

## CABINET

24 September 2013

<b>Title:</b> Delegation of Enforcement Powers for Regulating Illegal Money Lending Activity	
<b>Report of the Cabinet Member for Crime, Justice and Communities</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> All	<b>Key Decision:</b> Yes
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<b>Accountable Divisional Director:</b> Robin Payne, Divisional Director Environment Services	
<b>Accountable Director:</b> Darren Henaghan, Corporate Director Housing and Environment	
<b>Summary:</b> <p>This report seeks Cabinet approval for Barking and Dagenham Council to authorise Birmingham City Council for its specialist Illegal Money Lending Team (IMLT) to investigate illegal money lending activity within the Borough and institute legal proceedings on behalf of this Council against illegal money lenders (loan sharks).</p> <p>This proposal, if agreed, will add to Birmingham City Council's resources and will enable Barking and Dagenham Trading Standards Service to have access to a team of highly trained experts from the IMLT. The proposal will also support performance of the Council's duty in relation to enforcement of the provisions of the Consumer Credit Act 1974.</p>	
<b>Recommendation(s)</b> <p>The Cabinet is recommended to agree:</p> <ul style="list-style-type: none"><li>(i) To delegate the Council's enforcement functions in respect of Part III of the Consumer Credit Act 1974 to Birmingham City Council and powers of prosecution for any matter associated with or discovered during an investigation by Birmingham City Council's Illegal Money Lending Team, pursuant to Section 101 of the Local Government Act 1972, Regulation 7 of the Local Authority (Arrangements for Discharge of Functions) (England) Regulations 2000 and Section 13 (7) of the Local Government Act 2000; and</li><li>(ii) The 'Protocol for Illegal Money Lending Team Investigations' as set out at Appendix A and to authorise the Corporate Director of Housing and Environment, in consultation with the Head of Legal and Democratic Services, to enter into the agreement with Birmingham City Council for its Illegal Money Lending Team to undertake the work in the Borough.</li></ul>	

## **Reason(s)**

This area of law enforcement requires specialist resource, expertise, techniques and facilities which Barking and Dagenham Trading Standards Services would not otherwise have access to. Members of the IMLT include officers with high-level training and expertise in surveillance techniques as well as security operations. The team includes, amongst others, ex police officers and security services personnel.

### **1. Introduction and Background**

- 1.1 The primary legislation governing the consumer credit industry is the Consumer Credit Act 1974. The Trading Standards Service enforces this in each Local Authority area. The Act is based on a licensing system and all consumer credit and consumer hire businesses operating in the UK (with certain exemptions) must possess an appropriate licence issued by the Office of Fair Trading (OFT). The OFT must be satisfied that an applicant for a Consumer Credit Licence is a fit and proper person before issuing that person with a licence to trade.
- 1.2 To operate a consumer credit business without being licensed is a criminal offence and carries a maximum penalty of £5,000 and/or up to two years imprisonment. Licences can be revoked where it can be established that the licensee has acted inappropriately. Warnings and conditions can be added to the licence where necessary. Illegal money lending covers a range of activities, from persons that are actually licensed but are acting unlawfully, to the extreme of a person offering cash loans without being licensed at all (Loan Sharks). Loan Shark activity is characterised by deliberate criminal fraud and theft, with extortionate rates of interest on loans that mean borrowers face demands for payment of thousands of pounds more than they borrowed and can often never pay off the loans. Borrowers who fail to pay or refuse to pay are subject to intimidation, theft, forced prostitution and other, extreme physical violence.
- 1.3 An Illegal Money Lending Team was established within Birmingham Trading Standards as a pilot project in England, one of only two in Great Britain; the other pilot area being Glasgow – covering Scotland. The remit of the team is to investigate illegal money lending activity, establish if a problem exists and, if so, bring to justice those persons carrying on this activity. The team is made up of highly experienced investigators with a broad range of backgrounds and investigative skills.
- 1.4 The scheme, initially working across the midlands, has already been extended to cover the North West, East of England, South East and Yorkshire and Humber areas.
- 1.5 Research, funded by the Department of Business Innovation and Skills (BIS) and using information gathered by the Birmingham pilot project, has been published which identifies the extent of this type of activity as well as the reasons that people use illegal money lenders. Funding for the project is provided from the Financial Inclusion Fund administered by the Treasury and managed by the BIS. The Treasury and BIS announced that due to the success of the Birmingham team that funding will continue and can be used to roll out to other authorities.

