

Agenda item:

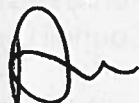
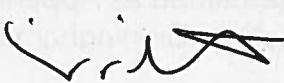
Cabinet

On 19 July 2011

Report Title : Authorisation to officers of the Birmingham City Council Illegal Moneylending Team to enforce parts of the Consumer Credit Act within the London Borough of Haringey

Report authorised by Director of Place and Sustainability

Signed :

  31/5/2011

Contact Officer : Paul Boeuf (x 5537) (paul.boeuf@haringey.gov.uk)

Wards(s) affected: All

Report for: Non-Key Decision

1. Purpose of the report (That is, the decision required)

1.1. (a) to approve the report and the Protocol between the London Borough of Haringey and Birmingham City Council in relation to cross border working (attached as Appendix 1)

(b) to authorise the Director of Place and Sustainability to enter into the Protocol between the London Borough of Haringey and Birmingham City Council in relation to cross border working (Appendix 1) and to authorise the Director of Place and Sustainability to sign the Instrument of Delegation (attached as Appendix 2) on behalf of Haringey Council.

2. Introduction by Cabinet Member

2.1. This authorisation will enable important intervention work to be undertaken against illegal money lenders and their involvement amongst the most vulnerable in our community. It will allow us to continue to access the funds allocated from Government for the purpose at no cost for ourselves. I support the recommendations detailed in this report.

3. State link(s) with Council Plan Priorities and actions and /or other Strategies:

There is a link to Priority 5, delivering excellent, customer focused services. This authorisation will enable Haringey to make more effective use of the specialised service provided by Birmingham City Council. That service will be of particular use to vulnerable groups.

4. Recommendations

4.1. (a) that the purposes of this report and the Protocol between the London Borough of Haringey and Birmingham City Council in relation to Cross Border Working (attached as Appendix 1) be approved

(b) that the Director of Place and Sustainability be authorised to enter into the Protocol between the London Borough of Haringey and Birmingham City Council in relation to cross border working (Appendix 1) and to be authorised to sign the Instrument of Delegation (attached as Appendix 2) on behalf of Haringey Council in order to delegate to Birmingham City Council the enforcement of provisions in the Consumer Credit Act 1974 and powers to prosecute relating to money-lending as described in the above Protocol.

5. Reason for recommendation(s)

5.1. There is considerable concern throughout the country about the activities of illegal moneylenders. Investigating their activities is very specialised and resource-intensive work.

5.2. The Department for Business, Innovation and Skills (formerly the Department for Business, Enterprise and Regulatory Reform) is funding a nationwide network of specialist Illegal Money Lending Teams to deal with this. Up to 31 March 2011 a London team was operated on the capital's behalf by the London Borough of Tower Hamlets. This team represented an additional resource available to protect consumers in Haringey from illegal moneylenders.

5.3 On 13 October 2009 the Cabinet approved a report similar to this one delegating to the London Borough of Tower Hamlets the enforcement of provisions in the Consumer Credit Act 1974 and powers to prosecute relating to illegal moneylending.

5.4 During the period of the project up to 2011, across London as a whole, the London Illegal Moneylending Team achieved substantial results, including helping over 1300 victims, getting £5.1 million in illegal debt written off, and having 36 loan sharks arrested. One case was connected to Haringey and resulted in a Tottenham man being fined £8,000, with £12,000 costs and forfeiture of £12,200 illegal profits.

5.5 The Department for Business, Innovation and Skills has revised the funding arrangements with the effect that from 1 April 2011 there is now one national team covering the whole of England. (There are separate teams for Scotland and Wales.) This team will be operated by Birmingham City Council, which has

already been successfully operating a team covering a number of English regions. This new arrangement is fully supported by the London Borough of Tower Hamlets. In order to operate in Haringey their officers would need to be granted the authority to exercise the powers under the Consumer Credit Act. If they are not granted this authority they will not be able to carry out any work in Haringey, and the Council and its residents would not be able to benefit from these resources provided by the government.

5.6 This authority would represent the delegation to Birmingham City Council of the power to investigate offences relating to illegal moneylending and to prosecute those responsible. Officers of Haringey would be consulted before any prosecutions were started. The project is intended to continue until March 2015, and authorisation is sought until that date. The protocol states that the Council has the right to withdraw from the arrangement at any time, although it will only do so if it has good reason.

