

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

LICENSING COMMITTEE – 28 NOVEMBER 2012

Title of report	REVIEW OF CHARITABLE COLLECTIONS POLICY
Contacts	<p>Councillor Alison Smith 01530 835668 alison.smith@nwleicestershire.gov.uk</p> <p>Environmental Health Team Manager 01530 454610 lee.mansfield@nwleicestershire.gov.uk</p> <p>Licensing Enforcement Officer 01530 454838 emma.mchugh@nwleicestershire.gov.uk</p>
Purpose of report	For Members to consider the review of the Charitable Collections Policy following the consultation period.
Council Priorities	Safer & Healthier District
Implications:	
Financial/Staff	No financial or staffing implications
Link to relevant CAT	Business CAT
Risk Management	N/A
Equalities Impact Assessment	Equality Impact Assessment already undertaken, issues identified actioned.
Human Rights	N/A
Transformational Government	N/A
Comments of Head of Paid Service	Report is satisfactory
Comments of Section 151 Officer	Report is satisfactory
Comments of Monitoring Officer	Report is satisfactory

Consultees	Trading Standards, Charity Retail Association, Institute of Fundraising, Textile Recycling Association, Which? Charities and commercial organisations, NALFO regional officer and Charity bags
Background papers	House to House Collections Act 1939 House to House Collections Regulations 1947 Police, Factories, Etc (Miscellaneous Provisions) Act 1916 All background papers can be found at www.legislation.gov.uk
Recommendations	TO CONSIDER AND APPROVE THE DRAFT CHARITABLE COLLECTIONS POLICY

1 LEGISLATION

- 1.1 House to house collections are governed by the House to House Collections Act 1939 (the Act) and the House to House Collections Regulations 1947, as amended. House to house collections for charitable, benevolent or philanthropic purposes, whether or not the purpose is charitable within the meaning of the rule of law, are required to be licensed by the Licensing Authority.
- 1.2 The Licensing Authority is empowered under Section 5 of the Police, Factories, Etc (Miscellaneous Provisions) Act 1916 to license collections made in 'any street or public place' for 'charitable or other purposes'.

2. BACKGROUND TO THE INTRODUCTION OF THE POLICY

- 2.1 In June 2010, the Licensing Committee considered and approved the adoption of the Charitable Collections Policy. The Policy stipulates how the Licensing Authority will process and determine applications for street collections and house to house collections permits.
- 2.2 Due to the economic climate, the Licensing Authority witnessed a large increase in the number of applications received in particular from commercial clothing collection companies that give as little as 5% of the whole proceeds of the collection to the charity. In order to ensure that the charity received as much of the proceeds from the collection as possible, it was agreed by the Licensing Committee that at least 75% of the total proceeds of the collection must be given to charity and no more than 25% of the total proceeds of the collection can be deducted by the organisation for expenses/costs relating to the collections.
- 2.3 The House to House Collections Act 1939 permits a Licensing Authority to refuse an application for a house to house permit on the following grounds:
 - If too high a proportion of the proceeds is likely to be spent on expenses;
 - If not enough of the proceeds are to be given to the charity or cause;
 - If incorrect information was provided on the application form;

- If the promoter or any other person involved in the collection has been convicted of certain criminal offences i.e. burglary, blackmail or fraud.

2.4 In line with the Policy, the Licensing Authority has refused several applications on the grounds that not enough of the proceeds are being given to the charity and too high a proportion of the proceeds are likely to be spent on expenses. Two organisations appealed against the decision to refuse their application on these grounds.

2.5 The appeal was determined by the Cabinet Office. Based on the information provided by the applicant and the Licensing Authority, the Cabinet Office decided to allow the appeal determining that giving 5% to the charity was not inadequate in proportion to the value of the proceeds likely to be received and that the remuneration or expenses paid out to any commercial operator was not unreasonable. A copy of the letter received from the Cabinet Office is attached as **Appendix 1**. In light of this determination, the Policy has been reviewed.

3. PROPOSED CHANGES TO THE EXISTING POLICY

3.1 Changes have been made to section 4 of the Policy which relates to house to house collections. The following changes have been made:

- 100% of the profits of the collection must be given to the charity that the collection was held on behalf of;
- Profits is defined as the money remaining after all reasonable expenses/costs have been deducted from the proceeds of the collection;
- 'Any offence under the 1939 Act' has been added to the list of reasons why the Licensing Authority can refuse or revoke a permit for a house to house collection.

A copy of the reviewed Policy is attached as **Appendix 2**.

