



<u>Committee and Date</u>	<u>Item</u>
9 December 2015	
	<u>Public</u>

## **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.
- 1.2 It is proposed that the new delegation will be effective from 1 April 2016 and continue for five years until 31 March 2021.

### **2. Recommendations**

- 2.1 That Cabinet agrees that with effect from the 1 April 2016 to 31 March 2021 the discharge of its function of the enforcement of Part III of the Consumer Credit Act 1974 and the enabling provisions within the Financial Services Act 2012 in respect of matters concerned with the Financial Services and Markets Act 2000 be carried out in Shropshire by Birmingham City Council and delegates the power of prosecution to Birmingham City Council for any matters associated with or discovered during an investigation by the 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 and 19 of the Local Government Act 2000.

- 2.2** That Cabinet agrees the 'Protocol for Illegal Money Lending Team Investigations' as set out in **Appendix A** and delegates to the Senior Commissioner for Business Support and Regulatory Services, in consultation with the Portfolio Holder for Regulatory Services, Housing and Commissioning (Central), the authority to enter into this protocol with Birmingham City Council on behalf of Shropshire Council and to make and approve any necessary amendments to the protocol, excluding any amendment to extend the term, if 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 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.
- 3.2** The risk to adopting this partnership approach by providing delegated powers is low. The approach reduces the 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** National funding for the work of the Birmingham team is under significant pressure and will be reduced by a minimum of 14% in 2016/17, with further reductions anticipated during the lifetime of the proposed delegated function arrangement with Birmingham City Council. This is likely to affect the extent of the work and the period over which the protocol may remain fully effective and in force. Funding reductions will inevitably reduce the work that the IMLT can undertake across England and within Shropshire. However, it remains more than can be delivered by Shropshire Council's Business Support and Regulatory Services alone.
- 3.4** At a national level, a scoping report to propose options for supporting illegal moneylending work in the future has been commissioned, particularly to take account of funding reductions that may make the current IMLT model unaffordable.
- 3.5** 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.
- 3.6** 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.
- 3.7** Marginalising rogue money lenders creates an environment which supports and encourages legitimate credit providers and reduces the fear of crime.
- 3.8** 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.
- 3.9** There are no environmental implications associated with the recommendations contained in this report.

- 3.10** 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.
- 3.11** No consultation has been undertaken in respect of the recommendations; it is not required and would serve no purpose. In addition, an Equality and Social Inclusion Impact Assessment (ESIIA) 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 scope of the contract value relevant to the delivery of Business Support and Regulatory Services as agreed by the Council with ip&e Ltd.
- 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 together with the Financial Services Act 2012 in respect of matters concerned with the Financial Services and Markets Act 2000. The legislation is normally enforced by regulatory services within local authorities. It 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 Financial Conduct Authority (FCA). The FCA 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 IMLT 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 and continues to be 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 consists of highly experienced investigators with a broad range of backgrounds and investigative skills.
- 5.5** 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 the National Trading Standards Board (NTSB).
- 5.6** The England IMLT is hosted by Birmingham City Council and continues to provide a resource to investigate illegal money lending across England.
- 5.7** Birmingham City Council was chosen to lead the England team due to the efficiencies associated with having one national team. The team, although it is based in Birmingham, continues to operate the “parachute in and out model”,

with a local presence through regional officers, this being the recommended option that resulted from research commissioned through Policis.

- 5.8** The benefits that the IMLT can bring to Shropshire are significant. In common with most local authorities, the Council's Business Support and Regulatory Services 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.
- 5.9** The IMLT scheme initially commenced operation across Shropshire under a protocol, agreed by Cabinet, in January 2008; this was renewed in 2013 and the current protocol is due to expire on the 31 March 2016. In order for the scheme to continue to operate across Shropshire, Birmingham City Council requires further formal delegation of functions, including the power to prosecute, to carry out enforcement of Part III of the Consumer Credit Act 1974 and the enabling provisions within the Financial Services Act 2012 in respect of matters concerned with the Financial Services and Markets Act 2000.
- 5.10** As referred to in the summary above, it is proposed that the new delegation will be effective from 1 April 2016 and continue for five years until 31 March 2021.
- 5.11** In relation to a wide range of consumer legislation, including the Consumer Credit Act 1974, the Consumer Rights Act 2015 (which came into force on the 1 October 2015) makes it clear that local weights and measures authorities may exercise powers and bring legal proceedings for offences committed outside their own administrative areas. In practice, this now means that Birmingham City Council is permitted, in law, to exercise powers and to take legal proceedings relating to offences that may have been committed within Shropshire Council's area for the purposes of investigating illegal money lending activities and instituting legal proceedings.
- 5.12** Previously, in order to ensure clarity in respect of the operation of the delegated arrangements, a protocol was used to set out the processes and practices to enable Birmingham City Council and its officers to undertake investigations and

the necessary associated legal procedures. However, as a result of the Consumer Rights Act 2015, such a protocol is now no longer legally required. Nevertheless, it is proposed that Shropshire Council and Birmingham City Council continue with this approach to ensure that both parties fully understand the practical extent of the delegation that will be in place. The protocol is set out in **Appendix A**.

**5.13** The delegation to Birmingham City Council does not prevent Shropshire Council's Business Support and Regulatory Services 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 project up to March 2015 include:

- Written off over **£64 million** of illegal debts (money that victims would have paid back to illegal lenders if the IMLT had not acted).
- Taken over **329** prosecutions.
- Secured prison sentencing totalling over **214** years and also one sentence of indefinite length.
- Assisted over **25** thousand victims, including showing them other sources of financial support.
- Trained over **24** thousand front line staff to spot the signs of illegal lenders.

**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 Business Support and Regulatory Services 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 Business Support and Regulatory 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.
- 7.3 The recommendations will support performance of the Authority's duty in relation to enforcement of the provisions of the Consumer Credit Act 1974 and the Financial Services Act 2012 in respect of matters concerned with the Financial Services and Markets Act 2000.

<p><b>List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)</b></p> <ul style="list-style-type: none"><li>• Cabinet report of 16 January 2008: Consumer Credit Act – Illegal Money Lenders</li><li>• Cabinet report of 13 November 2013: Delegation of functions to Birmingham City Council for the purposes of Illegal Money Lending Enforcement</li></ul>
<p><b>Cabinet Member (Portfolio Holder)</b> Cllr Mal Price - Portfolio Holder for Regulatory Services, Housing and Commissioning (Central)</p>
<p><b>Local Member</b> N/A</p>
<p><b>Appendices</b> Appendix A – Protocol for Illegal Money Lending Team Investigations Appendix B – Objectives of the Illegal Money Lending Project</p>