



Wednesday 27 November 2013 at 7.00 pm

Board Room 7&8 - Brent Civic Centre, Engineers Way,
Wembley HA9 0FJ

Trading Standards Joint Advisory Board

Membership:

Members
Councillors:

Jones
Hashmi
Baker
Ferry
Maru
Hall

Representing

First alternates
Councillors:

Denselow
Brown
BM Patel
Mithani

Second alternates
Councillors:

Powney
CJ Patel
HM Patel

For further information contact:

(LB Brent) Gayle Fentiman, Democratic Services Officer
020 8937 4617, gayle.fentiman@brent.gov.uk

(LB Harrow) Miriam Wearing, Senior Democratic Services Officer,
0208 454 1542 miriam.wearing@harrow.gov.uk

For electronic copies of minutes, reports and agendas, and to be alerted when the minutes of this meeting have been published visit: www.brent.gov.uk/committees

The press and public are welcome to attend this meeting

Agenda

Introductions, if appropriate.

Election of Chair for the meeting (from amongst the Brent members)

Apologies for absence and clarification of alternate members

Item Page

1 Election of Chair

2 Declarations of personal and prejudicial interests

Members are invited to declare at this stage of the meeting, any relevant financial or other interest in the items on this agenda.

3 Minutes of the previous meeting

4 Matters arising

5 Deputations (if any)

6 Budget update report from the head of Trading Standards 1 - 6

This report provides an update on the Trading Standards budget for the current financial year and proposals for 2014/2015.

Contact Officer: Nagendar Bilon,
Consumer and Business Protection

Tel: 020 8937 5500

nagendar.bilon@brent.gov.uk

7 Introduction of a Charge Based Regulatory Advice Service for Businesses 7 - 18

This report details the introduction of a statutory based Primary Authority Partnership (PAP) scheme and a charged based advice and support service on regulatory matters for all other businesses.

Contact Officer: Nagendar Bilon,
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nagendar.bilon@brent.gov.uk

8 Delegation of powers to Birmingham City Council - Enforcement of Illegal Money Lending 19 - 34

This report details the delegation of the Council's powers under the Consumer Credit Act 1979 to Birmingham City Council to allow the national Illegal Money Lending Team to investigate loan sharks operating in the Consortium area.

Contact Officer: Nagendar Bilon,
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9 Any other urgent business

Notice of items to be raised under this heading must be given in writing to the Democratic Services Manager (London Borough of Brent) or his representative before the meeting in accordance with the constitutions of both councils.

10 Date of next meeting

The next scheduled meeting of the Trading Standards Joint Advisory Board will be held on 27th March 2014 at Harrow Civic Centre.



- Please remember to **SWITCH OFF** your mobile phone during the meeting.
- The meeting room is accessible by lift and seats will be provided for members of the public.

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Trading Standards 27 November 2013

Report from the Head of Trading Standards

For Information

Wards affected:
ALL

Trading Standards financial update and budget for 2014-15

1.0 Summary

1.1 This report provides Members with information on the current 2013-14 financial position and likely outturn and the operational budgetary requirements for Trading Standards for the 2014-15 financial year.

2.0 Recommendations

2.1 That Members note the likely 2013-14 outturn

2.2 That Members note the budget requirement for the same service level from each borough

2.3 That Members note the risks to future levels of complex enforcement action and the ability to secure Proceeds of Crime Act receipts arising from reduced staffing levels

2.4 That Members consider this report and comment where appropriate.

3.0 Financial Considerations

3.1 This report relates to the financial position of the Trading Standards Service.

3.2 Although this report does not itself have financial implications, it provides Members important information on likely 2013-14 outturn and the proposed Trading Standards budget for 2014-15 for the budget making process in both Brent and Harrow Councils.

4.0 Background

4.1 Table 1 below shows the annual budget for the provision of Trading Standards services since 2008-09 along with the surpluses that were generated at the end of each year and the amount invested into the Service from income derived from the Proceeds of Crime Act (POCA). The table also shows the net budget for each year which reflects the true cost to each borough.

Table 1**BRENT****HARROW**

Year	Original budget	Surplus	POCA	Net Budget	Original budget	Surplus	POCA	Net Budget
2008/09	£956K	£52K		£904K	£816K	£50K		£768K
2009/10	£886K	£52K		£834K	£816K	£51K		£768K
2010/11	£845K	£63K		£782K	£828K	£58K		£770K
2011/12	£649K	£0	£25K	£624K	£625K	£0	£25K	£600K
2012/13	£674K	£0	£50K	£624K	£625K	£0	£50K	£575K
2013/14	£674K	£0	£75K	£599K	£625K	£0	£75K	£550K

2013-14 Out-turn

4.2 Insofar as the current financial year is concerned, the Trading Standards Service budget is forecast to spend to budget. It is anticipated that the budgeted sum of £75K from POCA receipts will be achieved for each borough, but otherwise there is unlikely to be any underspend.

Relative budget position

4.3 Table 1 shows that there have been substantial reductions in the Trading Standards budget for both boroughs since 2008-09. :-

- Since 2008-09 there has been a 34% reduction in the Brent budget and a 28% reduction in the Harrow budget.
- For 2012-13, Brent's contribution to the overall Trading Standards budget was 52% and Harrow's was 48%.
- Since 2009, the Trading Standards staff establishment has decreased from 31.5 FTE to 18.5 FTE which represents a 30% decrease in staffing levels.
- Provisional information from CIPFA for 2012-13 places Brent and Harrow Trading Standards firmly within the third quartile for net cost.
- Despite the above reductions in budgets, the Trading Standards Service has continued to be innovative and has been able generate some surpluses and income through Primary Authority Partnerships and Proceeds of Crime, thus reducing the net cost to the respective boroughs whilst continuing to provide a better value for money service.

4.4 As a result of these budget reductions, the Trading Standards Service has become a more reactive organisation and the ability to carry out proactive work or conduct complex cases has been greatly reduced. Examples of complex work not undertaken or undertaken less often include investigations into counterfeit goods, doorstep crime, 'car clocking', unsafe products, etc. These types of investigations have traditionally been the source of financial investigations that lead to the seizure of assets under the Proceeds of Crime Act. A further pressure has been the greater burden placed on officers as a result of an increase in bureaucratic requirements such as obtaining judicial approval for covert surveillance activities and giving prior notice to traders before carrying out routine inspections.