3.2 The Licensing Authority will still determine each application on its own merits and decide if any remuneration or expenses deducted is excessive. The Licensing Authority will continue to deal robustly with unlicensed house to house collections and bogus collectors under the Licensing Authority's Enforcement Policy.

4. CONSULTATION

4.1 The reviewed Policy was sent out for consultation for 12 weeks commencing on 27th August 2012. The consultation comprises letters sent to all the relevant bodies requesting their comments.

4.2 The consultation period ended on 19th October 2012. Two responses were received in relation to the consultation from Trading Standards at Leicestershire County Council and the Institute of Fundraising.

4.3 In the response from Trading Standards, they stated that the Policy is reasonable and reflects the changes that are required. No changes were made to the Policy as a result of the response.

- 4.4 The Institute of Fundraising in their response to the consultation, stated that 100% of the profits from the collection to the charity is unrealistic and would deter a large number of organisations from applying for a permit. After discussion, it has been decided not to make changes to the draft Policy as a result of the response. In the Officers' experience, charities are not aware of how much a commercial organisation receives for a tonne of clothes therefore it is felt that they are not obtaining the best possible amount of money for their charity. Furthermore, the amount given to the charity by the commercial organisation is dictated by the market rate and the charity is not in a position to negotiate with the commercial organisations. The Act was not intended for commercial organisations to benefit from charitable collections and Officers believe that it is our duty to ensure that the charities receive the most money from the collection. 100% of the proceeds to the charity after the deduction of costs and expenses will enable the charity to benefit fully from the charitable collection. A copy of the letter received is attached as **Appendix 3**.



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Ms Joanne O'Sullivan
Head of Fundraising
Ronald McDonald House Charities
11-59 High Road
East Finchley
London
N2 8AW

28 March 2012

Dear Ms O'Sullivan

House to House Collections Act 1939: Appeal by Ronald McDonald House against decision of North West Leicestershire Council to refuse a House to House Collection Licence

I refer to your appeal against the decision of North West Leicestershire District Council to refuse an application for a house to house collections licence under the House to House Collections Act 1939 (the 1939 Act). I am sorry it has not been possible to resolve this matter before now.

The Minister for Cabinet Office has considered this appeal afresh on its merits and has looked carefully at all the information supplied by both parties. The Minister has decided to allow the appeal. In reaching this decision the Minister has noted the grounds set out in section 2(3)(a) and (b) of the 1939 Act on which the application was refused but has not confined his consideration to these grounds alone.

As far as the test in section 2(3)(a) of the 1939 Act ("the proportionality test") is concerned, it is appreciated that, for a number of reasons, the costs of conducting house to house collections of second-hand clothing tend to be higher than, for example, collections of cash. In your case a commercial collector is to be used, but charities that undertake these types of collection in-house are likely to face similar costs of distributing leaflets/collection bags, collecting goods that have been left out for them, and sorting/grading donated items. In relation to collections of second-hand goods for re-sale, the value of the goods at the point of donation may be low,

and it is through the collection and sorting process that value is added, resulting in a saleable product. Taking these costs into account, the Minister does not consider the proportion of the proceeds that will go to the charity to be inadequate in proportion to the value of the proceeds likely to be received (including any proceeds already received).

As for the test in section 2(3)(b) of the 1939 Act ("the excessive remuneration test"), the Minister is not persuaded that remuneration or expenses that would be paid out to any persons involved in organising or conducting the collection are at a level that is unreasonable given the work involved in undertaking this type of collection.


The tests in section 2(3)(c)-(f) have also been considered but it has been concluded that there are no grounds for refusal on the basis of these. The Minister does not consider that the successful prosecution of GT Recycling Initiatives for collecting without a licence is a ground on which to refuse the application as this prosecution does not fall within any of the relevant provisions of the 1939 Act; particularly, it does not fall within the offences to which paragraph (d) of subsection (3) of section 2 applies, listed in the Schedule of the 1939 Act.

Therefore, in accordance with section 2(6) of the 1939 Act, the Minister for Cabinet Office has decided that the appeal should be allowed and that North West Leicestershire District Council should forthwith issue a licence to Ronald McDonald House charity.

The original application was for a licence for the period from 1 January to 31 December 2011. As this time has elapsed, the period of time for which the licence is granted should be determined by the Council, in consultation with you, according to its usual criteria.

A copy of this letter goes to North West Leicestershire District Council.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'H Morgan', written in a cursive style.

