

## Agenda Item 6

**Licensing and Enforcement Sub Committee**

**15 December 2009**

**Report Reference**



### **House to House Collection Application Intersecond/Do Not Delay (Breast Cancer Prevention Programme)**

#### **Summary**

A house to house collection application has been made by Raimondas Biguzas of Intersecond Ltd on behalf of Do Not Delay, a cancer prevention programme registered in Lithuania. The application is for the collection to take place over the whole of the District. This report outlines the application, documents supplied and relevant legislation in order that an informed decision can be made as to whether it will be granted or refused.

#### **Recommendation**

**That the house to house application by Raimondas Biguzas on behalf of Intersecond is considered and either granted or refused taking into consideration the House To House Collections Act 1939 and House to House Collections Regulations 1947 which is the relevant legislation applicable to this type of collection**

#### **a) Reasons for Recommendation**

To ensure that house to house collections in the East Devon area are carried out properly and in compliance with the relevant law.

#### **b) Alternative Options**

That the house to house collection application is granted or refused

#### **c) Risk Considerations**

#### **d) Policy and Budgetary Considerations**

#### **e) Date for Review of Decision**

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### **1. Main Body of the Report**

1.1 The House-to-House Collections Act 1939 together with the House-to-House Collections Regulations 1947 as amended are the appropriate legislation covering the type of charitable collection for which permission is sought.

1.2 The legislation referred to in the previous paragraph prohibits the making of house to house collections except under a licence issued by the licensing authority of the area in which the collection is to take place. (Sec 2(3) There is also power vested in the Secretary of State to

grant orders for exemptions for house to house collections in respect of a substantial part of the country. No order has been issued in respect of this applicant. No guidance is issued as to what is a “substantial part of England”.

- 1.3 The collection must be for a charitable purpose. For the purposes of the Act “charitable purpose” means any charitable, benevolent or philanthropic purpose, whether or not the purpose is charitable within the meaning of any rule of law.
- 1.4 The person promoting or proposing to promote a collection must apply to the Council for a licence. The licence can be granted for up to twelve months. However, if the Council thinks it would make life easier to have all house-to-house collection licences expiring together in the case of annual collections, or collections that take place over longer period, the Authority can grant a licence for a period shorter than twelve months or for a period of up to eighteen months.
- 1.5 Section 2(3) of the House to House Collections Act 1939 provides the Council with the ability to refuse to grant a licence or revoke it if it appears:
  1. The amount to be applied to charitable purposes is inadequate in proportion to the total likely to be collected;
  2. In relation to the total amount collected an excessive remuneration is likely to be paid to a person or persons;
  3. The grant of a licence will be likely to facilitate an offence under Section 3 of the Vagrancy Act 1924, i.e. begging;
  4. The person applying for a licence is not fit and proper because they have been convicted of offences of assault, robbery, blackmail, burglary, offences under Section 5 of the Police Factories, etc., (Miscellaneous Provisions) Act 1916 and certain offences in Scotland;
  5. The fact that the person applying for a licence or the holder of a licence has failed to exercise due diligence to ensure that all collectors were fit and proper people or failed to ensure that collectors complied with the provisions or regulations made under the Act, or failed to stop badges and certificates being obtained by unauthorised individuals;
  6. The applicant or holder of a licence has not given the Council such information as the authority reasonably required for the purpose of informing themselves of any other matters referred to in paragraphs 1 to 5.
- 1.6 A House to House collection application was made by Intersecond for dates in 2009 but was returned for more information to be provided by the applicant
- 1.7 On 30 November 2009 East Devon District Council received a revised application for a House to House collection (**Appendix A**) from a firm called Intersecond Ltd who operate from Unit 12 Clipper Park Industrial Estate, Thurrock Park Way Tilbury. The application was from a Raimondas Biguzas, to collect for “Do not delay”/“Azzara” a breast prevention programme which operates as a Public Institution Company number 124013046 in Vilnius Lithuania. The proceeds of the collections going to the **Do Not Delay charity in Lithuania**.
- 1.8 The collection dates are for various dates in 2010 commencing 11 to 15 January 2010 and is made by way of bags and leaflets being left on house doorways on a given day in the area. These are collected at a later date. The clothes are then sold or re cycled for money.
- 1.9 The company produced a copy of the agreement between themselves and Do Not delay/Azzara (**Appendix B**). Amongst other contractual obligations in the document the company Intersecond agree to pay Do Not Delay at **least £3000** a month, every month during the validity of the contract.
- 1.10 They also produced an extract from a banking group called Nordea (**Appendix C**) showing that on 30 July 2009 a payment had been

made to Azzara for £3000. Research on the internet shows Nordea as a Nordic bank with a claimed 10 million customers and 1,400 branch offices.

