

SALE OF SECOND HAND GOODS BY LIONS CLUBS

1. A number of queries have been received regarding the legal position of a club which sells used goods as part of its Fundraising Activities with particular reference as to whether or not it is affected by Safety Regulations made under the Consumer Protection Act.

2. **To whom does the Act apply?**

The safety regulations apply only when a person supplies goods in the course of a business. The relevant section of the Act goes on to say that it is immaterial whether the business is a business dealing in the goods in question.

3. **So how does this apply to a Lions Club, which is not generally regarded as a business?**

I am afraid that the fact that the activity is a charity event does not prevent it being a business - a 'profit' is made from the sale of goods and it is irrelevant that the individuals running the activity do not receive the money. There is also legal authority which says that profit, or the intention to make profit, is not an essential part of the legal definition of a trade or business!

4. **How then do we decide whether an activity will be regarded as "in the course of a business"?**

It seems a generally accepted view that the simple distribution of goods by a Lions Club free of charge or at a nominal charge only to needy persons would not constitute a business activity. However, when a charge is made for goods with a view to raising funds, this may well bring it within the scope of the definition. All the circumstances of the activity will have to be considered in each individual case before a view could be taken. Considerations would include the scale of the activity, how it is organised and the frequency of the activity.

Further guidance can be obtained from case law which indicates that carrying on a business denotes something of a permanent character, not merely an isolated transaction. There is also authority however which says that there may be long periods of inactivity in the

running of the business.

In the case of an annual event therefore, it could be argued that each are separate activities and thus not regarded as a business. It could equally be argued however that they are a permanent annual event which would be covered by the regulations. Each case would have to be considered individually, there being no clear answer to cover all situations - just the sort of law that keeps us lawyers in business!

By way of further example, from the point of view of charities there are probably 2 extremes - from the Charity shop in the High Street to the one-off jumble sale. The first example is clearly a business even though the profit goes to charity, the second example would probably not be.

5. **So what should a Lions Club do?**

It can be seen from the above that the legal position is not certain in every case. However, safety regulations are there to protect the public. I would recommend that all Lions Clubs operate such activities as if the regulations did affect their activity. Safety of the public must be of paramount importance and I am sure that no Lions Club would wish to have an injury, or worse, on its conscience if it occurred as a result of defective or unsafe goods sold by the club.

Furthermore, irrespective of the safety regulations, there is always the possibility of civil action against a club if it sold defective or dangerous goods.

6. **What do the regulations cover?**

The safety regulations cover numerous goods. The following examples cover some of the most common articles sold, but is by no means an exhaustive list. Similarly, the list of checks highlights the main areas, but cannot cover everything and the appropriate safety regulations can change. The responsibility for enforcing the regulations rests with the Trading Standards department of your County Council, Metropolitan District, London Borough or, in Scotland, Regional Council and Clubs are strongly advised to seek guidance from them. Most Trading Standards Officers will welcome an approach.

6.1 **Toys.**

Since 1990 all new toys must carry a CE logo to show they meet EC Safety standards. However, this may be placed on the packaging which is not always available on a second hand sale. Second hand toys which carry a CE mark on them will give an indication that they comply with safety regulations, but should still be checked for damage/completeness. Toys must be checked to ensure they are sufficiently strong to withstand normal stress, that edges, cords, movable parts etc. do not cause injury, that they do not present a risk of strangulation or suffocation, that ride-on toys as far as practical have easy to use braking system, that projectiles fired from toys are designed to prevent injury, that they are composed of materials which are not readily flammable and that toys for children under 36 months do not have parts that may be swallowed or inhaled.

6.2 Furniture and Furnishings.

This includes furniture, beds, headboards, mattresses, cushions, pillows and similar items. These can now only legally be sold if they comply with the same fire-resistance requirements that are applicable to new furniture. The simple way to check is to look for the appropriate label confirming compliance. If there is no label, then check if it was manufactured after 1989. If you are unsure, do not sell it.

Bunk beds have to comply with regulations covering the gaps in the mattress base, rails, headboard, ladders etc. to prevent a child becoming trapped.

6.3 Electrical Items

Electrical items must be safe when connected to an electricity supply. This includes the equipment, cables etc. All such items should be checked by a qualified electrician before being offered for sale.

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November 1994