Helen Morgan
Charities and Sector Support Team



NORTH WEST
LEICESTERSHIRE DISTRICT
COUNCIL

Charitable Collections Policy

1. INTRODUCTION

1.1 HOUSE TO HOUSE COLLECTIONS

- 1.1.1 House to house collections are governed by the House to House Collections Act 1939 (the Act) and the House to House Collections Regulations 1947, as amended.
- 1.1.2 As a general rule, house to house collections for charitable, benevolent or philanthropic purposes, whether or not the purpose is charitable within the meaning of the rule of law, are required to be licensed by the Licensing Authority which is North West Leicestershire District Council.
- 1.1.3 The definition of 'collection' extends beyond requests for money, to include the sale of magazines, requests for unwanted clothing and household items, visits to persuade persons to buy goods etc where any part of the proceeds may go to charity.
- 1.1.4 The only exception to the general rule is organisations that have been granted an Exemption Certificate by the Home Office under the provisions of the House to House Collections Act 1939. This Certificate allows an organisation to collect in the District without applying for a licence from the Licensing Authority. The organisation will not be exempted from the regulations or provisions of the Act and the organisation must inform the Licensing Authority of the dates and areas of any planned collections.

1.2 STREET COLLECTIONS

- 1.2.1 The Licensing Authority is empowered under Section 5 of the Police, Factories, Etc (Miscellaneous Provisions) Act 1916 to license collections made in 'any street or public place' for 'charitable or other purposes'.
- 1.2.2 'Street' is defined as including any highway and any public bridge, road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not.
- 1.2.3 The definition of a 'public place' will include the entranceways to shops. Although the foyer of a supermarket could be considered to be behind 'closed doors' and subject therefore only to the discretion and approval of the manager, any collector straying outside and/or into the car park would require a licence.
- 1.2.4 The Charitable Collections (Transitional Provisions) Order 1974 sets out model street collections regulations which have been adopted by the Licensing Authority.

2. AIMS

- 2.1 The aims of the Licensing Authority in respect of the licensing of charitable collections are to:
 - Safeguard the interests of both public donors and beneficiaries;
 - Facilitate well organised collections by bona fide charitable institutions and to ensure that good standards are met; and
 - Prevent unlicensed collections from taking place.

3. OBJECTIVES

3.1 In order to achieve its aims in respect of licensing of charitable collections, the Licensing Authority has identified the major issues and sought to tackle them through this Policy with the intention of:

- Ensuring impartiality and fairness in determining applications;
- Accommodating all eligible requests, subject to capacity, and bearing in mind that certain days and locations are especially sought after;
- Providing equality of opportunity for would-be collectors;
- Avoiding causing undue nuisance to the public;
- Setting fair maximum limits for one applicant;
- Achieving a fair balance between local and national causes;
- Forming links and improving communications with other organisations with a direct or indirect involvement in the licensing and administration of charitable collections such as the police, Trading Standards, the Charity Commission, parish councils and local charitable institutions, etc.

3.2 This Licensing Authority recommends that all organisations adhere to the Institute of Fundraising's Code of Fundraising Practice. A copy of this code of practice can be found at www.institute-of-fundraising.org.uk

4. HOUSE TO HOUSE COLLECTIONS

4.1 GENERAL PRINCIPLES

4.1.1 Charities must be registered with the Charity Commission or be a charitable organisation based within the District of North West Leicestershire.

4.1.2 Wherever possible, two organisations shall not be permitted to collect in the same area on the same day. Applications will be dealt with on a first come first served basis.

4.1.3 In general, organisations shall not be permitted to hold more than two collections throughout the District or part thereof during one calendar year. This shall be at the discretion of the Licensing Enforcement Officer.

4.1.4 Where further requests are received from exempted charities to collect on dates which have already been allocated, a formal request will be made for them to consider an alternative date.

4.1.5 Applications will only be accepted for charitable collections to be held in the current or next calendar year.

4.1.6 The Licensing Authority appreciates that expenses/costs will be incurred by the organisations when carrying out clothing collections and that through the process of collecting and sorting the clothes value is added. However, expenses/costs deducted by the organisation must still be reasonable.

4.1.7 With regards to clothing collections, the whole profits of the collection must be given to the charity or cause. Applications will be decided on their own

merits. Profit is defined as the money remaining once all reasonable expenses/costs have been deducted from the proceeds of the collection.

- 4.1.8 The applicant must forward a financial return form to the Licensing Authority within one month of the date of the collection showing details of the monies collected. No licence will be issued to any applicant that has failed to forward the financial return form in respect of previous collections.

4.2 APPLICATION PROCEDURE

- 4.2.1 The Licensing Authority operates a diary system to log in collections therefore the applicant is encouraged to contact the Licensing Authority before submitting an application in order to check the available dates for any collection.

- 4.2.2 Applications are to be made in writing on the form provided together with the information requested. Where possible, the use of electronic forms will be encouraged.