- 4.5 Examples of lower priority work which has been reduced or is no longer carried out include: product safety investigations, inspections of trade premises, investigations of consumer complaints, maintenance of approved trader schemes, underage sales, consumer advice and education, community projects, rapid response to doorstep crime, assisting consumers with their civil claims, formal enforcement actions/prosecutions, partnership working and a decrease in e-crime investigations.
- 4.6 A further concern is that training normally provided to staff to maintain their competency levels has had to be curtailed and, in some cases, completely stopped. The medium/long term impact of this could be that the Trading Standards Service will not be able to meet the Councils' statutory obligations due to a lack of suitably trained and qualified staff.
- 4.7 The consequent decrease in work outputs is of obvious concern to both Councils with increased risks of injuries and death from unsafe products, increase in health issues and anti-social behaviour amongst the young from increased sales of age restricted products. The current austerity measures have resulted in more illicit goods such as tobacco and spirits being sold to consumers which, amongst other things, creates an unfair trading environment for *bona fide* traders and leads to difficulties in attracting legitimate businesses to the area.

Proceeds of Crime Act

- 4.8 Table 2 below provides details of the potential income that was forecast in November 2011 from the POCA. Those figures were based on the establishment that existed at the time. If we are to achieve the income from POCA, then it is essential that we maintain the level of investigatory resource and prosecutions so that we have a regular flow of POCA cases to pursue. However, as stated above, the effect of the recent reductions in staffing levels has resulted in fewer cases being prosecuted and, therefore, leading to a much reduced number of cases suitable for financial investigations. In fact, the current position is such that our Accredited Financial Investigators (AFIs) are almost totally reliant on the cases that have been referred to them by Brent Planning Service and the Harrow Benefits Team. If we are to meet our commitments for 2014-15, then steps must be taken to increase the Trading Standards ability to conduct complex cases that lead to POCA investigations and to also build up a greater portfolio of referrals from the other regulatory Services within Brent and Harrow Councils.

Table 2

	2011-12	2012-13	2013-14	2014-15
Net Income - Brent	£25K	£50K	£75K	£100K
Net Income - Harrow	£25K	£50K	£75K	£100K

- 4.9 Apart from the issues raised in 4.8 above in relation to the inability of the Service to meet its commitment to return £100K to each borough, the other potential risk is that if the current trend continues then the sustainability of the Financial Investigation Team is at risk as it has not been possible to build up the contingency fund to account for the uncertainty that is associated with these types of financial investigations. As a result of this, the long term viability of the team is uncertain in the event of the anticipated shortfall in income from the POCA incentivisation scheme.

5.0 2014-15 Budget Proposals

- 5.1 LB Brent plan to maintain the existing Trading Standards budget for 2014-15, i.e. £674K, which includes the 1% salary increase for 2013-14. LB Harrow had previously indicated that some reduction in the Trading Standards budget may be considered for 2014-15, however, no information is available at the time of writing in relation to Harrow's budget intentions.
- 5.2 To maintain the same level of service as for 2013-14 will require a budget contribution from Harrow the same as 2013-14 with a 1% increase to account for the additional salary costs for 2013-14 and any other anticipated employee costs increases in 2014-15. This would amount to £631k. .
- 5.3 Members are also asked to consider that if there is any potential for growth, then Trading Standards should be included in those discussions along with the other services to alleviate the above mentioned pressures, including the ability to investigate and prosecute cases that lead to POCA investigations.

6.0 Staffing Implications

- 6.1 The Trading Standards Service is currently undergoing a structural review along with the other regulatory services in Brent. The implication of this is to create a larger Service which, along with a number of other regulatory functions, will include the joint Trading Standards teams under one Head of Service. The current Head of Service post that has responsibility for the two borough Trading Standards teams and the POCA officers will be combined with a similar post to create one position to lead the newly created Regulatory Services Team. This will generate some further savings for the two boroughs. In all other respects there are no further staffing implications for the Trading Standards Service.
- 6.2 Should Harrow's budget not be maintained at the level proposed there may be a further requirement for reductions in staff numbers with the risk of redundancies.

7.0 Next steps

- 7.1 It is proposed that meetings be held between the respective Brent and Harrow Commissioning officers and senior Trading Standards managers with a view to agreeing the budget for 2014-15. As a result of these discussions it is hoped that a viable solution can be found with respect to the funds that are due to be paid to each borough from the POCA incentivisation scheme and to provide some certainty so that the Trading Standards Service and the Financial Investigation Team can continue to deliver excellent services in the future.
- 7.2 As stated during the March 2013 Joint Advisory Board meeting, the vast majority of the POCA cases have resulted from Trading Standards investigations and from those referred to us by the Brent Planning Service. It was, therefore, agreed that LB Harrow would actively encourage its Planning Service to investigate breaches of planning control and refer these cases to the Trading Standards Service for financial investigations. It was also suggested that the Legal Department for Harrow, which had taken over the provision of legal services for LB Barnet, would refer appropriate planning and benefit fraud cases to our Accredited Financial Investigators with a view to increasing the incentivisation income. However, as yet there have been no such


referrals and Members and officers are urged to assist with the above so that the Trading Standards Service is better placed to meet its financial commitments.

8.0 **Background Information**

8.1 For further information please contact N Bilon, Brent Civic Centre, Fifth Floor, Engineers Way, Wembley, Middlesex, HA9 0FJ, telephone 020 8937 5500.

NAGENDAR BILON
HEAD OF TRADING STANDARDS

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 <p>Brent</p>	<p>Trading Standards 27 November 2013</p> <p>Report from the Head of Trading Standards</p>
<p>For Information Wards affected: ALL</p>	
<p>Introduction of a Charge Based Regulatory Advice Service for Businesses</p>	

1.0 SUMMARY

- 1.1 This report was due to be presented at the Joint Advisory Board meeting on 11th July 2013. However, it could not be considered as the meeting was inquorate and, as a result, it is being presented again for consideration by all Board Members.
- 1.2 The attached report concerning the introduction of a Primary Authority Partnership (PAP) scheme and a fee based regulatory business advice service was approved by Brent Council's Executive Committee on 17th June 2013. At the same time, this report was also forwarded to Harrow Officers with a view to obtaining a similar delegation from the London Borough of Harrow's Executive Committee.
- 1.3 As Harrow already operates PAPs for some of its other regulatory services, it is hoped that this report could form the basis of a similar scheme to charge for all business advice, after an initial 'free' period. Members will note that the Brent Executive have approved the provision of a maximum of 7 hours of 'free' to all businesses and LB of Harrow are asked to consider implementing a similar scheme.

