

CONSUMER CREDIT ACT – DELEGATION OF ENFORCEMENT

To: Cabinet

Date: 15th March 2011

From: Acting Executive Director: Environment Services

Electoral division(s): All

Forward Plan ref: Not applicable **Key decision:** No

Purpose: To inform Members of the continued funding for the national illegal money lending project and seek Cabinet approval for Cambridgeshire County Council to authorise Birmingham City Council to investigate and institute proceedings against illegal money lenders operating within the Cambridgeshire County Council area.

Recommendation: Cabinet is asked to:

i) Approve the delegation of the function of enforcement of Part III of the Consumer Credit Act 1974 within Cambridgeshire to Birmingham City Council.

ii) Delegate to the Cabinet Member for Economy and the Environment, in consultation with the Acting Executive Director, Environment Services, the authority to extend the delegation to Birmingham City Council annually from 31 March 2012.

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1. BACKGROUND

- 1.1 The consumer credit industry is regulated under the Consumer Credit Act 1974. The Trading Standards Service enforces this in each Local Authority area. 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 Illegal moneylenders, or loan sharks, are those without a credit licence who lend money to people. Loan sharks prey on some of the most vulnerable people in society and cause immense misery. It has always proved very difficult to bring them to justice.
- 1.3 Under the Illegal Money Lending Project the Department for Business, Enterprise and Regulatory Reform (BERR) has been funding regional teams in Glasgow and Birmingham since 2004 to investigate the impact of strong enforcement against illegal moneylenders. An evaluation of these pilots was carried out and reported on in February 2007. It has been recently announced that the funding for these teams will be extended for the foreseeable future.
- 1.4 In June 2008 Cabinet agreed the delegation of the enforcement functions of Part III of the Consumer Credit Act 1974 to Birmingham. This delegation was not renewed due to uncertainty about the projects future funding.

2. BENEFITS, LEGAL AND OPERATIONAL ISSUES

- 2.1 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(7) 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.
- 2.2 It is proposed that the delegation will continue until 31 March 2012 with a view to extending the arrangement if successful.
- 2.3 In order to ensure clarity in respect of the operation of these arrangements it is proposed that Cabinet reaffirm the protocol agreed in June 2008 (Appendix A), which sets out the processes and practices to enable Birmingham City Council officers to undertake investigations and legal procedures.
- 2.4 Any prosecutions will be undertaken by Birmingham City Council with no liability for costs to Cambridgeshire County Council. Birmingham City Council will also conduct investigations for recovery of criminal assets, with recovered assets being returned to the Treasury. There is no barrier to Cambridgeshire County Council undertaking any prosecution or financial investigation where the Head of

Trading Standards believes that this is in the best interests of Cambridgeshire County Council to do so.

- 2.5 This delegation does not prevent Cambridgeshire Trading Standards from undertaking the function.

3. SIGNIFICANT IMPLICATIONS

3.1 Resources and Performance

The benefit that the Illegal Money Lending Team can bring to Cambridgeshire is significant. Cambridgeshire, like most local authorities, does not have the level of specialist resource necessary to effectively deal with illegal money lending operations. This is an excellent example of sharing specialist resources on specific issues to support vulnerable consumers and tackle rogues.

3.2 Statutory Requirements and Partnership Working

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(7) 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.

3.3 Access and Inclusion

There are no significant implications for any of the headings within this category.

3.4 Engagement and Consultation

There are no significant implications for any of the headings within this category.

4 RECOMMENDATIONS

4.1 It is recommended that Cabinet:

- approve the delegation of the function of enforcement of Part III of the Consumer Credit Act 1974 within Cambridgeshire to Birmingham City Council
- delegate to the Cabinet Member for Economy and the Environment, in consultation with the Acting Executive Director, Environment Services, the authority to extend the delegation to Birmingham City Council.

Source Documents	Location
Illegal Money Lending Project	http://www.berr.gov.uk/consumers/consumer-finance/over-indebtedness/lending/Illegal Lending Project/page37542.html
Evaluation of the illegal money lending pilots	http://www.berr.gov.uk/files/file37025.pdf

Appendix A

Protocol existing between Cambridgeshire County Council and Birmingham City Council

DEPARTMENT OF BUSINESS, ENTERPRISE, REGULATION AND REFORM ILLEGAL MONEY LENDING PROJECT

PROTOCOL FOR ILLEGAL MONEY LENDING TEAM INVESTIGATIONS

Interpretation

For the purposes of this Protocol –

“BCC”	- means Birmingham City Council
“Birmingham Trading Standards”	- means the regulatory services of BCC
“CCC”	- means Cambridgeshire County Council
“CCC Trading Standards”	- means the Trading Standards Service of CCC
“Commencement Date”	- means []
“Delegated Power”	- means the delegation of the discharge of the functions under Part III (licensing of credit and hire business) and Part XII (enforcement of Act) of the Consumer Credit Act 1974 to BCC by CCC in pursuance of section 13, section 19 (1) (b) of the Local Government Act 2000 and regulation 7 of the Local Authorities (Arrangements for Discharge of Functions) (England) Regulations 2000 and any other legislation enabling the delegation of those functions
“IMLT”	- means the Illegal Money Lending Team
“Term”	- means from the Commencement Date to 31st March 2009

1. Application

- 1.1. This Protocol applies to the BERR (formerly DTI)/HM Treasury funded *Illegal Money Lending Project* and covers –
- the conduct of investigations and associated working practices for IMLT officers when conducting investigations or operating in CCC's area;
 - the mechanisms whereby CCC Trading Standards is updated on the progress of the project and any significant issue relating thereto;
 - the exchange of intelligence and information between the IMLT and CCC; and
 - the institution of legal proceedings.

