

EAST HERTS COUNCIL

LICENSING COMMITTEE – 20 NOVEMBER 2014

REPORT BY DIRECTOR NEIGHBOURHOOD SERVICES

CONSIDERATION OF A SITE MANAGEMENT AGREEMENT (SMA)  
WITH THE PUBLIC FUNDRAISING ASSOCIATION (PFRA) IN  
RELATION TO DIRECT DEBIT STREET COLLECTIONS

WARD(S) AFFECTED: ALL

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**Purpose/Summary of Report:**

- To inform the Members of the Licensing Committee about the details of discussion undertaken with the PFRA regarding a site management agreement for East Herts District.

<b><u>RECOMMENDATION FOR LICENSING COMMITTEE:</u></b> that	
<b>(A)</b>	<b>The Committee makes a recommendation regarding the signing of a site management agreement with the PFRA; or</b>
<b>(B)</b>	<b>The Committee makes a recommendation regarding any changes they would like to see to the Site Management Agreement (SMA) which Officers will take back to the PFRA.</b>

1.0 Background

1.1 Charity cash collections on the street need a licence from the council (or the police in London) under The Police, Factories, etc. (Miscellaneous Provisions) Act 1916.

1.2 However, an issue arises when determining whether face-to-face Direct Debit street fundraising is covered by this Act.

1.3 The 1916 Act (section 5 – the only bit that is still in force) very clearly states a licence is required for a collection of money. The Act says that a licence is required in order to “collect money or sell articles for the benefit of charitable or other purposes” (s5.1). Direct Debits are not considered to be money in law; they are ‘promises of money’ at a later date.

- 1.4 Face-to-face collections conducted door-to-door by visiting householders is covered by a completely different act, the House-to-House Collections Act 1939. Unlike the 1916 Act, the 1939 Act is generally held to cover face-to-face Direct Debit fundraising because it states that a licence is required for the collection of 'money or other property'.
- 1.5 This lack of regulation of Direct Debit collections causes a number of issues for the council. Despite an authority having a policy regarding cash collections, which may dictate the locations and numbers of collectors, and issuing permits accordingly Direct Debit collectors can turn up without notice.
- 1.6 This leads to increased complaints from members of the public using these areas, businesses who feel customers are avoiding certain areas and from the charity holding a legitimate cash collection.
- 1.7 Some authorities have, with very limited success, tried to use the 1916 Act to move direct debit collections on if they do not have permit but ultimately this is a bluff and there is no case law to back up this position.
- 1.8 At East Herts we have been positively engaging with the Direct Debit collection sector so that we are able to have some control over the number of collectors within our Town centres. To do this we have encouraged them to consult us on dates and have issued permits similar to those we are required to issue for cash collections. However ultimately, if Direct Debit collectors choose not to do this, and just turn up, there is no recourse for the council.
- 1.9 A report was put before the Licensing Committee on 13 March 2014 regarding an approach from the PFRA regarding a site management agreement. The Licensing Committee recommended that talks take place and the report that follows details the results.

## 2.0 Report

- 2.1 Following discussions with PFRA Outreach Officer site visits were arranged so that PFRA representatives could see the areas that may be covered by a site agreement and also understand the expectations of East Herts Council.

- 2.2 After the site visits a draft Site Management Agreement (SMA) was drafted and emailed to Officers for their opinion. This first draft of the site agreement is attached to this report as **Essential Reference Paper 'B'**.
- 2.3 Having viewed this document and forwarded it to the Chairman of the Licensing Committee a number of changes to the first draft were suggested:
- That the numbers of collectors permitted at each location be limited to 4. This was viewed as a suitable amount of collectors to achieve the charities objectives without causing the issues detailed in paragraph 1.6 above.
  - To add the wording 'using pathways on both side of the road' to the description of positioning of collectors to ensure collectors are spaced out.
  - That the frequency be limited to three specific days, Tuesday, Wednesday and Thursday only rather than 3 visits a week as detailed in the first draft. This was suggested as it would be fairer to the charities wishing to book cash collections, many of which like to book days well in advance. If we were only provided with the PFRA bookings three months in advance then we would not know what days would be free beyond that period so could not issue street collection permits beyond those days.
- 2.4 Two questions were asked for clarification on other parts of the SMA for clarification:
- In paragraph 3.2 of the draft SMA it states that the reasonable distance between fundraisers is approximately 3 metres. Officers asked if this was a standard distance to all SMA's as it would mean all 4 fundraisers could be concentrated within a 12 metre section of pavement. The PFRA stated that this was standard to all SMA's and that it was rare for fundraisers to stand this close to each other when actively collecting and would generally only happen when new fundraisers were being trained or assessed. They stated that it is not of benefit to fundraisers to operate too closely as it limits the number of people they can interact with and can cause annoyance to the public.
  - In paragraph 4.2 it states that copies of the diary bookings will be made available to the nominated officers. Officers asked how will this be done in practice and how often? Will there be access online at any time? Can the diary be