2.0 RECOMMENDATIONS

- 2.1 That Members discuss the report and consider obtaining approval from the London Borough of Harrow's Executive Committee to introduce the above mentioned PAP and fee based regulatory advice service for Trading Standards in line with the recommendations contained in the attached report.

3.0 FINANCIAL IMPLICATIONS

- 3.1 There are a number of financial implications which are explained in further detail within the attached report.

4.0 STAFF IMPLICATIONS

- 4.1 Should this charge based regulatory advice scheme be adopted, then there are potential staffing implications which are directly dependant on the level of demand for this service from local businesses.

5.0 DETAILS

- 5.1 A more detailed explanation of how the fee based scheme may operate is explained in the attached report. However, since the approval of the scheme by the Brent Executive, 10 businesses have formally signed up as Primary Authority Businesses with Trading Standards and, in some cases, also in relation to Food Safety and Health & Safety. These businesses include multi-national companies such as Ikea, Wickes and Pernod Ricard. In fact, Pernod Ricard is based outside of the Consortium area but has chosen to sign up as a Primary Authority with the London Boroughs of Brent and Harrow Trading Standards Service. Three of the businesses have opted to pay for the scheme on an annual contractual basis and the remainder have chosen the 'pay as you go' method of payment.

6.0 BACKGROUND INFORMATION

- 6.1 Any person wishing to inspect the above should contact Nagendar Bilon, Brent Civic Centre, Engineers Way, Wembley, HA9 0FJ; Telephone: 020 8937 5500.

NAGENDAR BILON
HEAD OF TRADING STANDARDS



Executive Committee
17 June 2013

**Report from the Director of Environment and
Neighbourhood Services**

For Information

Wards Affected: ALL

Introduction of a Charge Based Regulatory Advice Service for Businesses.

1.0 SUMMARY

- 1.1 This report seeks Executive approval for the introduction of a Primary Authority Partnership (PAP) scheme in the London Borough of Brent (LBB) and for the introduction of a charging system to increase the availability of advice and support to businesses, and especially Small and Medium sized Enterprises (SMEs), with provision of up to seven hours free advice and guidance on regulatory matters.
- 1.2 These proposals will reduce and simplify the regulatory burden on businesses entering into PAPs by ensuring that they can have confidence in applying the advice they have been given nationwide with consistency of approach between different local enforcement agencies.
- 1.3 For businesses requiring more advice than it would presently be possible to give from existing resources, these proposals extend the availability of advice, with up to seven hours advice and support provided free, which is expected to be sufficient for most small businesses, and the option of accessing more advice if required at an extremely economic rate.

2.0 RECOMMENDATIONS

- 2.1 That the Executive:-
 - i. Agrees to the Council adopting the Primary Authority Partnership scheme under the Regulatory Enforcement and Sanctions Act 2008 (RESA).
 - ii. Delegates authority to the Director of Environment and Neighbourhood Services to enter into Primary Authority agreements with businesses and to request nomination of partnerships to the Better Regulation Delivery Office under the provisions of Section 25 of the Regulatory Enforcement and Sanctions Act 2008.

- iii. That the Executive agrees to the Council adopting a system of providing up to seven hours' regulatory advice for all businesses free of charge, and the introduction of a charge based scheme on a cost recovery basis for those that require more than seven hours' of advice as detailed in paragraph 3.11 below.
- iv. That the Executive agrees to the Council adopting the proposed hourly charging rates of £51.54 (Annual Contract) and £64.43 (Pay As you Go contract) and, thereafter, to increase these rates on an annual basis on 1st April each year by the annual change in the Retail Price Index (RPI) for January of the year concerned.

3.0 DETAILS

- 3.1 Local Authority regulators, such as Trading Standards, Food Safety and Health & Safety, have been advising businesses of all sizes for many years in a number of ways. From small to large enterprises, advice has been provided, to the extent possible within available resources, free of charge. Regulators have justified this on the basis that this is a part of their statutory duties and that helping businesses comply with the law was a more effective way of ensuring compliance than by just inspection and enforcement action (including prosecution). This approach also satisfied the requirements of the Enforcement Concordat and the Regulators' Compliance Code.
- 3.2 One particularly powerful compliance tool that has developed over the years is the Home Authority (HA) principle whereby a Local Authority acts as the single point of contact for businesses that are based in their area but operate across the country. Local Authority regulatory services have been supporting HA relationships with larger companies for many years. The ethos behind these voluntary agreements has been to work constructively with businesses and advise them on the best way to achieve compliance with the law.
- 3.3 The Regulators' Compliance Code requires regulators to offer a certain level of free advice. It states, "Advice services should generally be free of charge, but it may be appropriate for regulators to charge a reasonable fee for services beyond basic advice and guidance necessary to ensure compliance. Regulators should, however, take account of the needs and circumstances of smaller regulated entities and others in need of help and support".
- 3.4 The RESA introduced the concept of PAPs. They were seen as logical developments of HA schemes. PAPs are legally recognised schemes, unlike the voluntary HA schemes they are intended to replace. In simple terms, they are HA schemes under a statutory footing and with "teeth". To be formally recognised as a PAP, all agreements have to be registered with the Better Regulation Delivery Office (BRDO) in accordance with their basic terms and conditions.
- 3.5 The Primary Authority scheme is open to any business, charity or other organisation that is regulated by two or more local authorities in respect of a relevant function. It is recognised that not all businesses will be eligible to join the PAP scheme but all will, nevertheless, continue to be supported under the current arrangements with up to seven hours of free regulatory advice as

described in 3.10 below, and the ability to access further advice at reasonable cost.

3.6 PAPs can be offered across a range of different regulatory categories, such as Health & Safety, Food Safety and Trading Standards, and can be run jointly in conjunction with other local authority services. The categories for PAP agreements will also increase in the future, and expand to include agreements with, amongst others, trade organisations. The categories covered by PAPs are shown below but these are likely to increase in the future, e.g. alcohol licensing.

