

Body: General Licensing Committee

Date: 23 January 2007

Subject: Public charitable collections - street collection application criteria and future licensing arrangements

Report of: Local Democracy Manager and Licensing Manager

Ward(s): All

Purpose:

- (a) To review the application criteria for the grant of street collection (flag day) permits.
- (b) To advise the committee of the impending transfer of responsibility for the licensing of public charitable collections (street and house to house collections) to the Licensing Team of Environmental Health.
- (c) To advise the committee of the changes that are expected from the eventual implementation of new provisions for public charitable collections in the Charities Act 2006.

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Recommendations:

- (1) To approve revised application criteria (set out in appendix 1 to this report) for the grant of street collection permits.

- (2) To note the transfer of responsibility for the licensing of public charitable collections (street and house to house collections) to the Licensing Team of Environmental Health.

1.0 Introduction

1.1 Responsibility for the administration of public charitable collections (street collections and house to house collections) is currently being transferred from Local Democracy to the Licensing Team in Environmental Health. This was agreed some time ago in conjunction with the introduction of alcohol licensing. Although the two areas are not directly connected, with the establishment of a dedicated licensing team, there was a recognition that the Council's licensing activities should wherever appropriate be brought together. This is common practice within other Authorities. In addition to

the transfer of public charitable collections, in due course, the Licensing Team is also taking over responsibility for small lottery registrations which is currently being dealt with by Legal Services.

- 1.2 The 2007 street collection calendar is currently being drawn up under the direction of the Local Democracy Manager prior to transfer of responsibility. An issue has arisen which suggests that the criteria under which applications are assessed should be reviewed and the Licensing Committee is invited to consider the matter as described more fully in section 2 of this report below.
- 1.3 The Committee will also wish to be advised of the Charities Act 2006. This piece of legislation was enacted in November 2006 and includes various provisions which will significantly change the way that councils licence public charitable activities. Further detailed information on this is given in section 3 below. It should be noted that implementation of the new provisions is unlikely for a number of years and not before 2009.

2.0 Criteria for the grant of street collection applications

- 2.1 The current criteria are set out in appendix 1 to the report, together with proposed changes. Text to be deleted is shown in square brackets and text to be added in italics.
- 2.2 The first proposed change is to restrict the applications that the Council will consider to those from recognised registered charities, and from local charitable bodies which directly benefit the population of the borough. As well as charities that are registered with the Charity Commission, other non-profit making groups can currently apply. Typically these comprise campaigning organisations active in animal welfare and environmental causes. They are not entitled to be registered charities because of the nature of their activities and the purposes to which proceeds are put.

In addition, there are a number of charities that are either exempt or excepted from Charity Commission registration. These latter categories include very small scale charities or certain religious groups or groups such as scouts and guides. Some of these will, in due course, become registered as a consequence of the new Charities Act.

The challenge for the Council, as licensing authority, is that it is very difficult to monitor in any realistic way how charitable proceeds are used by many of these groups, and thereby give public assurance that our licensing activities are meaningful. Limiting collections to registered charities does at least mean that the Council can rely on the regulatory activities of the Charity Commission. An exception is however made for local groups where the proceeds directly benefit the local population. In such cases the groups are likely to be known to the Council and there will be a much greater awareness of their activities within the local community. Furthermore, it is easier to monitor the activities of local groups.

2.3 Of the 31 applications so far made for collections in 2007, (the calendar is currently being finalised) only 4 would fall outside the new restriction described above. All 4 are campaigning not for profit organisations. Their names are deliberately withheld from this report as the committee is asked to consider this as a matter of principle and not on the merits or otherwise of the applicants. The 4 organisations have been advised of this proposed change. In some cases it may be possible for the applicant to amend their application so that it relates to a registered charity working in close association with them.

To date one organisation has responded by phone indicating unhappiness at the proposed change and saying that they are unlikely to want to make alternative arrangements and collect on behalf of a registered charity. Any further responses will be reported at the meeting.

2.4 The other main changes are the addition of criteria (f), (g), (h) and (i). These additions would formalise what has in fact taken place for a number of years.

3.0 Charities Act 2006

3.1 Regulation of public charitable collections under the existing law

Public charitable collections in the street are currently regulated under the Police, Factories Etc (Miscellaneous Provisions) Act 1916, and a model of local regulations is contained in the Charitable Collections Order 1974 (Transitional Provisions), though local authorities are not obliged to introduce such a system of licensing in their area.

Public charitable collections conducted house to house are currently regulated by the House to House Collections Act 1939 and the House to House Collections Regulations 1947 which established a central licensing regime for such collections.

The Local Government Act 1972 transferred responsibility for both forms of licensing to local authorities from the police, except in London where responsibility remains with the Metropolitan Police and the Common Council of the City of London.

The Cabinet Office (Office of the Third Sector) is responsible for administering the national exemption order scheme for house to house collections under the current law. National exemption orders are generally available to organisations which have obtained house to house collection licences in at least 70 – 100 local authority licensing areas for the two preceding years. There are currently 40 national exemption order holders.

Under current legislation there is a right of appeal to the Home Secretary against the decision of a local authority to refuse an organisation a licence to hold a house to house collection or to revoke such a licence. There is currently no equivalent right of appeal in the case of street collections.