2. Protocol

- 2.1. The purpose of this Protocol is to facilitate the delegation of powers to officers employed within BCC's IMLT to enforce the provisions of Parts III and XII of the Consumer Credit Act 1974 in CCC's area. The Protocol encourages the exchange of information and a working partnership approach between BCC and CCC in relation to offences committed under Part III of the Consumer Credit Act 1974.
- 2.2. This Protocol will come into force on the Commencement Date and terminate at the expiry of the Term.
- 2.3. Notwithstanding the terms and conditions of this Protocol, this Protocol does not prohibit CCC from withdrawing the Delegated Power at any time during the Term. However, CCC agrees and undertakes not to withdraw the Delegated Power unless it has reasonable grounds for so doing.

3. The IMLT

- 3.1. The Delegated Power confers upon BCC authority to conduct investigations and prosecutions in relation to offences committed under Part III of the Consumer Credit Act 1974 in CCC's area under the auspices of the *Illegal Money Lending Project*.
- 3.2. The IMLT comprises a team manager and up to 29 staff directly employed by BCC. The IMLT team manager will be responsible for the day-to-day operation and supervision of the IMLT.
- 3.3. The IMLT team manager will report directly to the Director of Regulatory Services or the Head of Trading Standards and Licensing of BCC, as appropriate.
- 3.4. Thirteen weeks after the Commencement Date and quarterly thereafter, the IMLT team manager of BCC will provide to the Head of CCC Trading Standards a progress report on investigations being conducted by the IMLT in CCC's area. The report shall contain details of all investigations undertaken by the IMLT during the preceding

quarter unless, in the opinion of the Director of Regulatory Services or the Head of Trading Standards of BCC, there is a significant risk that disclosure in a particular case may jeopardise an investigation, prosecutions being pursued or concluded, and developments concerning or affecting the *Illegal Money Lending Project*.

- 3.5. CCC agrees and acknowledges that the Delegated Power confers upon BCC the right to instigate investigations, make decisions to prosecute and lay charges and/or informations in relation to offences under Part III of the Consumer Credit Act 1974 committed in CCC's area. BCC agrees and undertakes to conduct investigations and prosecutions in accordance with the relevant Code for Crown Prosecutors, BCC's Enforcement Policy and in accordance with the policies and procedures approved and adopted by Birmingham Trading Standards.

4. Working Arrangements in CCC's area

- 4.1. CCC will designate and appoint a CCC Contact Officer ("the CCO"), and a deputy CCO ("the deputy CCO") to liaise with the IMLT team manager on matters relating to and in connection with the *Illegal Money Lending Project*.
- 4.2. The IMLT team manager will consult with the CCO (or the deputy CCO in the CCO's absence) before any charges and/or informations are preferred or laid in relation to offences alleged to have been committed in CCC's area, unless it would be impracticable to do so. In those circumstances, the IMLT team manager will consult with the CCO (or the deputy CCO) at the earliest reasonable opportunity on the charges and/or informations being or about to be pursued.
- 4.3. The IMLT team manager will on the first working day of each month (and at any other time that he/she considers it to be necessary or prudent), or at the request of the CCO (or deputy CCO), brief the CCO (or deputy CCO) on any intelligence gathered, any progress made on investigations and/or prosecutions pending or otherwise, relating to or affecting CCC and/or its residents and/or CCC Trading Standards.
- 4.4. Notwithstanding clause 4.3 above, all reasonable steps will be taken by the IMLT team manager to keep the CCO (or deputy CCO) updated on the progress of investigations and inquiries being carried out in CCC's area and any changes made or introduced by BERR concerning the *Illegal Money Lending Project*. The IMLT team manager shall maintain regular communications with the CCO (or deputy CCO).
- 4.5. The IMLT will have regular contact with Cambridgeshire Constabulary and other government agencies. The IMLT team manager will consult the CCO, (or deputy CCO) to identify any local arrangements, investigations and protocols before any investigation is commenced in pursuance of the *Illegal Money Lending Project*. Wherever possible, the IMLT team manager will actively involve the CCO (or deputy CCO) and seek to develop close links between those agencies and CCC Trading Standards.

