Office for Civil Society provisional position on appeals under the House to House Collections Act 1939

As published in the NALEO Guidance for Licensing Officers issuing licences for charitable door to door collections – England and Wales September 2011 – Annex 4

What are the implications for licensing authorities of this revised position

Where a local licensing authority refuses to grant a licence (or revokes a licence), there is a right of appeal to the Minister for the Cabinet Office (under section 2(4) of the House to House Collections Act 1939). Under section 2(4), local licensing authorities must set out in writing their decision including the grounds for refusal (or revocation), and must inform the applicant of their right of appeal to the Minister for the Cabinet Office. Any such appeal may be brought within 14 days of the date of the notice.

As a starting point, house to house collections appeals will be considered afresh on their merits, based on the information provided by the applicant to the local licensing authority, and any additional information provided to us by either party. This approach represents a shift, based on legal advice, from our previous position of simply reviewing whether the local licensing authority's decision was one that it could legitimately make (without consideration of the merits of the application).

In determining an appeal on its merits, we will need to consider whether to refuse the application on one of the grounds in set out in sections 2(3)(a) to (f) of the House to House Collections Act 1939 ("the 1939 Act"). These are:

(a) that 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);

(b) that 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;

(c) that 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;

(d) that 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 of the offences specified in the Schedule to this Act, or has been convicted in any part of His 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;

(e) that 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

(f) that 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 most common grounds on which appeals have been received for refusals in recent years are (a), (b) and (f).

In considering the test in (a) above (“the proportionality test”), what we regard as “inadequate” will depend on the nature of the collection. We acknowledge that the costs of conducting certain types of house to house collection (e.g. of second-hand clothing) tend to be higher than other collections (e.g. of cash). 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. We will therefore take into consideration reasonable costs of conducting the collection.

In considering the test in (b) above (“the excessive remuneration test”), we will consider whether remuneration or expenses paid out to any persons involved in organising or conducting the collection are at a level that is reasonable for the type of work being undertaken, taking into account that the collection is said to benefit a charitable purpose.

In most cases we will need to ask for more information from both the appellant and local licensing authority unless it has been provided as part of the license application process or when the appeal was lodged. This is likely to include a copy of the relevant commercial participator agreement where a commercial partner is undertaking the collections on behalf of a charity, copies of the collection materials (leaflets/bags), details of some previous collections – e.g. returns provided to local authorities, what steps the promoter takes to secure that collectors are fit and proper persons, whether best practice e.g. membership of the Fundraising Standards Board, mechanism for dealing with complaints etc.

What are the implications of this revised position for licensing authorities?

Unlike in the past, if the Minister is now considering an appeal from a collector (such as a commercial collection partner) who is undertaking the work on behalf of a charity, they will look at what their costs are, and how much the collector is paying to their charity. If these are similar or favourable compared to other similar collections taking place in the same area of the country and which have been granted licences elsewhere, then in all probability the Minister/Cabinet Office will uphold the appeal and overturn the decision made the licensing authority to refuse a licence.

This has been demonstrated recently in the media where an appeal against a decision made by Cardiff council was upheld.

In essence the key is for local authorities to avoid using minimum percentages as a benchmark as to whether an application should be accepted or not. Percentages very often bear no resemblance to the actual amount of money that goes to the charitable purpose. The rationale behind this is explained in the NALEO guidance.

Return to the top of this page.