5.7 If this report is approved it will help to create a better Haringey by making the Borough safer, and it will mean that the additional resources which the government has given to deal with the problem of illegal moneylending can be used to their best advantage.

6. Other options considered

6.1. If there were no change to the current situation there would be additional demands placed on officers from Haringey Trading Standards at a time of budget cuts and Haringey would not get the full benefit of the extra funding.

7. Summary

Central government has funded a special England-wide enforcement project to combat illegal moneylending. The project is operated on behalf of the government and English local authorities by Birmingham City Council. This report seeks to authorise the officers concerned to exercise powers within Haringey under the Consumer Credit Act. This would enable the project to function more efficiently and benefit consumers across London.

8. Head of Legal Services' Comments

9.1 This report proposes the formal delegation of Haringey's executive-side functions relating to enforcement against illegal money-lending to Birmingham City Council. Under the Council's Constitution (Part 3, Section D paragraph 1.1(b)) such an arrangement requires the authorisation of the full Cabinet.

9.2 The functions being delegated to Birmingham City Council are matters already delegated to officers in Haringey's scheme of delegation. The signing of the Instrument of Delegation would not prevent Haringey's Cabinet or Cabinet Member continuing to have oversight, or the right to call for reports, on the operation of the Protocol relating to enforcement against illegal money-lending. As noted in the report, the Protocol is time limited to the end of March 2015 and there is a right of earlier withdrawal in the event of there being "sound reason" to do so.

9. Equalities & Community Cohesion Comments

The activities of illegal moneylenders often take place within individual communities and have damaging effects, particularly on vulnerable individuals and the elderly.

10. Consultation

10.1. None has been undertaken.

11. Service Financial Comments

11.1. There are no financial implications for the Council, as the work of the Illegal Moneylending Team is something over and above what the Council already does. In the Protocol, Birmingham City Council specifically states that it will be liable for the actions and competence of the persons employed within the IMLS.

12. Use of appendices /Tables and photographs

13.1 Appendix 1: Protocol between the London Borough of Haringey and Birmingham City Council in relation to Cross Border Working

13.2 Appendix 2: Instrument of Delegation .

13. Local Government (Access to Information) Act 1985

There are no background papers

APPENDIX 1

DEPARTMENT FOR BUSINESS INNOVATION AND SKILLS (BIS) ILLEGAL MONEY LENDING PROJECT

PROTOCOL FOR ILLEGAL MONEY LENDING SECTION INVESTIGATIONS

Interpretation

For the purposes of this Protocol –

“BIS” means the Department for Business Innovation and Skills

“BCC” means Birmingham City Council

“LBH” means the London Borough of Haringey

“IMLS” means the Illegal Money Lending Section

“Delegated Power” means the discharge of the function of the Enforcement of Part III of the Consumer Credit Act 1974 granted to BCC by LBH in pursuance of section 101 and 222 of the Local Government Act 1972, Regulation 7 of the Local Authorities (Arrangements for Discharge of Functions) (England) Regulations 2000, sections 13 to 19 of the Local Government Act 2000 and any other legislation enabling the discharge

“Commencement Date” means the date the Delegated Power is granted

“Term” means from the date of signing of this protocol to 31st March 2015

“Birmingham Trading Standards” means Regulatory Services of BCC

“Contact Officer (LBHCO)” means the relevant person appointed by the Team Leader (Trading Standards) of LBH to liaise with the Head of Illegal Money Lending Section on matters relating to and in connection with the Illegal Money Lending Project

“Appropriate Contact Officer” means The Director of Regulatory Services, Head of Trading Standards or the Head of Illegal Money Lending of Birmingham Regulatory Services or any person nominated by the Council or authorised by them

1. Application

1.1 This Protocol applies to the BIS / HM Treasury funded 'Illegal Money Lending Project' and covers the following issues:-

- The conduct of investigations and associated working practices for the IMLS officers when conducting investigations or operating in the London Borough of Haringey
- The mechanisms whereby the London Borough of Haringey is updated on the progress of the project and any significant issue relating thereto.
- The exchange of intelligence and information between the IMLS and the London Borough of Haringey
- The institution of legal proceedings.

