



# Policy statement

## Charity bag fraud and theft

### Introduction

House to house collections of donated goods are a crucial source of income for many charities and a popular way for the public to donate.

However, charities like the British Heart Foundation are increasingly the victim of charity bag theft, with organised crime gangs targeting bags of second hand clothes left out on the pavement for charities to collect. Some criminals are also setting up their own unregistered or fake charities to mislead people into making donations using fraudulent charity bags.

In 2011/12 BHF shop staff reported 241 incidents of theft of donated goods from doorsteps but we believe that this is only the tip of the iceberg.

### Policy statement

The BHF welcomes the action taken by the police to investigate and prevent charity bag theft and fraud. The sentencing for those caught committing such offences should reflect the detrimental impact that these activities have on the work of charities, and the harm that could be caused to the public's willingness to donate.

- The Sentencing Council for England and Wales should include the harm to charities and philanthropy as an aggravating factor in sentencing guidance on theft and fraud
- In Northern Ireland, the harm done to charities should be included as an aggravating factor in the sentencing guidelines on theft and fraud
- In Scotland, the forthcoming Sentencing Commission should look to incorporate this into new guidance on theft and fraud

Government agencies and regulators should continue to provide information to householders about how to ensure that their donations are going to genuine charities.

Charities like the British Heart Foundation also have a vital role to play in informing the public about measures they can take to help tackle these crimes, including checking the details on the bag before donating, not leaving bags out for a long period before they are collected and donating direct to charity shops.

## Background

House to house collections of donated goods are a crucial source of income to many charities. In 2011/12 BHF charity shops raised over £31.2million and our standard shops sales value was £98.4m, with 36% of sales income from goods donated through house-to-house collections. In a recent survey half of people who had received a bag from a charity collecting house to house collections donated cash or goods<sup>1</sup>.

In recent years, there has been an increase in the commercial value of the used textile trade, with many clothes collected in the UK being sold abroad for profit. The global second hand clothing business is estimated to be worth in excess of £620million \$1billion per annum<sup>2</sup>. This may have prompted the increase in attempts to steal charity bags awaiting collection or to hoodwink the public into making donations using fraudulent charity bags. Stolen charity bags and fraudulent collections cost UK charities an estimated £15million a year<sup>3</sup>.

### **Regulation of house to house collections**

In England and Wales charity house-to-house collectors are required to obtain a license from the local authority to carry out a house-to-house collection, or to obtain a National Exemption Order from the Cabinet Office<sup>4</sup>. In Northern Ireland, charity collectors are required to apply for a license from the local police station; exemptions can be sought from the Department for Social Development<sup>5</sup>.

In England, Wales and Northern Ireland, commercial companies collecting goods on behalf of charities are required to make a 'solicitation statement'. This provides donors with information including which causes will benefit from the collection and how much of the proceeds go to charity<sup>6</sup>.

In Scotland, there are currently no legal regulations relating to house-to-house collections of goods. However, new measures were included in the Public Benevolent Collections Regulations passed in 2011. Consultation on the regulations is expected during 2012<sup>7</sup>.

### **The law on theft**

Theft is defined as dishonestly appropriating property belonging to another with the intention of permanently depriving the other of it<sup>8</sup>.

In April 2012, the Crown Prosecution Service in England and Wales issued new guidance on theft offences which included clarification relating to the theft of charity bags. The guidance states that if items of property are left for the benefit of a

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<sup>1</sup> Charity Retail Association (2012) *Consumer Research Report*

<sup>2</sup> Presentation given by Andy Foster, Director of Operations at the Trading Standards Institute at September 2011 symposium <http://www.frsb.org.uk/cymraeg/news/events-2/clothes-collection-symposium/>, business is worth \$1billion, equating to £620million.

<sup>3</sup> <http://www.frsb.org.uk/english/give-with-confidence/where-we-can-help/scam-alert/>

<sup>4</sup> <http://www.cabinetoffice.gov.uk/voluntary-sector/charity-law-regulation/public-charitable-collections.aspx>

<sup>5</sup> House-to-House Charitable Collections Act (NI) 1952, and the Regulations made under that Act; see also Department for Social Development, *Northern Ireland Charities, A Guide for Trustees*, 2007

<sup>6</sup> Charities Act 2006, and Charities Act (Northern Ireland) 2008

<sup>7</sup> <http://www.scotland.gov.uk/Topics/People/15300/charities/CurrentLegislation/FutureImplementations>

<sup>8</sup> Theft Act 1968 <http://www.legislation.gov.uk/ukpga/1968/60/crossheading/definition-of-theft> Although the act does not cover Scotland, the common law definition in Scotland is the same

particular charity then the property has not been abandoned and it still belongs to the householder until collected. Removal of bags before charities can collect them should therefore be treated as theft. The guidance also notes that the prosecution of such cases is generally in the public interest as this interferes in the relationship between members of the public and the causes they wish to donate to<sup>9</sup>.