- 4.2.3 Applications must be received on the first day of the month preceding that in which the collection is proposed. In order for the necessary checks to be carried out and to leave time for the necessary prescribed badges and certificates to be ordered and received from Her Majesty's Stationary Office (HMSO), it is advised that applications are submitted a minimum of 3 months before the proposed date of collection. Any applications received less than the 28 days before the proposed first date of collection will be declined. This requirement may be waived in exceptional circumstances at the discretion of the Licensing Enforcement Officer.

- 4.2.4 The following information must be submitted with the application:

- Literature about the organisation;
- Copy of published accounts for the last two years;
- Copy of statement of accounts from the last three or four collections carried out (including collections held in other Licensing Authority areas);
- Letter from the charitable organisation authorising you to undertake a collection on their behalf, if you are not an official of the organisation; and
- An agreement or contract details with any registered charity or individual benefiting from this collection.

- 4.2.5 Applications will be considered on receipt and, where appropriate, additional information may be requested from the applicant to assist in determining the application. The failure to provide adequate information in the application form or upon request will result in a refusal or a delay in consideration until any outstanding information has been provided.

- 4.2.6 Applications will be considered by the Licensing Authority on their respective merits and the Licensing Authority will either:

- (a) Issue a permit specifying the requested date and location; or
- (b) Refuse to issue a permit on the statutory grounds.

4.2.7 The Licensing Authority can refuse or revoke a licence for various reasons including:

- To limit the number of collections in line with this Policy at the discretion of the Licensing Enforcement Officer;
- If too high a proportion of the proceeds is likely to be spent on expenses;
- If not enough of the proceeds are to be given to the charity or cause;
- If incorrect information was provided on the application form;
- If the promoter or any other person involved in the collection has been convicted of certain criminal offences i.e. burglary, blackmail or fraud or any offence committed under the Act.

4.2.8 There is a right of appeal to the Secretary of State against the refusal or revocation of a licence within 14 days from the date on which the notice is given of the refusal or revocation.

4.2.9 During the collection, the promoter must ensure that collectors are 'fit and proper' persons and that they comply with the regulations. A guide to the house to house regulations is attached to this Policy at Appendix 1.

4.2.10 As soon as possible after the date of any collection (no later than one month after the collection), the promoter must forward to the Licensing Authority a financial return form showing details of the monies collected.

5. STREET COLLECTIONS

5.1 GENERAL PRINCIPLES

5.1.1 Charities must be registered with the Charity Commission or be a charitable organisation based within the District of North West Leicestershire.

5.1.2 Wherever possible, two organisations shall not be permitted to collect in the same area on the same day. Applications will be dealt with on a first come first served basis.

5.1.3 Organisations shall not be permitted more than two permits per year to carry out charitable street collections within the same location on a Friday or Saturday.

5.1.4 In general, organisations shall not be permitted to hold more than two collections throughout the District or part thereof during one calendar year. This shall be at the discretion of the Licensing Enforcement Officer.

5.1.5 No payment must be made to any collector, or to any other person connected with the promotion or conduct of the collection, indirectly or directly, out of the proceeds of the collection without the approval of the Licensing Authority. In general, payments to collectors are discouraged as it is contrary to the objective of maximising income to charitable institutions. Reimbursement of reasonable expenses is generally accepted provided that it is within an acceptable overall proportion of the total collected. All collections will be considered on an individual basis but all payments will be subject to agreement with the Licensing Authority in advance.

5.2 APPLICATION PROCEDURE

- 5.2.1 The Licensing Authority operates a diary system to log in collections therefore the applicant is encouraged to contact the Licensing Authority before submitting an application in order to check the available dates for any collection.
- 5.2.2 Applications are to be made in writing on the form provided together with the information requested. Where possible, the use of electronic forms will be encouraged.
- 5.2.3 Any applications from charitable organisations who wish to hold a street collection within Belvoir Shopping Centre, Coalville should be accompanied by a letter from the owners of the shopping centre giving permission for the collection to take place on the relevant date. Their contact details can be found on the application form.
- 5.2.4 Applications shall be received no later than one month before the date on which it is proposed to make the collection. This requirement may be waived in exceptional circumstances at the discretion of the Licensing Enforcement Officer.
- 5.2.5 The application will be considered on receipt and, where appropriate, additional information may be required from the applicant. Applications will be considered and determined on a 'first come first served' basis.
- 5.2.6 Applications will be considered by the Licensing Authority on their respective merits and the Licensing Authority will either:
 - (a) Issue a permit specifying the requested date and location; or
 - (b) Refuse to issue a permit.
- 5.2.7 There are no restrictions as to the grounds for refusing an application for a street collection licence and there is currently no right of appeal against a decision of the Licensing Authority to refuse or revoke a licence for a collection.
- 5.2.8 During the collection, the promoter must not allow anyone to collect money, or sell goods, unless they have been given written authority. The promoter must ensure that all people acting as collectors are fit and proper persons and comply with any appropriate legislation. A guide to the street collections regulations are attached to this Policy as Appendix 2.
- 5.2.9 As soon as possible after the date of any collection (no later than one month after the collection), the promoter must forward to the Licensing Authority a financial return form showing details of the monies collected.