published on the East Herts website? The answers given were that booking would be provided to East Herts 3 months in advance and that these details could be published on our website. The PFRA are moving towards the introduction of a live online diary that can be accessed by the public but that the date for completion is not yet known.

- 2.5 The PFRA then took the amended agreement away for discussion with their members who include both charities and the professional agencies that most fundraisers use.
- 2.5 Following these discussions the PFRA came back with a second draft SMA which can be found at **Essential Reference Paper 'C'**. This SMA contained all the changes requested which had been agreed by the PFRA members but also requested that Sawbridgeworth and Buntingford be removed from the agreement. The reasons given for this were that the PFRA members did not want to collect in these locations so the PFRA's policy was to not include such areas in an SMA.
- 2.6 It is this second draft SMA that Officers would like the Licensing Committees to consider.
- 2.7 There are a number of benefits to the signing of the SMA to East Herts Council, the public and the charities themselves.
- 2.8 East Herts Council currently tries to control the numbers and locations of Direct Debit fundraisers by issuing street collection permits. There is no fee for the issuing of a permit and Officer time is used issuing unenforceable paperwork and dealing with numerous enquiries each day. For example if a Direct Debit Fundraiser calls the Licensing Section about particular dates that Officer has to look at the street collection diary and see if the time and location are free. If they aren't then there may be a long discussion about other possible dates. Once dates are provisionally booked and the request is confirmed in writing by the fundraiser an Officer has to update the diary and then issue the permit. A great deal of the valuable Officer time would be saved if all Direct Debit bookings went through the PFRA.
- 2.9 The current regime is unenforceable so that when a complaint is received the Enforcement Team has to explain the situation to the public. Sometimes they have visited locations and attempted to move fundraisers on where they are in a location where another charity is making cash collections. If a Direct Debit fundraiser

turns up with 10 collectors there is currently little that can be done. This does little to inspire confidence with the public. If the SMA were to be signed then any issues with a Direct Debit fundraiser could go via the PFRA and they have the ability to take action under their 'Penalty and Compliance Regime'. This would save the time of Licensing Enforcement Officers and give the public a route of complaint for any issues.

- 2.10 All the members of the PFRA have to follow their 'Rules and Codes' and comply with the best practice laid down in the Institute of Fundraising's 'Code of Fundraising Practice'. This includes things like:

*If a person clearly and obviously indicates – by words or gestures – that they do not wish to be engaged by a fundraiser – either at the initial approach or during a conversation/engagement – the fundraiser should desist from the engagement and make no further attempt to engage that person.*

If a member of the public reported a Direct Debit collector in breach of these that could be referred to the PFRA for action under the 'Penalty and Compliance Regime'.

- 2.11 Members of the public could look on the East Herts website and see which charities should be in a particular location on any given date. Similarly other fundraisers would be able to look and see which days were free at least 3 months in advance without having to contact the Licensing Section.
- 2.12 Fundraisers, both of cash and Direct Debits, would be likely to have improved responses as the perception of the areas being flooded with collectors would be lessened. This would minimise instances of two charities turning up in the same location on the same day.
- 2.13 If the agreement is signed there would be a lead time of up to 8 weeks before the agreement could be fully implemented. Work would have to be carried out by the Licensing Section to ensure that those days that have already been booked but would fall under the SMA are not double booked. The agreement has reviews written in to it at 6 months and 12 months so that both East Herts Council and the PFRA can ensure that it is operating correctly and so any changes deemed necessary can be examined.

2.14 If the SMA did not work out as planned either party could withdraw after giving 3 months' notice in writing.

### 3.0 Implications/Consultations

3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

#### Background Papers

<http://www.pfra.org.uk/>

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