### ***The law on fraud***

Fraud is an intentional deception for personal gain. Covering England, Wales and Northern Ireland the Fraud Act 2006 defines three new ways of committing fraud – false representation, failing to disclose information and abuse of position. In terms of false representation, the Act introduced a two stage test to determine whether a fraud has been committed – firstly whether a defendant’s behaviour would be regarded as dishonest by the ordinary standards of reasonable and honest people and, secondly whether the defendant was aware that their conduct was dishonest and would be regarded as such by reasonable and honest people<sup>10</sup>. The act needs to be committed with the intention of personal gain or causing loss to another party.

In Scotland, fraud is defined through common law and has three elements. There must be false representation in speech, writing or conduct as well as an intention to deceive and action must be taken with the intention of personal gain or causing loss to another party<sup>11</sup>.

### ***How the law is enforced***

The police are aware of the proliferation of charity bag fraud and theft and are taking some action to address this. Some of these offences are opportunistic and one off but the police believes that the majority of this activity is taking place through organised gangs and international criminal networks<sup>12</sup>. There has been one high profile conviction for this type of theft, resulting in custodial sentences<sup>13</sup>.

The **National Fraud Intelligence Bureau**, hosted by the City of London Police, collates and analyses fraud crime and intelligence nationally. In April 2011 the bureau set up a charity desk where intelligence about bogus and stolen collections (amongst other charity related fraud) is channelled and acted upon. The desk is supported by staff from charities and commercial organisations like Clothes Aid<sup>14</sup>.

City of London Police Commander Ian Dyson has said:

“Investigating this type of criminality is a major priority for the City of London Police, and those who continue to offend should expect our officers to come calling sometime soon”<sup>15</sup>

Commissioner of City of London Police Adrian Leppard has said:

“Charity bag fraud is an emerging threat that is making organised crime gangs millions of pounds by exploiting society’s goodwill and stealing from those helping the most vulnerable in society.”<sup>16</sup>

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<sup>9</sup> [http://www.cps.gov.uk/legal/s\\_to\\_u/theft\\_act\\_offences/index.html](http://www.cps.gov.uk/legal/s_to_u/theft_act_offences/index.html)

<sup>10</sup> Fraud Act 2006 <http://www.legislation.gov.uk/ukpga/2006/35/notes/division/5>

<sup>11</sup> <http://www.police-information.co.uk/legislation/legislationindexsco.html#fraud>

<sup>12</sup> <http://www.nfib.police.uk/major-strike-against-charity-bag-fraud.html>

<sup>13</sup> <http://www.bbc.co.uk/news/uk-england-london-14858399>

<sup>14</sup> [http://www.nfib.police.uk/nfib-targets-charity-bag-fraud.html?searched=charity+desk&advsearch=oneword&highlight=ajaxSearch\\_highlight+ajaxSearch\\_highlight1+ajaxSearch\\_highlight2](http://www.nfib.police.uk/nfib-targets-charity-bag-fraud.html?searched=charity+desk&advsearch=oneword&highlight=ajaxSearch_highlight+ajaxSearch_highlight1+ajaxSearch_highlight2)

<sup>15</sup> <http://www.nfib.police.uk/major-strike-against-charity-bag-fraud.html>

**Trading Standards** also have a potential role to play in tackling charity bag fraud and theft under the Consumer Protection from Unfair Trading Regulations 2008 Act<sup>17</sup>. The regulations aim to ensure that businesses act honestly and fairly towards their customers and that consumer behaviour is not affected by misleading practices. The Trading Standards Institute – the professional association for trading standards officers - has created an enforcement toolkit to give a quick reference guide to the legal issues around tackling this problem. The toolkit should enable enforcement officers to take swift action<sup>18</sup>.

## **Sentencing**

In **England and Wales**, the Sentencing Council was established in 2009 to improve transparency and consistency in sentencing<sup>19</sup>. One of the functions of the council is to produce sentencing guidelines and monitor their use. The guideline on theft in breach of trust links sentencing to the value of the goods stolen, stating that the starting point for theft of less than £2000 is a community order while the starting point for theft of less than £2000 in breach of a high degree of trust is 18 weeks custody<sup>20</sup>

In **Scotland**, courts decide on the most appropriate sentence in each case within the limits provided by the Scottish Parliament. Each case is unique and the courts have a range of penalties available to them. There are plans to create a new sentencing commission in Scotland which will promote consistency in sentencing and produce sentencing guidelines which will need to be approved by the High Court<sup>21</sup>.

In **Northern Ireland**, courts sentence offenders considering all the facts of the case and every offence has a maximum sentence set in law. The starting point for theft for a single offence committed by a first time offender is three months in custody. The maximum penalty that can be imposed in a magistrate's court is twelve months imprisonment or a £5,000 fine, or both<sup>22</sup>. The aggravating factors applied to sentencing include the value of the loss, the impact on the victim and suspicion deliberately thrown on others<sup>23</sup>.

