



Committee and Date

13<sup>th</sup> November 2013

12.30 pm

Item

**12**

Public

## Delegation of functions to Birmingham City Council for the purposes of Illegal Money Lending Enforcement

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### 1. Summary

- 1.1 A Department of Business, Innovation and Skills (BIS) funded Illegal Money Lending Team (IMLT) exists within Birmingham City Council's Regulatory Services. The IMLT operates across England. This report seeks approval for Shropshire Council to authorise Birmingham City Council to investigate illegal money lending activities and to institute proceedings against illegal money lenders operating within the Shropshire Council area. The costs and risks of any action will lie with Birmingham City Council.

### 2. Recommendations

- 2.1 That Cabinet delegates the function of enforcement, including undertaking investigations, under Part III of the Consumer Credit Act 1974 and the power to institute proceedings under this Act and any other relevant legislation to Birmingham City Council for any matters associated with illegal money lending in Shropshire.
- 2.2 That Cabinet agrees, with any necessary amendments, the 'Protocol for Illegal Money Lending Team Investigations' set out in **Appendix A** and delegates to the Public Protection Service Manager for Safer & Stronger Communities and the Portfolio Holder for Business Growth, ip&e and Commissioning (North) the authority to enter into this protocol with Birmingham City Council on behalf of Shropshire Council and to make and approve any amendments to the protocol where required.

## REPORT

### **3. Risk Assessment and Opportunities Appraisal**

- 3.1** 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 the Cabinet, as the executive, to formally delegate this function to Birmingham City Council pursuant to Section 101 of the Local Government Act 1972 and under Section 13 and 19 of the Local Government Act 2000 and Regulation 7 of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000. Birmingham City Council is also required to formally accept the delegation.
- 3.2** The risk to adopting this partnership approach by providing delegated powers is low. The approach removes any risk to future funding of this work as the officers will be employed by another local authority. There are no other viable options as the IMLT in Birmingham is the only team providing this service to English local authorities.
- 3.3** Illegal money lenders 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 priorities associated with crime and disorder and protecting the more vulnerable members of the community.
- 3.3** 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.
- 3.4** Marginalising rogue money lenders creates an environment which supports and encourages legitimate credit providers and reduces the fear of crime.
- 3.5** It is often the poorer and more vulnerable members of society who become victims of illegal money lenders and find it difficult to access appropriate support and help.
- 3.6** There are no environmental implications associated with the recommendations contained in this report.
- 3.7** There are unlikely to be adverse human rights implications arising from the recommendations. The proposed delegations are entirely in line with provisions of current law and provide a means to enhance the human rights of individuals by tackling undesirable money lending practices that can themselves lead directly to the infringement of individuals' human rights.

**3.8** No consultation has been undertaken in respect of the recommendations; it is not required and would serve no purpose. In addition, an Equality Impact Needs Assessment (EINA) has not been carried out on the basis that the recommendations do not relate to a change in policy.

#### **4. Financial Implications**

**4.1** There are no financial implications for Shropshire Council as a result of this proposal. All major costs will be funded by the Treasury. Incidental costs in providing a work base for officers operating in Shropshire will be contained within the Public Protection budget.

**4.2** Any prosecutions will be undertaken by Birmingham City Council with no liability for costs to Shropshire Council.

#### **5. Background**

**5.1** The primary legislation governing the consumer credit industry is the Consumer Credit Act 1974. The Act is normally enforced by regulatory services within local authorities. 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.

**5.2** 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.

**5.3** 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.

**5.4** An Illegal Money Lending Team was established within Birmingham City Council as a pilot project in England, one of only two in Great Britain; the other pilot area was Glasgow – covering Scotland. The remit of the team was 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 consisted of highly experienced investigators with a broad range of backgrounds and investigative skills.

**5.4** Research, funded by the BIS and using information gathered by the Birmingham

pilot project, has been published which identifies the extent of loan shark 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 BIS. The Treasury and BIS announced that due to the success of the Birmingham team that funding would continue and this has rolled out to other authorities.

- 5.5** In December 2010, Business Minister Edward Davey announced that £5.2 million in funds will be available to continue the national Illegal Money Lending Project for 2012 – 2014. In addition, the minister announced that BIS intended to restructure the project by moving the project to a three national team model.
- 5.6** Birmingham City Council was chosen to lead the England team. The team continues to operate the “parachute in and out model”, with a local presence through regional officers, this being the recommended option by the research commissioned through Policis.
- 5.7** The benefits that the IMLT can bring to Shropshire are significant. In common with most local authorities, the Council’s Public Protection Service is not able to provide the level of specialist resource to provide the illegal money lending 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.
- 5.8** The IMLT scheme was extended into Shropshire under a protocol agreed by the Cabinet in January 2008. This protocol expired on 31 March 2009. In order for the scheme to recommence in Shropshire, Birmingham City Council requires further formal delegation of functions to again carry out enforcement, including investigations, and to institute proceedings under the Consumer Credit Act 1974 and other legislation relevant to illegal money lending activities.
- 5.9** It is proposed that the delegation will continue until 31 March 2016 with a view to extending the arrangement if necessary.
- 5.10** In order to ensure clarity in respect of the operation of these arrangements, the protocol in **Appendix A** sets out the processes and practices to enable Birmingham City Council and its officers to undertake investigations and legal procedures.
- 5.11** This delegation does not prevent Shropshire Council from undertaking the function.
- 6. Additional Information**
- 6.1** The objectives of the BIS Illegal Money Lending Project are set out in **Appendix B**, together with a summary of the type of activities undertaken by the IMLT to support these objectives.
- 6.2** Key statistics for the IML project up to December 2012 include:

- Identified nearly **3,000** illegal lenders
- Arrested over **600** illegal money lenders (loan sharks)
- written off over **£40 million** of illegal debts (money victims would have paid back to illegal lenders if the team had not acted)
- secured over **218** prosecutions, resulting in prison sentencing totalling over **140** years and one indefinite
- helped over **19,000** victims of loan sharks including the most hard to reach individuals
- referred over **1000** victims to alternate (legal) sources of financial support

**6.3** In addition to exceeding the expectations of the Government, the project has also achieved significant added value, including partnership working with the Police, the Department of Work and Pensions, Post Office Counter Fraud Unit and H M Revenue and Customs to facilitate a coordinated approach to tackling crime and disorder.

## **7. Conclusions**

- 7.1** The recommendations, if agreed, will add to the Council's resources and will enable Public Protection to have access to a team of highly trained experts from the IMLT.
- 7.2** This area of law enforcement requires specialist resource, expertise, techniques and facilities, which Public Protection 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.
- 7.3** The recommendations will support performance of the Council's duty in relation to enforcement of the provisions of the Consumer Credit Act 1974.

<b>List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)</b>
Cabinet report of 16 January 2008: Consumer Credit Act – Illegal Money Lenders
<b>Cabinet Member (Portfolio Holder)</b> Cllr Stephen Charmley
<b>Local Member - N/A</b>
<b>Appendices</b> Appendix A – Draft Protocol for Illegal Money Lending Team Investigations Appendix B – Objectives of the BIS Illegal Money Lending Project