- 4.6. The IMLT team manager will as soon as reasonably practicably inform the CCO (or deputy CCO) of the outcome of any concluded prosecution proceedings in relation to offences committed in CCC's area.
- 4.7. BCC will consult with CCC and CCC's press and public relations officer in good time before issuing any press release concerning any prosecution pursued by BCC pursuant to this Protocol.
- 4.8. Any contact with other local authorities, public bodies, other police forces, credit unions or similar organisations that may be locally funded or may involve local sensitivities will be agreed with the CCO (or deputy CCO) in advance. Upon being notified of an intention to contact such an authority or body, CCC Trading Standards may arrange for one of their own officers to accompany the IMLT's officer on any visit or undertake to conduct the visit itself and pass any results back to the IMLT.
- 4.9. Where the IMLT team manager and the Head of CCC Trading Standards agree that an officer or officers of CCC Trading Standards will be actively involved in an investigation, that officer will remain an employee of CCC but, for the purposes of the investigation, will come under the control and supervision of the IMLT team manager.
- 4.10. The IMLT team manager may give his agreement subject to any terms or conditions that the IMLT team manager and the Head of CCC Trading Standards consider necessary and/or appropriate, and subject also to the IMLT team manager being satisfied that the participating CCC officer or officers will not compromise any investigation or endanger any member of the IMLT or supporting staff or witnesses, and that the participating officer or officers have the appropriate training and experience to participate in the investigation.
- 4.11. Unless there is prior agreement with the IMLT team manager for assistance in an investigation, which is accompanied by an official purchase order from BCC, no reimbursement will be made for time spent on activities supporting the *Illegal Money Lending Project* or expenditure incurred by any CCC officer.
- 4.12. In the absence of the IMLT team manager, the role, duties, and responsibilities of the IMLT team manager shall be discharged and carried out by the Senior Assistant Director of Regulatory Services or Head of Trading Standards and Licensing of BCC.

5. Referral of Information and Intelligence to the IMLT

- 5.1. It is recognised that the IMLT will rely on receiving information about illegal money lending activities.
- 5.2. Having regard to any statutory limitations or restrictions, the time likely to be expended, resources available and costs likely to be incurred by

CCC, CCC will endeavour to provide to the IMLT as much relevant information and intelligence as it could reasonably and practicably be expected to provide concerning any investigation being carried out in CCC's area.

- 5.3. Information and intelligence will be provided by the CCO (or deputy CCO) to the IMLT team manager or a person designated by him/her.
- 5.4. The IMLT will not, as a matter of routine, investigate individual complaints received concerning alleged illegal money lending activities. However, these complaints may be used by the IMLT as a source of intelligence.
- 5.5. BCC, the IMLT and CCC agree to process personal data only in accordance with the requirements of the Data Protection Act 1998 and to disclose information only in accordance with the requirements of the Enterprise Act 2002.

6. Conduct and Control of Investigations

- 6.1. The conduct and control of all investigations and prosecutions undertaken by the IMLT in CCC's area will be the responsibility of BCC. Investigations and prosecutions will be undertaken in accordance with the relevant Code for Crown Prosecutors, BCC's published Enforcement Policy and in accordance with the policies and procedures approved and adopted by Birmingham Trading Standards.
- 6.2. BCC will be responsible for all aspects of the investigations and responsibilities under the Criminal Procedure and Investigations Act 1996, Regulation of Investigatory Powers Act 2000, the Data Protection Act 1998, the Freedom of Information Act 2000 and the Enterprise Act 2002.
- 6.3. BCC will be solely responsible for the health and safety of IMLT officers and any other officer or person under the control or supervision of the IMLT, who is providing support and assistance in any investigation undertaken by the IMLT.
- 6.4. When the IMLT team manager recommends a prosecution under Part III of the Consumer Credit Act 1974, CCC will be provided with a copy of the relevant prosecution file.
- 6.5. The prosecution file will consist of a detailed case summary, schedule of issues, aggravating and mitigating factors, reasons justifying prosecution and any other material facts that should be brought to CCC's attention.
- 6.6. CCC may make representations about a proposed prosecution to the Director of Regulatory Services of BCC (the informant for BCC) , who shall give due consideration to any such representations when making his/her decision on whether or not to prosecute in a particular case.

7. Responsibilities and Actions of the Parties

- 7.1. BCC shall be liable for the actions and competence of the persons employed within the IMLT and shall ensure that the IMLT complies with all legislative requirements and takes all reasonable steps to ensure any actions taken by members of the IMLT are lawful and within the spirit of this Protocol.
- 7.2. CCC shall be liable for the actions and competence of CCC Trading Standards officers and shall take all reasonable and practicable steps to ensure that they are competent to carry out their duties and that they comply with legislative requirements and the spirit of this Protocol.
- 7.3. Information/intelligence provided between BCC and CCC shall only be used for the purpose in which it was provided and shall not be divulged to third parties unless required by law or in pursuance of an investigation/inquiry under this Protocol.
- 7.4. BCC and CCC endorse a joined up working approach to the enforcement of Part III of the Consumer Credit Act 1974. They will attempt to promote consistency in enforcement. However, this Protocol does not attempt to restrict the powers of authorised officers of the IMLT or CCC from discharging their duties, as appropriate.

Dated:

Signed:

Head of Trading Standards
Cambridgeshire County Council

Signed:

Director of Regulatory Services
Birmingham City Council