitable purpose. At the point at which goods have been collected, it is unlikely that the value of the proceeds generated for charitable purpose will be much more than 20%, whoever has undertaken the collection.

Typically, the cost of collecting door to door is substantial compared to the actual value of the goods at its point of collection, However there is still some scope for efficient charitable door to door collections to raise substantial sums of money for charity, albeit on relatively small profit margins per tonne of goods collected.

Where the collection is undertaken by a commercial third party, the charity is guaranteed an income (usually based on a per tonne basis), even if it turns out the commercial partner's collection costs are more than the revenue gained through the value of the goods collected. If the charity undertakes its own collection it is likely to raise more per tonne but incurs more risk.

## **How can we be sure that the amount of proceeds going for charitable purpose is adequate?**

Trustees are under a duty to ensure that all actions are in the best interest of the organisation. This will involve considering financial and reputation aspects before entering into a contract.

### **Summary of important issues for consideration when determining an application**

When considering applications the financial information is sometimes difficult to interpret. Unless the applicant is able to clearly identify the proportion that will be donated to a charitable purpose and the Licensing Board are confident in the calculations the applicant should be asked to clarify the information they have provided. If they are unable to clarify information requested, they should be first invited to withdraw the application. If they refuse to withdraw the application following a request for clarification then Licensing Board may be mindful to refuse the licence.

Things to take into consideration:-

- 1 The applicant must provide clear information about who is undertaking the collection (e.g. whether it is an individual, a commercial collection partner, a charity's commercial collection arm or a registered charity itself). It is also important that the application makes a clear distinction between the revenue received by the collector and the proceeds that are actually applied to the charitable purpose.
- 2 The collection costs incurred by the collector will vary dependent upon the method of collection and should be taken into account and deducted before the amount being sent for charitable purposes can be derived.
- 3 If the proportion allocated to the charitable purpose is clear, the Licensing Board must be satisfied that the amount to be given to the charitable purpose is adequate in relation to the proceeds received. The 1939 Act does not make any stipulation as to what constitutes an adequate proportion and it is up to the Licensing Board to make its own decision. The guidance issued is intended to help make the decision.
- 4 In deriving this, the Licensing Board need to be mindful that although the costs of collecting a tonne of clothing can be substantial in relation to the actual value of the clothing, this in itself should not be seen as an automatic reason for refusing a licence.
- 5 When assessing an application to undertake a charitable door to door collection, an assessment should be made whether the proceeds actually going for charitable purpose (after all remuneration/collection costs have been deducted) and should adopt a default position where they will only consider refusals if it is apparent that these proceeds of a particular collection, are significantly lower than those being achieved by other similarly modelled collections operating in the same area at about the same time.
- 6 Licensing Board should also be mindful of the outcome of the 2010 Judicial Review involving Birmingham Council, the Minister for the Cabinet Office and Clothes Aid where the Minister accepted he made an error of law when considering the appeal and that a full merit assessment of Clothes Aid's licence application should have been carried out. As a result the Cabinet Office now carries out a full merit assessment of applications received by them as a result of an appeal.
- 7 As well as appraisal being given to the proportion of proceeds being applied for charitable purpose and remuneration or costs incurred as a result of the collection, the Licensing Board should also consider whether any of the other grounds for refusal stipulated in the 1939 Act and previously highlighted in this report, are relevant to the application being considered.
- 8 If it is known that there will be a too high concentration of charitable door to door collections taking part in the area at around the same time as the proposed collection being considered, the Licensing Board may want to consider undertaking (in order of preference);

Arrange by mutual agreement with the collector to grant a licence to operate a collection on alternative dates;

If this is not possible, make a recommendation to the collector to withdraw the licence application.

A model application form has been devised and it is recommended that this form be used by Licensing Authorities therefore this form will be adapted for use for applicants wishing to apply in Rotherham. **(Appendix 1)**

Attached to this report is a quick checklist **(Appendix 2)** which has been devised by NALEO, the Cabinet Office and Institute of Fundraising for use by Officers when dealing with an application received and before it is brought to Licensing Board for a decision to be made.

### **Current Appeals to the Cabinet Office**

The Cabinet Office are currently dealing with two appeals against the decision by the Council to refuse licences – these are Recycling Solutions North West Limited and Audosta.

## **8. Finance**

Permits for House to House collections in or about the Borough of Rotherham are provided free of charge to applicants. Any relating enforcement and other matters of application processing are financed through the authority's normal budgeting methods.

## **9. Risks and Uncertainties**

Failure to consider each application to the extent that members feel necessary to satisfy themselves they have reached a reasoned decision could lead to inappropriate collections being made within the Borough.

When a licensing authority refuse to grant a licence (or revoke a licence) which has been granted, they shall forthwith give written notice to the applicant or holder of the licence stating upon which one or more of the grounds set out in subsection (3) of this section the licence has been refused (or revoked) and informing him of the right of appeal given by this section, and the applicant or holder of the licence may thereupon appeal to the Cabinet Office against the refusal or revocation of the licence as the case may be and the decision of Cabinet Office shall be final. The time within which any such appeal may be brought shall be fourteen days from the date on which notice is given under subsection (4) of this section.

## **10. Policy and Performance Agenda Implications**

The granting of House to House permits is consistent with the Corporate Plan and community strategy as it ensures the delivery under the themes of a Safer and Fairer Rotherham; also ensuring that the Council continues to maintain its statutory functions and undertakes appropriate enforcement to support the delivery of safe communities in Rotherham.

## 11. Background Papers and Consultation

**NALEO – Guidance for Licensing Officers issuing licences for charitable door to door collections – England and Wales – published September 2011 (updated October 2011)**

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