2. Protocol

2.1 The purpose of this protocol is to facilitate the delegation of powers to BCC and officers employed within BCC's IMLS to enforce the provisions of the Consumer Credit Act 1974 within the area of the London Borough of Haringey. The protocol encourages the exchange of information and a working partnership approach between BCC and LBH in relation to the Consumer Credit Act 1974.

2.2 This Protocol will come into force on the Commencement Date and terminates at the end of the Term.

2.3 Notwithstanding the terms and conditions of this Protocol, this Protocol does not prejudice the right of LBH to withdraw the Delegated Power at any time during the Term. However LBH undertakes not to withdraw the Delegated Power unless it considers there is good reason to do so. The Delegated Power is not to be unreasonably withdrawn by LBH.

3. The IMLS

3.1 It is recognised that officers in the IMLS will need authority to initiate and/or undertake investigations and/or the prosecution of potential offences falling within the scope of the 'Illegal Money Lending Project' where such potential offences fall entirely outside of the BCC boundaries. This protocol and also the Delegated Power is deemed to provide such authority to BCC and its officers regarding all matters.

3.2 The IMLS will comprise of a team manager and up to 45 staff directly employed by BCC. The Head of Illegal Money Lending Section will be responsible for the day-to-day operation and supervision of the IMLS.

3.3 The Head of Illegal Money Lending Section will report directly to the Director of Regulatory Services BCC or nominated officer as appropriate.

The head of the Legal Money Lending Section will be a senior lawyer with significant experience in the area of money lending and regulation. The head will be responsible for the day-to-day operation of the section and will be a member of the senior management team. The head will be responsible for the development of the section and will be a member of the senior management team. The head will be responsible for the day-to-day operation of the section and will be a member of the senior management team. The head will be responsible for the development of the section and will be a member of the senior management team.

3.4 The Head of the Illegal Money Lending Section BCC will, when required, provide quarterly progress reports, from the Commencement Date, to Team Leader (Trading Standards) of LBH giving details of investigations, (unless there is a significant risk that any such disclosure may jeopardise an investigation ; such a decision is within the discretion of the Director of Regulatory Services or Head of Trading Standards BCC) prosecutions being pursued or concluded and developments concerning or affecting the Illegal Money Lending Project in the London Borough of Haringey.

3.5 It is recognised that after Delegated Power is granted to BCC, all decisions concerning the pursuance of relevant investigations, decisions to prosecute and the laying of charges and/or information on such relevant matters within Haringey, shall be taken by BCC and in accordance with the relevant Code for Crown Prosecutors and BCC's Enforcement Policy.

4. Working Arrangements in the Haringey Council Area

4.1 LBH will designate and appoint a London Borough of Haringey Contact Officer (LBHCO).

4.2 The Head of Illegal Money Lending Section will at any time the Head of Illegal Money Lending Section considers necessary and prudent, or at the request of the LBHCO, brief the LBHCO on any intelligence gathered, any progress made on investigations and/or prosecutions pending or otherwise, relating to or affecting the London Borough of Haringey and/or its residents.

4.3 Further to Clause 4.2 above, all reasonable steps will be taken by the Head of Illegal Money Lending Section to keep the LBHCO updated on the progress of investigations and enquiries being carried out in Haringey and any changes made or introduced by BIS concerning the 'Illegal Money Lending Project'. It is incumbent on the Head of Illegal Money Lending Section to maintain regular dialogue/communication with the LBHCO.

4.4 The IMLS will have regular contact with the Police and other Government agencies. The Head of Illegal Money Lending Section will consult the LBHCO to identify any local arrangements, investigations and protocols before any investigation is commenced in pursuance of the 'Illegal Money Lending Project'. Wherever possible, the Head of Illegal Money Lending Section will actively involve the LBHCO and seek to develop close links between those agencies and BCC.

4.5 The Head of Illegal Money Lending Section will as soon as reasonably practicable inform the LBHCO of the outcome of any concluded prosecution proceedings conducted within the London Borough of Haringey.

4.6 BCC, where possible, will consult with LBH in good time before issuing any press release concerning any prosecution pursued by BCC pursuant to this Protocol.