6. DIRECT DEBITS

- 6.1 In relation to street collections, the collections of direct debits for charitable purposes will need to be licensed by way of a street collection permit.
- 6.2 With regards to house to house collections, many organisations do not believe that direct debits fall under the remit of the House to House

Collections Act 1939 however the Act defines collection as 'an appeal to the public, made by means of visits from houses to house, to give, whether for consideration or not, money or other property.'

- 6.3 It is the view of this Licensing Authority that direct debits can be classed as the 'giving of money' and therefore direct debit collections would fall under the remit of the above Act and this Licensing Authority requires that all direct debit collections are licensed by way of a house to house collection permit for the non licence exempt charities.

7. CONTACT DETAILS

Anybody wishing to contact the Licensing Authority with regard to this Policy can do so as follows:

In writing to Licensing Service
 Environmental Health
 North West Leicestershire District Council
 Council Offices
 Coalville
 Leicestershire
 LE67 3FJ

By email to licensing@nwleicestershire.gov.uk

By telephone 01530 454838

By fax 01530 454574

DOCUMENT HISTORY

Issue 1 – 2nd June 2010

Issue 2 (draft) – November 2012



North West Leicestershire District Council: Review of Charitable Collections Policy.

18th October 2012

This document is a summary response from the Institute of Fundraising to North West Leicester District Councils consultation document published on 24th August 2012. For more information or to explore issues further, please contact Edward Wyatt at policy@institute-of-fundraising.org.uk or 020 7840 1000.

About the Institute

The Institute of Fundraising (registered charity in England and Wales (no. 1079573) and Scotland (no. SC038971)) represents fundraisers and fundraising throughout the United Kingdom. Its mission is to support fundraisers, through leadership, representation, standards setting and education, to deliver excellent fundraising. It is a membership organisation committed to the highest standards in fundraising management and practice. Members are supported through training, networking, the dissemination of best practice and representation on issues that affect the fundraising environment. The Institute of Fundraising is the largest individual representative body in the voluntary sector with over 5300 Individual members and more than 340 Organisational members.

Summary Response

The Institute of Fundraising (IoF) welcomes the opportunity to comment on the amendments to the District Council's policy document.

Our thoughts with direct reference to your draft policy document:

1. Requirements for all profits to be given to the charitable organisation

With reference to clause 4.1.7 and clause 4.2.7, we recognise the legal right of the council to refuse licences where, in their opinion, insufficient funds obtained through the collection are to be attributed to the charitable cause. However, we feel it is important to reiterate to the council the legal responsibility charity trustees and, by association, charity officers are under when entering into commercial partnerships. Any fundraising activities can only legally be undertaken if it is adjudged to be in the best interests of the charitable organisation. If a charity has entered into contract with a commercial entity for the purposes of a fundraising activity, such as a public collection, it can be assumed that the arrangement represents good value for the charitable cause.

The council's requirement that the whole profits from any house to house collection are to be given to the charity or cause is unrealistic and will only serve to preclude a large number of

organisations from undertaking such activity. It is unclear what the motivation is behind this clause. Charity law already looks to protect and empower the public to make informed decisions on what they deem to be an acceptable split of profit between charities and the contracted commercial collector through commercial participator agreements and solicitation statements.

I would ask the council to focus its resource on stopping illegal collections rather than effectively restricting how a charity can raise vital income and who donors can donate to.

2. Welcome collaboration

With reference to clause 3.2, it is highly positive to see reference to the IoF and the Codes of Fundraising Practice. In order to keep you and your licensing officers up to date please be aware that after our own consultation we are now due to launch a new, single, Code of Fundraising Practice on November 13th 2012. Although further information will be available on our website nearer to the launch, we would be happy to discuss what and why any changes have been made with any relevant persons from your team.

With a view to encouraging further valuable collaboration between our organisations I would like to invite your licensing team to discuss with the IoF how we can work together to further public confidence in giving safely and raise awareness of how to handle bogus collectors operating in any given residential area. I would be delighted to send you further materials on this subject if requested.