- 1.11 A request was made by the Licensing Office for further details of how much was donated to the charity and an invoice collection summary was supplied by Intersecond (**Appendix D**) indicating that during the period **1 April 2008 – 31 March 2009** a total income of **£108,668.98** was collected with total expenses for collections shown as **£94,668.69**. This document also shows a charitable donation of **£12,600**. The collection summary needs to be read in full to obtain the overall picture.
- 1.12 It is not clear from the accounts extract whether the amounts collected are from local or national collections, or if the amount used for expenses, for example the **£60,867.20** (for the cost of bags) relate to national or local collections.
- 1.13 It also appears that there is only a minimum guarantee of £3,000 per month to the Do Not Delay breast cancer prevention programme and therefore any amount can be earned by the company as long as the minimum donation is made to the programme. In an email (**Appendix F**) the applicant makes the point that the total income received from sales should not be regarded as the profit the company makes. The email explains that the profit the company makes is the total income minus the company's expenses. The company then donate 90% of their profit to charity. However company's expenses appear excessively high in comparison to the amount of profit shown by the company. For example in (**Appendix D**) the total income is shown as £108,668.97 but the expenses just for the supply of bags totals £60,867.20. **Appendix D** was forwarded to the Council with a letter (**Appendix G**) dated the 16 November. This letter attempts to further explain the company's manner of operation and tries to explain the reasons for the high company costs. This letter appears to blame high staff costs however **Appendix D** shows that the cost of bags is approximately 3 times the staff costs for the three months that the account sheet purports to cover.
- 1.14 Whilst preparing this report it has not been possible to find any guidance on the amount that has to be paid to the charity. Nor it appears is there any case law that is able to provide assistance. Therefore it is a matter for the Sub Committee's judgement to decide if the amount to be applied to charitable purposes is adequate or inadequate in proportion to the total likely to be collected.
- 1.15 Intersecond has also produced documentation to suggest that they have joined the Institute of Fundraising (**Appendix E**). The Institute has produced a code of practice to explain the mandatory requirements and advise on best practice. It is intended to address fundraising activity throughout the UK but this membership does not cover the company "Do Not Delay/Azzara. This company is from Lithuania, and does not appear to be registered with the Institute of Fundraising. Additionally the Institute appears only to be an advisory body with no regulatory powers.
- 1.16 A letter dated 25 November 2009 was received with the house to house application form stating that there were no more documents (including financial) that the company could send in support of its application. (**Appendix H**). As explained later in this report this was incorrect as further documentation has since be supplied.
- 1.17 On 1 December 2009 the Council again corresponded with the company to try to obtain a clearer picture of the company's accounts. An email was received in reply from them (**Appendix K**). Accompanying the email was the following documents:
  - (i) statements of accounts from the Nordea Banking group making payments to Azzara in April 2009 for £3000.00 (**Appendix L**)
  - (ii) a payment to Azzara on 1 June 2009 for £3000.00 (**Appendix M**)
  - (iii) a repeat of a previous Nordea bank payment of £3216.18 to Azzara on 30 July 2009 (**Appendix N**)

The correspondence also stated that the initial contract with the Do Not Delay/Azzara scheme started in 2007 and the minimum payment has gradually increased, and as from September 2009 the payment will be £5000.00 a month.

- 1.18 All efforts to raise money for charity and good causes are obviously to be applauded, but they must be conducted in a manner complying with the legal frame work, in this case the House to House Act 1939 governs the house to house collections procedure. There are three areas of concern in relation to this application:
- (a) The amount to be applied to charitable purposes is thought to be inadequate in proportion to the total likely to be collected.
  - (b) In relation to the total amount collected an excessive remuneration is likely to be paid to an individual.
  - (c) The applicant or holder of a licence has not given the Council such information as the authority reasonably required for the purpose of informing themselves of any other matters as listed in paragraphs 1.5 items 1 - 6 above.

The company only guarantee £3000.00 (or £5000.00 as from September 2009) per month to the charity and therefore can receive any amount of money from the collection/sale of clothes, and from the limited accounts they have shown (bank statements for April June and July 2009) it appears that this is the amount that they pay to the Charity in Lithuania, but the earning potential has no ceiling, with the only obligation to pay at least £3000.00 to the charity (£5000.00 from September 2009)

This also could mean that (b) above is breached as there appears to be no top limit to the amount potentially to be collected.

In relation to (c) above the company has only produced limited bank statements as mentioned above, and a spread sheet from the Intersecond company from 1.4.09 to 31.3.09 which is only an extract. None of these statements or accounts have been certified.

- 1.19 There has been some research into this company by the licensing office and it appears that some authorities have issued licences whilst others have refused applications. Enquiries so far have revealed 2 authorities who have refused a licence to this company. They are:
- (a) South Somerset District Council refused at officer level without a committee hearing as the charity did not benefit local residents.
  - (b) East Northamptonshire Council as there was not enough information supplied in relation to the collections.

- 1.20 Should the applicant be dissatisfied with the outcome of the hearing they may appeal the decision to the Secretary of State at the Home Office. They will have 14 days to do this from the date they receive the notice of the Sub Committee's decision. The decision of the Secretary of State is final with no further avenue of appeal. Should the Sub Committee be minded they can refuse this application on any of the grounds listed in **Para 1.5 items 1- 6**. If this course of action is followed the Sub Committee must give its reasons in writing along with details of the right to appeal.

- 1.21 Again on 1 December 2009. After a further request for information, 3 extracts from the Nordea Bank group were sent, **Appendix O, P and Q** showing that the company had paid £5000.00 to Azzura for the period September to November 2009, an accompanying e mail **Appendix R** stated that everything had been sent to us and that they had 33 licences obtained so far, and that "a quarter of the documents that you received were always enough for a Council to make a decision." The figures in relation to how many licences have been issued by other Authorities, has not been verified, it is not known how much information has been supplied to other authorities before a decision has been made as to the granting of a licence. it appears that there is not as much information supplied to other Authorities as East Devon has requested, before a decision is made.

1.21 Should any more information be provided by Intersecond then it will be made available on the date of the committee meeting.

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### **Legal Implications**

The legal implications are as outlined in the report.

### **Financial Implications**

There is no licence fee charged for House to House Collections, therefore no income implications. There are also no identified costs involved if the applicant goes to appeal.

### **Background Papers**

- ❑ House to House application Raimondas Biguzas on behalf of Intersecond/Do Not Delay - **Appendix A**
- ❑ Agreement copy between Intersecond and Do Not Delay - **Appendix B**
- ❑ Nordea banking group extract dated 30/7/09 **Appendix C**
- ❑ Collection Summary by Intersecond 01/04/2008 to 31/03/2009 - **Appendix D**
- ❑ Proof of membership by Intersecond of the Institute of Fundraising. - **Appendix E**
- ❑ Correspondence from Intersecond dated 19 November 2009 - **Appendix F**
- ❑ Correspondence from Intersecond dated 16 November 2009 - **Appendix G**
- ❑ Correspondence from Intersecond dated 25 November 2009 - **Appendix H**
- ❑ Correspondence to Intersecond dated 1 December 2009 - **Appendix J**
- ❑ Correspondence from Intersecond dated 1 December 2009 - **Appendix K**
- ❑ Bank statement from Nordea Bank dated 27/4/2009 - **Appendix L**
- ❑ Bank statement from Nordea Bank dated 1/6/2009 - **Appendix M**
- ❑ Bank statement from Nordea Bank dated 30/7/2009 - **Appendix N**
- ❑ Bank statement from Nordea Bank dated 29/9/2009 **Appendix O**
- ❑ Bank statement from Nordea Bank dated 3/11/2009 **Appendix P**
- ❑ Bank statement from Nordea Bank dated 30/11/2009 **Appendix Q**
- ❑ Correspondence from Intersecond dated 1/12/2009 **Appendix R**

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Douglas Jackson Ext. 2611  
Licensing Officer

Licensing and Enforcement Sub Committee  
15 December 2009