- 1.6 On 29 December 2010 Business Minister Edward Davey announced that £5.2 million would be available to continue the national Illegal money lending project for 2012/14 through the trading standards service.
- 1.7 In addition, the Minister also announced that BIS intended to restructure the project by moving the project to a three national team model. The Minister indicated that BIS were looking to maintain front line services whilst providing a value for money project. The England team was to be hosted by Birmingham City Council and would continue to provide a resource to investigate illegal money lending across England.
- 1.8 Birmingham was chosen to lead the new England team due to the efficiencies associated with the expansion. This was favoured to creating a brand new team that would attract high development and set up costs. Centralising national services was the key. The team based in Birmingham will continue to operate the “parachute in and out model”, with a local presence through regional officers, this being the recommended option by the recent research commissioned through Policies.
- 1.9 The benefit that this team can bring to Barking and Dagenham is significant. Barking and Dagenham Trading Standards Services, like most local authorities, is not able to provide the level of specialist resource to provide this function. This is an excellent example of how sharing resources on specific issues can bring benefits otherwise unavailable in providing support to vulnerable consumers and tackling rogues.

## **2. Proposal and Issues**

- 2.1 The Trading Standards team in Barking and Dagenham in common with the majority of the Trading Standards Departments across the country do not currently have the resources and expertise to set up an effective illegal money lending team.
- 2.2 One of the options available to the Council is to do nothing.
- 2.3 The option currently available to the Council is to take advantage of this government funded initiative to allow victims of illegal money lending and to benefit from the enforcement activities undertaken by Birmingham City Council (IMLT).
- 2.4 Alternatively, the other options are to allow illegal money lending activity to proceed unchallenged in this borough or to fund and develop our own illegal money team.

## **3. Objectives of the Project**

- 3.1 **Objective 1** - To obtain a clear understanding of the scale and impact of illegal money lending as well as learning lessons on the best way to enforce.
  - 3.1.1 The evidence so far indicates that illegal moneylenders are widespread and prevalent. They operate in areas that have a high proportion of rented accommodation and target the most vulnerable members of society. High rise flats are common premises targeted by loan sharks as legitimate lenders do not lend to people residing in this type of accommodation due to the health and safety risks for their collectors.

- 3.1.2 Evidence shows illegal moneylenders vary from those who lend £10 over a few days and demand £12 on repayment, to those who provide substantial loans to those looking to set up businesses. Interest rates range from 100% and up to 117,000% APR in some instances.
- 3.1.3 Information gathered so far suggests that illegal money lending is being operated across all sectors of the community. The majority of people using moneylenders are in receipt of income support or benefits and are introduced through word of mouth. However evidence also suggests that money lenders operate within the wider community and the pilot has identified illegal money lending within the business community. In many of the investigations it has been established that the moneylenders resort to intimidation and violence in order to secure payment. Other common traits include: adding indiscriminate charges, targeting single mothers and introducing payment through sexual favours.
- 3.1.4 Moneylenders often use victims of money lending to assist them with maintaining their criminal lifestyle and anonymity, for example illegal money lenders' vehicles are often registered at a clients' address.
- 3.1.5 There is also anecdotal evidence which suggests that illegal moneylenders have an impact on the wider community in which they operate, with victims resorting to petty crime to enable them to meet payments. Reducing the activities of illegal moneylenders or removing them altogether may therefore help to reduce levels of other criminal activity within a community.
- 3.1.6 With regard to enforcement activity the investigation of illegal money lending has proven to be very resource intensive. Target individuals need to be observed and monitored to determine their activity, to identify them and if possible establish their address. A significant proportion of targets are also what are termed "life style criminals", which means that evidence of other illegal activity can surface during the course of an investigation. This may not only involve other agencies but can also extend the life of an investigation, thereby adding to the pressure on resources.
- 3.2 **Objective 2** - To create a climate where victims can come forward – confident that prosecutions will be undertaken, and convictions obtained, without fear of reprisals.
- 3.2.1 Effective branding and publicity of the pilot project has meant extensive promotion of the aims of the project and work of the team, within both the local and wider community. Evidence suggests that this has been achieved because it can be evidenced that victims are willing to contact the hotlines, and to provide further evidence to help achieve prosecutions. This will be established in North Yorkshire.
- 3.2.2 The team has used injunctions, backed by the power of arrest under the Anti-Social Behaviour Act 2003, to remove lenders from their area of operation. Injunctions are reinforced with an agreement from the local police to flag the matter on their system and respond immediately if they receive a call from one of the victims.
- 3.3 **Objective 3** – To change the perception amongst those lending that illegal money lending is rarely prosecuted.
- 3.3.1 A proactive media campaign is ongoing in those areas that have successfully

targeted criminals. Engaging the media promotes the work of the team and raises public awareness.