A previous attempt to modernise the existing legislation was enacted as Part III of the Charities Act 1992. It has however never been brought into force because concerns were raised about whether it would work in practice. Its provisions will be replaced by the Charities Act 2006.

3.2 The 2006 Act provides for a new system for licensing charitable collections in public. It applies to all such collections, including face-to-face fundraising, involving requests for direct debits, commonly referred to as "chuggers" (short for charity muggers). There is a new role for the Charity Commission in checking whether charities and other organisations are fit and proper to carry out public collections and they will be responsible for issuing public collections certificates, valid for up to five years. The Commission has indicated that they need to develop the right regulations and guidance so that they can take on this new role. They also need the necessary resources to set up the new systems and this will take time to set up. However, they don't envisage taking on this function for a number of years.

3.3 **Collections in public places**

Previous legislation referred to 'street' collections. The Act extends this to collections in 'public places' which includes some privately owned land, such as railway station ticket halls and supermarket forecourts. Once a charity has a Charity Commission public collections certificate it will be able to apply to a local authority for a permit to hold collections at certain times in certain places in that local authority area. Local authorities will need to ensure that there are not too many collections taking place at the same time, in the same place.

3.4 **Door to door collections**

Previous legislation referred to 'house to house' collections. The Act refers instead to 'door to door' collections, to make clear that this includes business premises. A charity with a public collections certificate will be able to conduct door to door collections without permission from a local authority, but it must inform the local authority that the collection is taking place.

3.5 **Local, short-term collections**

Some collections will be exempt from licensing and will not require either a certificate or permit, but organisers will have to notify the local authority that the collection is taking place; so small scale activities like carol singing should not be disproportionately affected.

4.0 **Consultations**

4.1 Apart from notifications sent to the 4 applicants potentially affected by the changed criteria for street collection applications, no other consultations have been undertaken. However, it is important to note that it is for the Licensing Authority to set the parameters, ensure that applications are

bona fide and verify, from returns, that monies raised are being appropriately recorded.

5.0 Resource Implications

5.1 The financial implications are minimal. No fees are payable for the issue of street collection permits and house to house collection permits and the Charities Act 2006 will not alter this position. The transfer of responsibility for licensing public charitable collections to the Licensing Team will ensure that staff trained in regulatory matters will, in future, deal with applications. Officers will also be able to deal with issues arising from the activities of unlicensed collectors or situations where formal investigations may need to be undertaken. It does however have to be said that the instances where enforcement activity has been required in the past have been few. The police or trading standards will generally be responsible for taking action when unlicensed activities take place (criminal matter or misrepresentation). In the last 10 years only one licence has had to be revoked by the Council.

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Background Papers

The background papers to this report are as follows:

Information provided on the Charity Commission website at
<http://www.charity-commission.gov.uk/spr/charbill.asp>

Information provided on the Cabinet Office website at
http://www.cabinetoffice.gov.uk/third_sector/law_and_regulation/fundraising_and_collections/index.asp
http://www.cabinetoffice.gov.uk/third_sector/documents/charity_reform/implementation_plan.pdf

The Charities Act 2006 – Sections 45 to 62
<http://www.opsi.gov.uk/acts/acts2006/60050--n.htm#45>

If unable to view via the website links please contact David Robinson at the Town Hall, Grove Road, Eastbourne. Telephone 415022 or e-mail
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(der\P:charities\licensing report jan 07)

Appendix 1

Street Collections – Application Criteria

Extract from the Council’s approved scheme of delegation:

Text to be deleted is shown in square brackets [] and text to be added in *italics*.

Public Charitable Collections.

The grant, refusal and revocation of permits and licences for street collections (flag days) and house to house collections is delegated to the [Assistant Director for Strategy and Democracy] *Licensing Manager* subject to the provisions below.

Applications for street collection permits *will be entertained from either registered charities or from local charitable bodies which directly benefit the population of the borough* [are to] *and will be considered in accordance with the following criteria:-*

- a) Aim for no more than one collection each week on average, normally on a Saturday (objective being to maintain a positive response from the public).
- b) Take account of the amount of money collected on previous or other recent occasions and the number of collectors deployed (the objective being to ensure that “prime” collection dates go to societies which have the ability to maximise donations).
- c) Presumption to refuse where applicant has previously failed to submit a return for no good reason.
- d) Ensure that a range of different types of charitable society are represented.
- e) Give preference to locally based groups or national/regional organisations with active local support groups.
- f) *Give priority to charities with recognised national collection days such as the British Legion Poppy Appeal.*
- g) *That in the month of December priority will normally be given to organisations such as Round Table, Rotary and Lions which collect on behalf of local charities.*

- h) *That when major events take place such as Airbourne, collections in the near vicinity of the event will normally only be permitted when conducted on behalf of charities nominated or agreed in liaison with the event organiser.*
- i) *That where major incidents or disasters occur, collections at pre-identified locations will be permitted when conducted on behalf of the charities nominated.*

The Chairman of the *General* Licensing [Panel] *Committee* is to be consulted on the proposed Annual Calendar of Street Collections and the Mayor is to be provided with a draft copy of the Calendar.

The refusal or revocation of a house to house collection licence is to be reported to the *Chairman of the* Licensing [Panel] *Committee* by the *Licensing Manager*.