## **Information for the public**

There are a number of sources of information to support householders in making donations to genuine charities.

In 2010, the **Cabinet Office** launched the *Give with Care* campaign to help the public in England identify fraudulent or bogus collections. Leaflets and posters provided information about what to look out for in order to identify genuine and bogus collectors. This information is also provided in *Doorstep Collection – Making an Informed Choice*, produced jointly by the Charity Commission for England and

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<sup>16</sup> [http://www.nfib.police.uk/national-strategy-to-fight-charity-bag-fraud.html?searched=charity&advsearch=oneword&highlight=ajaxSearch\\_highlight+ajaxSearch\\_highlight1](http://www.nfib.police.uk/national-strategy-to-fight-charity-bag-fraud.html?searched=charity&advsearch=oneword&highlight=ajaxSearch_highlight+ajaxSearch_highlight1)

<sup>17</sup> <http://www.offt.gov.uk/business-advice/treating-customers-fairly/protection>

<sup>18</sup> <http://www.tradingstandards.gov.uk/policy/enf-toolkit.cfm>

<sup>19</sup> The council was set up as a provision in the Coroners and Justice Act 2009

<sup>20</sup> [http://sentencingcouncil.judiciary.gov.uk/docs/web\\_Theft\\_and\\_Burglary\\_of\\_a\\_building\\_other\\_than\\_a\\_dwelling.pdf](http://sentencingcouncil.judiciary.gov.uk/docs/web_Theft_and_Burglary_of_a_building_other_than_a_dwelling.pdf)

<sup>21</sup> Provision for the creation of this new body was included in the Criminal Justice and Licensing (Scotland) Act 2010 <http://www.scotland.gov.uk/Topics/Justice/legal/criminalprocedure/17305/Responses>

<sup>22</sup> There is a higher maximum penalty of up to ten years imprisonment if the crime is tried as an indictable offence

<sup>23</sup> <http://www.jsbni.com/Publications/sentencing-guides-magistrates-court/Documents/Templates/Theft-Breach%20of%20Trust.pdf>

Wales, OSCR, and the Department for Social Development in Northern Ireland<sup>24</sup>. In 2011, the Institute of Fundraising Scotland and the Fundraising Standards Board ran an awareness campaign urging the public to be careful with their donations<sup>25</sup>.

The **Charity Retail Association** has developed an online reporting tool on their website to gather reports of charity bag fraud and theft from their members. This collates information on criminals stealing legitimate collection sacks from outside peoples' homes or fake companies and fake charities deceiving the public with collection materials that look like they are from a genuine charity. The Association then share this information with the police<sup>26</sup>

The **Charity Commission** only has a role to play with regard to fraud within genuine charities where this leads to mismanagement e.g. embezzlement of funds by an employee or volunteer. The responsibility to protect a charity from abuse lies with the trustees. However, the Charity Commission does offer advice on their website to the public about how to check whether collections are genuine<sup>27</sup>.

**Action Fraud**, an organisation providing advice and information about fraud to the public, have produced an advice leaflet about charity donation fraud, which includes reference to people using unregistered charities to collect donations<sup>28</sup>.

There are a number of **kite marks** used by genuine charities, including the Code of Charity Retailing logo from the Charity Retail Association and the Fundraising Standards Board 'tick' logo to let the public know they can give with confidence.

### ***BHF activity***

- We will seek to amplify our policy call on bogus charity collections in the September 2012 *Big Donate* campaign, engaging the media, parliamentarians, BHF shops and BHF campaigners.
- We will continue to work with the Charity Retail Association and other organisations on tackling this issue, as opportunities arise

For more information contact [policy@bhf.org.uk](mailto:policy@bhf.org.uk)

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<sup>24</sup> [http://webarchive.nationalarchives.gov.uk/+http://www.cabinetoffice.gov.uk/third\\_sector/news/news\\_stories/10-02-12\\_givewithcare.aspx](http://webarchive.nationalarchives.gov.uk/+http://www.cabinetoffice.gov.uk/third_sector/news/news_stories/10-02-12_givewithcare.aspx)

<sup>25</sup> <http://www.fundraising.co.uk/news/2011/09/25/scottish-consumers-warned-bogus-charity-bag-collectors>

<sup>26</sup> [http://www.charityretail.org.uk/theft\\_bogus\\_form.html](http://www.charityretail.org.uk/theft_bogus_form.html)

<sup>27</sup> [http://www.charitycommission.gov.uk/About\\_us/Contacting\\_us/p\\_brief\\_Charity\\_Fraud.aspx](http://www.charitycommission.gov.uk/About_us/Contacting_us/p_brief_Charity_Fraud.aspx)

<sup>28</sup> <http://www.actionfraud.org.uk/sites/default/files/Charity%20donation%20fraud.doc.pdf>