3.4 **Objective 4** – To develop ways of replacing the removed lenders with more support for their victims.

3.4.1 The Illegal Money Lending Team will help victims of illegal moneylenders with practical help and support through and in conjunction with the services of local Debt Advice Teams and the National Debtline. It has been noted that victims often need more than simple money advice and so face-to-face advice is considered the most helpful way forward and is the route normally adopted.

3.4.2 Links are also established with credit unions and their associations and where practicable these agencies are also called upon to provide help and advice. The Illegal Money Lending Team offers money management to all victims of moneylenders who contact them for advice and assistance. Partnership working in this area is recognised as being essential in this area of service provision. This will be the key role of the 'Financial Inclusions Partnership Officer'

3.4.3 Birmingham City Council's vision of providing a credit union partnership may be able to play a role in this area. Indeed these two initiatives very much share similar objectives.

#### **4. Delegation**

4.1 In order to expand the scheme into London Borough of Barking and Dagenham, Birmingham City Council requires formal delegation of functions to carry out the investigations etc under the Act and to prosecute any matters in the area.

4.2 It is proposed that the delegation will continue until 31st March 2014 with a view to extending the arrangement if successful in the borough. The Treasury has already indicated an extension of the programme as part of the government plans to support consumers to address issues related to crime associated with this activity.

4.3 In order to ensure clarity in respect of the operation of these arrangements, the attached draft protocol sets out the processes and practices to enable Birmingham City Council and its officer to undertake investigations and legal procedures.

4.4 This delegation does not prevent Barking and Dagenham Trading Standards Services from undertaking the function.

#### **5. Financial Implications**

Implications completed by: Carl Tomlinson, Finance Group Manager

5.1 There are no financial implications for Barking and Dagenham Council as a result of this proposal, as Birmingham City Council is responsible for the financial management of the IMLT. The funding agreement between Birmingham City Council and HM Treasury covers all the running costs of the IMLT as well as provisions for the costs of expected legal proceedings and no resources will be required from LBBD. Occasional incidental costs in providing a work base for

officers operating in London Borough of Barking and Dagenham will be contained within the Trading Standards, Regulatory Services budget.

## 6. Legal Implications

Implications completed by: David Lawson, Deputy Head of Legal

- 6.1 By virtue of Section 161 of the Consumer Credit Act 1974, it is the duty of each 'local weights and measures authority' to enforce the provisions of the Act within their local authority boundary. This is an executive function for the purposes of the Local Government Act 2000 and the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and therefore it is necessary for Cabinet, as the executive, to formally delegate this function to Birmingham City Council under Section 13 and 19 of the Local Government Act 2000 and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000. Birmingham City Council is also required to formally accept the delegation.
- 6.2 Any prosecutions will be undertaken by Birmingham City Council with no liability for costs to Barking and Dagenham Council.

## 7. Other Implications

- 7.1 **Crime and Disorder** - Illegal moneylenders invariably target low-income households and the most vulnerable members of society. This can mean that their activities have disproportionate implications for the more deprived areas and action taken against them therefore supports the policy priorities associated with crime and disorder and protecting the more vulnerable members of the community.

Illegal money lending has a serious detrimental effect on both individuals and the community. Tackling the root causes and providing legitimate alternative sources of credit will contribute to reducing stress and pressures on many individuals and communities.

Marginalising rogue traders creates an environment which supports and encourages legitimate credit providers and reduces the fear of crime.

Enforcement by the funded illegal money lending team will contribute to the Council priority, to encourage and promote local economic prosperity as well as building communities and transforming lives.

- 7.2. **Risk Management** - The corporate risk management system has been used to assess the level of risk. The risk to adopting this partnership approach by providing delegated powers is assessed as low. The approach removes any risk to future funding of this work as the officers will be employed by another local authority.
- 7.3 **Equal Opportunities** - It is often the poorer and more vulnerable members of society who become victims of illegal moneylenders and find it difficult to access appropriate support and help.

**Background Papers Used in the Preparation of the Report:**

- Consumer Credit Act 1974
- Local Government Act 1972
- Local Authority (Arrangements for Discharge of Functions)(England) Regulations 2000
- Local Government Act 2000

**List of appendices:**

Appendix 1 - Protocol for Illegal Money Lending Investigation