- age-restricted sales
- agriculture
- animal establishments & animal welfare
- consumer credit
- environmental protection
- explosives licensing
- fair trading
- farm animal health
- food safety and hygiene
- housing
- metrology
- petroleum licensing
- pollution control
- product safety
- road traffic
- health and safety
- general licensing
- food standards

3.7 Although PAPs have developed from HA schemes, there are some fundamental differences that can present opportunities for businesses and local authorities. These include:-

- PAPs are legally recognised. Once a PAP contract is signed all other enforcement authorities have to have regard to it.
- Several areas of enforcement are covered, including, at present, Trading Standards, Environmental Health and Health & Safety.
- One source of advice for the company, which would be authoritative. Other enforcers would have to follow it and not act in a contradictory manner.
- A national inspection plan could be drawn up. This could help reduce the number of inspections the trader is subjected to nationally.
- The existence of an effective PAP should be considered as part of a regulator's risk assessment process thus reducing the trader's risk rating.
- As confidence in a business increases, it should reduce the number of enforcement inspections that are carried out. This will enable hard pressed LAs to concentrate their resources on other more serious problems and priorities.
- PAPs have an effective dispute resolution mechanism in the event of disagreements between local authorities ("LAs") with respect to statutory interpretation and other enforcement actions. There is no formal dispute resolution process with the voluntary HA scheme.
- The PAP scheme provides consistent advice from one source – businesses argue that inconsistent advice is still an issue costing them unnecessary time and money.
- It will improve communication between enforcing authorities and PAs, including increasing the information about a business from other LA officers. This will feed intelligence led enforcement.
- It will lower costs for the PAP businesses and LAs
- An added advantage will be that PAPs will help increase the knowledge and skill of officers providing the service

3.8 Most LAs have found that the demand for their 'free' business advice services has been increasing over the years. At the same time they have found that their resources have decreased. In Consumer & Business Protection (CBP) there has been a 25% reduction in staff in the last two years whilst the demand on the services has increased. With the advent of PAPs many LA regulators have taken the opportunity to have a fundamental look at how they deliver their business advice and support services. As such, a number of LAs, including, Milton Keynes Council, Slough BC, Surrey CC, have introduced a charge based scheme to help cover their costs. The table below compares the charging structures between the proposed Brent scheme and the abovementioned Councils who operate similar fee based business advice services. It should be noted that Brent's proposed scheme is significantly more generous in offering up to seven hours' of free advice whilst the proposed rates are similar to those that are charged by the other Local Authorities. This greater availability of free advice will predominantly benefit SMEs.

Local Authority	Free Advice (Number of Hours)	Option 1 (Hourly Rate)	Set up Costs (Amount)	Option 2 (Hourly Rate)	Set up Costs (Amount)
LB Brent	Yes (7 Hours)	£51.54	No	£64.43	No
Surrey CC	Yes (1 Hour)	£67.00	No	£67.00	£600
Milton Keynes Council	No	£56.63	£75	N/A	N/A
Slough BC	Yes (Minimal Initial Advice)	£58.80	No	N/A	N/A

3.9 Should the introduction of PAPs be accepted, then there are likely to be several different options that could be adopted depending on the needs of the business. It is proposed that Brent adopts the PAP scheme under the RESA and introduces a charging mechanism for the provision of business advice. However, it must be recognised that the introduction of the scheme should not unfairly penalise Small and Medium Size Enterprises (SME). (The European Commission has defined SMEs as any business which employs fewer than 250 employees with a turnover or balance sheet of less than 50 million Euros and 43 million Euros respectively). In fact, BRDO's opinion is that SMEs would most benefit from PAPs as they do not always have the resources to employ their own compliance or legal teams to provide the necessary advice and guidance to enable them to operate lawfully.

3.10 No individual business should be penalised through the introduction of this scheme. According to our records there are over 6,000 business premises in Brent relating to Trading Standards, Food Safety and Health & Safety. These businesses are graded according to the risk rating that is established based on a number of factors, i.e. type of goods/services, size of the business in terms of number of employees and outlets, retailer, manufacturer or importer. The number of businesses held on the Consumer & Business Protection team's databases and the risk ratings is as follows:-

Team	High Risk	Medium Risk	Low Risk
Food Safety	221	1559	917
Health & Safety	221	1559	917
Trading Standards	102	2883	3177

Regulatory Services no longer carry out routine inspection and advisory visits except to high risk businesses. Inspection and advisory visits are also carried out on request from the business, or when complaints are received from consumers or other local authorities. Last year 429 enquiries for regulatory advice were received from Brent businesses, the vast majority of which were from large enterprises that operate nationally such as retailers, manufacturers and importers. Based on the above and our knowledge and experience, local SMEs do not require advice and information over and above the seven hours of free advice that is being proposed in this scheme. The majority of SMEs fall within the low and medium risk categories and, as such, they will not be adversely affected as a result of this change in policy. Therefore, it is proposed that seven hours' of free advice and guidance is offered to all businesses in Brent under the specified areas of regulation. This would ensure that we continue to fulfil our obligations under the Regulators' Compliance Code and allow businesses to continue to access our services at no additional cost to them unless their requirements are such that they place excessive demands on our resources.

3.11 Where any business requires more than the seven hours' of free advice, then a charging scheme would apply in accordance with the following two options:-

Option 1 – This will be ideal for a trader who consults the Council for more than seven hours but on an irregular basis. The trader could then avail themselves to additional advisory services on a “pay as you go” basis.

Option 2 – This option would be suitable for traders who also consult the Service on a regular basis, irrespective of whether just locally based or anyone that trades across several LA boundaries. The Authority should promote PAPs to those companies that are eligible under RESA as experience from other parts of the country has shown that they are generally well received by businesses and regulators once properly established. Potential cost savings to the business can be significant and a well-run PAP should increase trust between the parties and improve levels of compliance. For this Option, the preferred method is to have an annual contract based on an agreed level of engagement with the business depending on the type of trade, number of referrals, complexity of legal advice and the different areas of regulation that the agreement will cover. However, any business that enters into an agreement for advice and support could also choose to pay on an hourly basis. By looking at these various factors, it will be possible to assess, with some degree of certainty, how much resources will be made available to the business for which a total up front annual fee can be calculated based on a lower hourly rate than in Option 1 above.

- 3.12 Should the proposal to introduce a PAP scheme be accepted then a good starting point for possible recruits are existing Brent HA companies. Other companies outside the borough could also be approached, particularly if they trade in a business sector that can be robustly supported by our specialist staff. There are already several examples of PAPs being run by Authorities where the business is not based in their area and where there has not been a previous HA relationship. In fact, there are potential opportunities in the future to offer this service on a shared basis with other Local Authorities, particularly those that are members of the WLA.
- 3.13 The Council should actively offer PAPs to companies across more than one category under RESA. Many existing PAPs are signed up on that basis as it reflects what the businesses require. In Brent, Food Safety, Health & Safety and Trading Standards are already under one management structure within the Consumer and Business Protection (CBP) Service and, therefore, the scheme will be relatively simple to administer. The types of businesses that would be suitable for PAPs are:-
- i. Companies with brand protection issues, such as counterfeiting. This is an area of strong local expertise and could include luxury goods producers in the fragrance and clothing fields.
 - ii. Large food packers. There are numerous such companies in Brent and they are supplying products to many of the major multiple retailers. Some businesses that have already been approached have shown an interest in PAPs and could be jointly covered by our Food Safety, Health & Safety and Trading Standard teams.
 - iii Other HA companies where there are existing good working relationships.

4.0 FINANCIAL IMPLICATIONS

- 4.1 There are no additional financial implications for the Council. In fact, if the recommendations of this report are adopted and a charging scheme is agreed then a small amount of the income that is derived from this source may be able to offset some of the current Food Safety, Health & Safety and Trading Standards budget pressures.
- 4.2 The provision of the PAP has been piloted in Brent by the CBP Service and, to date, five businesses have signed up to the scheme. Three businesses have opted for Option 1 and have agreed to pay at an hourly rate of £64.43 for the provision of regulatory advice services. Two large scale businesses that operate nationally have opted for Option 2 and are paying annual fees based on an agreed number of hours of advice and support from the Council on their specific area of regulation at an hourly rate of £51.54.
- 4.3 It is anticipated that the uptake of fee based advice service within the borough in the first year will be no more than fifty businesses. Any charges received on a cost recovery basis will be used to support the Council's existing budgets for the provision of regulatory services. Furthermore, should the demand for a charge based advice service increase significantly, then the income from this would allow the Council to divert some of these resources to employ additional staff to deliver this advisory work ensuring higher priority work such as investigations into

dangerous products, food hygiene and food safety alerts, and accidents at work, etc. is not compromised.

- 4.4 HMRC has indicated to another Primary Authority that VAT should be charged on the price, if the advice and support provided by that Authority could have been supplied by the private sector. In the circumstances, it is likely that VAT will be payable on top of the Council's prices.

5.0 LEGAL IMPLICATIONS

- 5.1 By having "Primary Authority" status, the Council has the power under section 31 of the Regulatory Enforcement and Sanctions Act 2008 ("RESA") to charge businesses fees on a cost recovery basis in relation to the exercise of its functions as a Primary Authority under Part 2 of RESA 2008. In calculating the costs incurred in providing the service, a local authority should have regard to the guidance issued by HM Treasury entitled "Managing Public Money" and in particular Annex 6.2 thereof. "Primary Authority" allows a business to form a partnership with a single local authority and this partnership, once it has been nominated by the Better Regulation Delivery Office, has a statutory basis.
- 5.2 Under section 25 of RESA 2008, the Secretary of State, through the Better Regulation Delivery Office ("BRDO"), may nominate a local authority to be a "Primary Authority" for the exercise of a relevant function under Part 2 of RESA 2008 in relation to a business. In this scenario, the BRDO has the power to nominate Primary Authority Partnerships between the Council and businesses so that the PAP agreement has a statutory footing.
- 5.3 The Council has an obligation under the Regulators Compliance Code (Statutory Code of Practice for Regulators, BERR, 2007) to provide businesses with advice and guidance about their legal obligations in respect of environmental health, trading standards, fire safety and licensing legislation. Where businesses require additional advice and support services under Primary Authority, section 31 of RESA 2008 enables the Council to recover the costs associated in providing these services from the business.

6.0 DIVERSITY IMPLICATIONS

- 6.1 As stated above, the charge based advice service must be administered in accordance with the public sector equality duty under the Equality Act 2010.
- 6.2 In carrying out this charge based advice service, it would be incumbent on the Council under the 2010 Act to: (1) have due regard to the need to eliminate unlawful discrimination, harassment and victimisation (along with other conduct) prohibited under the 2010 Act; (2) advance equality of opportunity between people who share a 'protected characteristic' and those who do not; (3) foster good relations between people who share a protected characteristic and those who do not.
- 6.3 The nine protected characteristics under the 2010 Act are: Age; Disability; Gender Reassignment; Race; Religion or belief; Sex; Sexual Orientation; Marriage and Civil Partnership; and Pregnancy and Maternity.

- 6.4 In March 2012, the Council's regulatory services officers held a consultation seminar (including one-to-one discussions) with local businesses. Representatives from 30 local businesses attended the event. There were no adverse issues raised during this consultation in relation to Equality Act 2010 considerations.
- 6.5 It is not envisaged that the scheme would have an impact (either positive or negative) in respect of the following protected characteristics: Age; Gender Reassignment; Sex; Sexual Orientation; Marriage and Civil Partnership.
- 6.6 In respect of the protected characteristic of disability: The Council would ensure that those with a disability have the same opportunity to access the scheme as those without a disability, by making reasonable adjustments to the fee based advice service where appropriate (for example, by supplying any written advice in braille format where necessary). A responsible officer would be appointed to collate monitoring information received back from fee paying service users to determine whether the scheme was effective for those with a disability.
- 6.7 In respect of the protected characteristic of race: the Council has identified the risk that some potential users from BME backgrounds may not take advantage of the scheme, particularly at the outset. This may be because some potential service users have English as an additional language, resulting in the users not fully appreciating the nature and benefits of the scheme. To mitigate this risk and to help ensure an equal opportunity to access the scheme, the Council would, wherever possible, seek to utilise the skills of officers who are able to communicate in the same language as that of the trader. Officers' knowledge and experience show that generally language is not a barrier to communication with businesses, but in the rare event where this is the case, then the Service has a number of officers who speak a range of different languages such as Hindi, Gujarati, Punjabi, Bengali, German, Mandarin, Hokkien and Malay. Furthermore, there are occasions when the use of interpreters and translators is sought to overcome any communication difficulties. This will continue to be the case even after the introduction of a charge based business advice service. Therefore, officers do not envisage that the policy will result in any direct or indirect discrimination to any of the protected groups. The Council will nominate a responsible officer to review (within a formal structure at defined periods) the monitoring information it receives back from service users to determine whether any particular groups are failing to take advantage of the service. The officer responsible for reviewing the monitoring information would check that small businesses are using the scheme, because it may be that a disproportionate amount of small businesses are owned members of the BME community. Officers are aware that most of the BME businesses in Brent are small to medium size enterprises and would, therefore, ensure that no one is treated unfairly through the introduction of the scheme as it will be open to everyone. Furthermore, outreach work is an integral part of our day to day activities and, once the policy has been agreed, then officers will ensure that the scheme is promoted with a view to increasing the take up of free advice and, where necessary, encouraging businesses to join Brent Council's fee paying service. As stated above, officers are aware that the majority of small to medium size businesses in Brent do not require more than seven hours of regulatory advice

per year and in that scenario, such advice can be provided free of charge (on the basis that it does not exceed seven hours per annum).

- 6.8 In respect of the protected characteristic of pregnancy and maternity: those who are pregnant may benefit from the health and safety advice made available under the scheme.

7.0 STAFFING / ACCOMMODATION IMPLICATIONS (IF APPROPRIATE)

- 7.1 Should approval be granted for the introduction of a charge based advice service, then there will initially be no additional staffing requirements. However, if the demand from businesses to join the scheme is greater than anticipated, then it is possible that additional staff will be required, which will be funded from the income that is received for the provision of this service.

BACKGROUND PAPERS

The Regulator's Compliance Code :

<http://www.berr.gov.uk/files/file45019.pdf>

The Regulatory Enforcement and Sanctions Act 2008:

<http://www.legislation.gov.uk/ukpga/2008/13/contents>

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 <p>Brent</p>	<p style="text-align: center;">Trading Standards 27 November 2013</p> <p style="text-align: center;">Report from the Head of Trading Standards</p>
<p>For Information Wards affected: ALL</p>	
<p style="text-align: center;">Delegation of Powers to Birmingham City Council – Enforcement of Illegal Money Lending</p>	

1.0 SUMMARY

- 1.1 The attached report provides information to Members of the Joint Advisory Board of the delegation of Brent Council's powers under the Consumer Credit Act 1979 to Birmingham City Council who host the national Illegal Money Lending Team (IMLT) to investigate the activities of loan sharks operating in this area.
- 1.2 Members should note that Executive Approval for the delegation of the abovementioned powers was granted by London Borough of Brent's Executive on 11th November 2013 in accordance with the attached report. At the same time, this report was also forwarded to Harrow Officers with a view to obtaining a similar delegation from the London Borough of Harrow's Executive Committee.

2.0 RECOMMENDATIONS

- 2.1 That Members discuss the report and consider the merits of such a delegation and how it can be used to protect the residents of both Boroughs from being exploited by loan sharks.
- 2.2 That Harrow Members on the Joint Advisory Board support the proposal to delegate abovementioned powers and take the necessary steps to obtain the Executive approval from their Council in line with the action already taken by London Borough of Brent.

3.0 FINANCIAL IMPLICATIONS

- 3.1 There are a no financial implications arising out of this report.

4.0 STAFF IMPLICATIONS

4.1 There are no staffing implications arising out of this report.

5.0 DETAILS

5.1 A detailed explanation of how the delegation will operate is provided in the attached report. However, members should note that this delegation will not preclude the London Boroughs of Brent and Harrow Trading Standards Service from undertaking its enforcement functions under Part III of the Consumer Credit Act 1974.

6.0 BACKGROUND INFORMATION

6.1 Any person wishing to inspect the above should contact Nagendar Bilon, Brent Civic Centre, Engineers Way, Wembley, HA9 0FJ; Telephone: 020 8937 5500.

NAGENDAR BILON
HEAD OF TRADING STANDARDS



Executive Committee
11 November 2013

**Report from the Director of Environment and
Neighbourhood Services**

For Information

Wards Affected: ALL

Approval of Delegation of Functions to Birmingham City Council for the Enforcement of
Illegal Money Lending under the Consumer Credit Act 1974

1.0 SUMMARY

1.1 This report seeks approval for the London Borough of Brent to authorise Birmingham City Council to investigate and institute proceedings against illegal money lenders operating within the Brent Council area.

2.0 RECOMMENDATIONS

2.1 That the Executive:-

- i. Delegate to Birmingham City Council the function of the enforcement of Part III of the Consumer Credit Act 1974 within the London Borough of Brent and delegate to Birmingham City Council the power to institute criminal proceedings for any matters associated with illegal money lending or discovered during investigations by the Illegal Money Lending Team (ILMT) at Birmingham City Council.
- ii. Agree the "Protocol for Illegal Money Lending Team Investigations" attached as Appendix 1 and delegate authority to Strategic Director of Environment and Neighbourhoods in consultation with the Head of Consumer & Business Protection to enter into the protocol agreement on behalf of the London Borough of Brent with Birmingham City Council and, if required, approve minor alterations.

3.0 DETAILS

3.1 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.

- 3.2 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 may be subject to intimidation, theft, forced prostitution and other extreme physical violence.
- 3.3 An Illegal Money Lending Team (“IMLT”) 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.
- 3.4 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.
- 3.5 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 BIS. The Treasury and BIS announced that due to the success of the Birmingham pilot, funding will be continued and can be used to roll out to other Authorities.
- 3.6 On 29th December 2010, Business Minister, Edward Davey announced that £5.2 million in funds was to be made available to continue the national illegal money lending project for 2012/13 through the trading standards service.
- 3.7 In addition, the Minister also announced that BIS intended to restructure the project by moving it 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 is now hosted by Birmingham City Council and will continue to provide resources to investigate and prosecute illegal money lending across England.
- 3.8 Beyond investigation, detection and prosecution, partnership working in this area is recognised as being essential. Effective branding and publicity of the work of the IMLT has included extensive promotion 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.

- 3.9 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.
- 3.10 The IMLT 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.
- 3.11 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 IMLT offers money management to all victims of moneylenders who contact them for advice and assistance.
- 3.12 The benefit that the work of this team can bring to the London Borough of Brent is significant. Brent Trading Standards Service, like most Local Authorities, is not able to provide the level of specialist resource to deliver 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.
- 3.13 Although the delegations proposed in this report will have clear benefits in allowing Brent to access the specialist skills and additional resource of the IMLT, that resource will be spread over an increasingly wide area of the country. While it is anticipated that the IMLT will be able to identify and tackle relevant crime in Brent, the scale of the problem is such that these interventions will not be able to eliminate all the very serious problems associated with illegal money lending in this borough.
- 3.14 The pilot project conducted by the IMLT highlighted the following key statistics:-
- nearly 3,000 illegal lenders Identified
 - over 650 illegal money lenders (loan sharks) arrested
 - over £40 million of illegal debts written off (money that victims would have paid back to illegal lenders if the IMLT had not acted)
 - over 218 prosecutions secured, resulting in prison sentences totalling over 140 years and helped over 19,000 victims of loan sharks, including the most hard to reach individuals
 - over 1000 victims referred to alternative (legal) sources of financial support
- 3.15 The evidence so far indicates that illegal moneylenders are widespread and prevalent. They often operate in areas that have a high proportion of rented accommodation and target the most vulnerable members of society.
- 3.16 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% to over 100,000% APR in some instances.

- 3.17 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 identified areas of concern include: adding indiscriminate charges, targeting single mothers and payment through sexual favours.
- 3.18 Moneylenders often use victims of money lending to assist them with maintaining their criminal lifestyle and anonymity, for example illegal money lenders' vehicles may be registered at a clients' address.
- 3.19 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 money lenders or removing them altogether may, therefore, help to reduce levels of other criminal activity within a community.
- 3.20 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 and to identify them and, if possible, establish their address. A significant proportion of targets are also what are termed "lifestyle 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.

Conduct and Control of Investigations

- 3.21 The conduct and control of all investigations undertaken and prosecutions by the IMLT in Brent will be the responsibility of Birmingham City Council ("Birmingham CC"). Investigations will be undertaken in line with the Birmingham CC's published Enforcement Policy and subject to the policies and procedures approved and adopted by Birmingham Trading Standards.
- 3.22 Birmingham CC will be responsible for all aspects of the investigations (relating to illegal money lending and related illegal activities) 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.
- 3.23 Birmingham CC will be solely responsible for the Health and Safety of IMLT officers and any other officer or person within the direct management of the IMLT providing support and assistance in any investigation undertaken by the IMLT.
- 3.24 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.

- 3.25 When the Head of Service of IMLT at Birmingham CC recommends a prosecution under Part III of the Consumer Credit Act 1974, if required, Brent Council's Trading Standards Department 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 Brent Council's Trading Standards Department ought reasonably to be aware of. Brent Council's Trading Standards Department will be invited to communicate any comments it considers appropriate and necessary concerning the intended prosecution to the Director of Regulation and Enforcement of Birmingham CC, who will be the informant for Birmingham CC when issuing prosecution proceedings. Such comments will be given due attention and consideration by the informant for Birmingham CC.
- 3.26 After the relevant delegated power is granted to Birmingham CC, all decisions concerning the pursuance of relevant investigations, decisions to prosecute and the laying of charges and/or information in relation to relevant investigations within Brent, shall be taken by Birmingham CC and in accordance with the relevant Code for Crown Prosecutors and Birmingham CC's Enforcement Policy.
- 3.27 The delegation of authority and powers to Birmingham CC is intended to be additional to the existing delegations to Brent officers, and it is not intended that this delegation will prevent Brent officers from investigating or prosecuting offences under Part III of the Consumer Credit Act 1974. However, such investigations would normally be referred to the IMLT.

4. Financial Implications

- 4.1 There are no financial implications for the London Borough of Brent 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 the London Borough of Brent will be contained within the Consumer and Business Protection service's budget.
- 4.2 All prosecutions arising from the IMLT's investigations will be undertaken by Birmingham City Council with no liability for costs to the London Borough of Brent.
- 4.3 This proposal, if agreed, will add to the Council's resources and will enable the London Borough of Brent Trading Standards Service to have access to a team of highly trained experts from the IMLT.
- 4.4 This area of law enforcement requires specialist resource, expertise, techniques and facilities which the London Borough of Brent Trading Standards Service 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.
- 4.5 The recommendations will support performance of the Authority's duty in relation to enforcement of the provisions of the Consumer Credit Act 1974.

5. Legal Implications

- 5.1 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 Executive to formally delegate this function under Part III of the Consumer Credit Act 1974 to Birmingham City Council under Section 13 of the Local Government Act 2000 and regulation 7 of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 and section 101 of the Local Government Act 1972. Birmingham City Council is also required to formally accept the delegation.
- 5.2 In order to expand the scheme into the London Borough of Brent, Birmingham City Council requires formal delegation of functions to carry out the investigations under the Act within the boundaries of the borough of Brent and to prosecute any matters relating to illegal money lending and Part III of the Consumer Credit Act 1974 in the area of Brent.
- 5.3 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 officers to undertake investigations and institute legal proceedings.
- 5.4 This delegation does not preclude the London Borough of Brent's Trading Standards Service from undertaking its enforcement functions under Part III of the Consumer Credit Act 1974.

6.0 DIVERSITY IMPLICATIONS

- 6.1 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.
- 6.2 Illegal moneylenders invariably target low-income households and the most vulnerable members of society. This can mean that their activities have greater implications for the more deprived areas. Therefore, any action taken against these illegal money lenders will support the crime and disorder priorities and protect the more vulnerable members of our community.
- 6.3 Illegal money lending has a detrimental effect on individuals and the community as a whole. Tackling the root causes and providing legitimate alternative sources of credit will contribute to reducing stress and pressures on many individuals and communities.
- 6.4 Marginalising rogue traders will create an environment which will support and encourage legitimate credit providers and reduce the fear of crime. But mostly importantly of all, action taken against illegal money lenders will enable the most vulnerable members of our society to escape from a continuous cycle of debt and poverty.

7.0 STAFFING / ACCOMMODATION IMPLICATIONS (IF APPROPRIATE)

- 7.1 There are no staffing or accommodation implications for London Borough of Brent as all the costs will be borne by the IMLT.

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APPENDIX 1

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

PROTOCOL FOR ILLEGAL MONEY LENDING TEAM INVESTIGATIONS

Interpretation

For the purposes of this Protocol –

“**BCC**” means Birmingham City Council

“**LBBTS**” means London Borough of Brent Trading Standards Service

“**IMLT**” means the Illegal Money Lending Team

“**Delegated Power**” means the discharge of the function of the Enforcement of Part III of the Consumer Credit Act 1974 granted to BCC by LBBTS 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

“**Brent Contact Officer (LBBTSCO)**” means the relevant person appointed by the Head of Trading Standards of LBBTS to liaise with the Head of Illegal Money Lending Team on matters relating to and in connection with the Illegal Money Lending Project

“**Appropriate Contact Officer**” means The Director of Regulation and Enforcement or the Head of Illegal Money Lending of Birmingham Regulation and Enforcement or any person nominated by the Council or authorised by them

1. Application

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

- The conduct of investigations and associated working practices for the IMLT officers when conducting investigations or operating in Brent Council
- The mechanisms whereby Brent Council is updated on the progress of the project and any significant issue relating thereto.
- The exchange of intelligence and information between the IMLT and LBBTS
- 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 IMLT to enforce the provisions of the Consumer Credit Act 1974 within the area of Brent Council. The protocol encourages the exchange of information and a working partnership approach between BCC and LBBTS 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 LBBTS to withdraw the delegated power at any time during the Term. However, LBBTS 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 LBBTS.

3. The IMLT

3.1 It is recognised that officers in the IMLT 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 IMLT will comprise of a Head of Service and up to 55 staff directly employed by BCC. The Head of Illegal Money Lending Team will be responsible for the day-to-day operation and supervision of the IMLT.

3.3 The Head of Illegal Money Lending Team will report directly to the Director of Regulation and Enforcement or nominated officer, as appropriate.

- 3.4 The Head of the Illegal Money Lending Team BCC will, when required, provide quarterly progress reports, from the commencement date, to the Head of LBBTS 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 Regulation and Enforcement or Head of Trading Standards BCC) prosecutions being pursued or concluded and developments concerning or affecting the Illegal Money Lending Project in Brent.
- 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 Brent, 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 Brent Council Area

- 4.1 LBBTS will designate and appoint a Brent Council Contact Officer (LBBTSCO).
- 4.2 The Head of Illegal Money Lending Team will at any time the Head of Illegal Money Lending Team considers necessary and prudent, or at the request of the LBBTSCO, brief the LBBTSCO on any intelligence gathered, any progress made on investigations and/or prosecutions pending or otherwise, relating to or affecting Brent 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 Team to keep the LBBTSCO updated on the progress of investigations and enquiries being carried out in Brent and any changes made or introduced by Government concerning the 'Illegal Money Lending Project'. It is incumbent on the Head of Illegal Money Lending Team to maintain regular dialogue/communication with the LBBTSCO.
- 4.4 The IMLT will have regular contact with the Police and other Government agencies. The Head of Illegal Money Lending Team will consult the LBBTSCO 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 Team will actively involve the LBBTSCO and seek to develop close links between those agencies and BCC.
- 4.5 The Head of Illegal Money Lending Team will as soon as reasonably practicably inform the LBBTSCO of the outcome of any concluded prosecution proceedings conducted within Brent.
- 4.6 BCC, where possible, will consult with LBBTS 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 LBBTSCO in advance. Upon being notified of an intention to contact such a body, Brent Council Trading Standards may arrange for one of their own officers to accompany the relevant officer of the IMLT on any visit.
- 4.8 Where the Head of Illegal Money Lending Team and the Head of Trading Standards of Brent Council agree that an officer or officers of Brent Council Trading Standards will be actively involved in an investigation, that officer will remain an employee of LBBTS but for the purpose of that investigation, will come under the control of the IMLT team manager. Such agreement will be subject to the Head of Illegal Money Lending Team being satisfied that the officer's or officers' participation will not compromise any investigation or endanger any member of the IMLT, 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 Team and the Head of Trading Standards of Brent Council consider necessary and/or appropriate.
- 4.9 Unless there is prior agreement with the Head of Illegal Money Lending Team 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 LBBTS officer.
- 4.10 The exercise by BCC of these arrangements shall be at no cost to LBBTS
- 4.11 BCC shall have an Appropriate Contact Officer.
- 4.12 In the absence of the IMLT Head of Service, the role, duties, and responsibilities of the Head of Illegal Money Lending Team 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 IMLT will rely on receiving information about Illegal Money Lender activities.
- 5.2 LBBTS will endeavour to provide as much relevant information and intelligence as reasonably and practicably possible to the IMLT concerning any investigation being carried out within Brent having regard to any statutory limitations/restrictions.
- 5.3 Information and intelligence will be provided by the LBBTSCO to the Head of Illegal Money Lending Team or a person designated by him/her.

- 5.4 BCC IMLT 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 IMLT as a source of intelligence.
- 5.5 BCC, IMLT and LBBTS 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 IMLT in Brent 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 IMLT officers and any other officer or person within the direct management of the IMLT providing support and assistance in any investigation undertaken by the IMLT.
- 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, IMLT BCC, recommends a prosecution under Part III of the Consumer Credit Act 1974, if required, LBBTS 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 LBBTS ought reasonably to be aware of. LBBTS will be invited to communicate any comments it considers appropriate and necessary concerning the intended prosecution to the Director of Regulation and Enforcement, the informant for BCC. Such comments will be given due attention and consideration by the informant for BCC.

7. Responsibilities and Actions of the Authorities

- 7.1 BCC shall be liable for the actions and competence of the persons employed within the IMLT and shall ensure that the IMLT shall comply with all legislative requirements and take all reasonable steps to ensure any actions taken are lawful and within the spirit of the protocol.
- 7.2 LBBTS shall be liable for the actions and competence of persons within its employ and shall take all reasonable steps to ensure the competence of those

persons in carrying out their functions and that they comply with legislative requirements and the spirit of this protocol.

- 7.3 Information / intelligence provided between BCC and LBBTS shall be used for the purpose intended and shall not be divulged to third parties unless to do so would be lawful and in pursuant of an investigation / enquiry subject to this protocol.
- 7.4 BCC and LBBTS endorse a joined up working approach to the enforcement of the Consumer Credit Act 1974. The partners will attempt to promote consistency in enforcement. However, this protocol does not attempt to restrict the powers of authorised officers of the IMLT or BCC from discharging their duties, as appropriate.

Commencement date: ??2013

Signed

Brent Council

Signed

Jacqui Kennedy
Director of Regulation and Enforcement
Birmingham City Council.

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