- 4.7 Any contact with local government bodies, other police forces, credit unions or similar organisations that may be locally funded or may involve local sensitivities will be agreed with the LBHCO in advance. Upon being notified of an intention to contact such a body, LBH may arrange for one of their own officers to accompany the relevant officer of the IMLS on any visit.
- 4.8 Where the Head of Illegal Money Lending Section and the Team Leader Trading Standards of LBH agree that an officer or officers of LBH Trading Standards will be actively involved in an investigation, that officer will remain an employee of LBH but for the purpose of that investigation, will come under the control of the IMLS team manager. Such agreement will be subject to the Head of Illegal Money Lending Section being satisfied that the officer's or officers' participation will not compromise any investigation or endanger any member of the IMLS, supporting staff or witnesses, that the officer has the appropriate training and experience to undertake the task; and upon any other terms that the Head of Illegal Money Lending Section and the Team Leader Trading Standards of LBH consider necessary and/or appropriate.
- 4.9 Unless there is prior agreement with the Head of Illegal Money Lending Section 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 LBH officer.
- 4.10 The exercise by BCC of these arrangements shall be at no cost to LBH
- 4.11 BCC shall have an Appropriate Contact Officer.
- 4.12 In the absence of the IMLS Head of Service, the role, duties, and responsibilities of the Head of Illegal Money Lending Section shall be discharged and carried out by the other Appropriate Contact Officers as nominated.

5. Referral of Information/Intelligence to the Project Team

- 5.1 It is recognised that the IMLS will rely on receiving information about Illegal Money Lender activities.
- 5.2 LBH will endeavour to provide as much relevant information and intelligence as reasonably and practicably possible to the IMLS concerning any investigation being carried out within the London Borough of Haringey having regard to any

statutory limitations/restrictions, the time likely to be expended, resources available and costs likely to be incurred by LBH in providing the same.

- 5.3 Information and intelligence will be provided by the LBHCO to the Head of Illegal Money Lending Section or a person designated by him/her.
- 5.4 BCC IMLS will not, as a matter of routine, investigate individual complaints received concerning alleged Illegal Money Lender activities. However, such complaints may be used by the IMLS as a source of intelligence.
- 5.5 BCC, IMLS and LBH 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 undertaken and prosecutions by the IMLS in the London Borough of Haringey will be the responsibility of BCC. Investigations will be undertaken in line with the BCC's published Enforcement Policy and subject to 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 IMLS officers and any other officer or person within the direct management of the IMLS providing support and assistance in any investigation undertaken by the IMLS.
- 6.4 Where breaches of Part III of the Consumer Credit Act 1974 are identified, action will be taken in accordance with the enforcement policy and procedures adopted by Birmingham Trading Standards.
- 6.5 When the Head of Service, IMLS BCC, recommends a prosecution under Part III of the Consumer Credit Act 1974, if required, LBH will be provided with a copy of the relevant prosecution file, which will consist of a detailed case summary, schedule of issues, aggravating and mitigating factors, reasons justifying prosecution and any other material fact that LBH ought reasonably to be aware of. LBH will be invited to communicate any comments it considers appropriate and necessary concerning the intended prosecution to the Director of Regulatory Services, the informant for BCC. Such comments will be given due attention and consideration by the informant for BCC.

APPENDIX 2

Local Government Act 1972 Section 101
Local Authorities (Arrangements for the Discharge of Functions)(England) Regulations
2000 Regulation 7

Instrument of Delegation of Discharge of Functions to another Local Authority

Name of Local Authority delegating the discharge of functions:

London Borough of Haringey

Name of Local Authority taking on responsibility for discharge of functions:

Birmingham City Council

Description of functions:

BY THIS INSTRUMENT

(1) The Executive of the London Borough of Haringey, in pursuance of Section 101(1)(b) of the Local Government Act 1972, Section 19 of the Local Government Act 2000 and Regulation 7 of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 hereby delegates to Birmingham City Council:

- (A) Enforcement of Parts III and IV of the Consumer Credit Act 1974, and
- (B) The enforcement functions and powers under Parts XI and XII of the Consumer Credit Act 1974, and
- (C) The power of prosecution under section 222 of the Local Government Act 1972

all in connection with money-lending or the activities of money lenders and/or their agents and associates

(2) The delegated functions shall be discharged in accordance with the attached 'Protocol' and shall remain in force until conclusion of the Term unless rescinded in writing by the London Borough of Haringey prior to that date.

Signed:

Signed:

London Borough of Haringey

Birmingham City Council

Name.....

Name

Director of Place and Sustainability

(Designation)

Date:

Date: