



Executive
11 November 2013

**Report from the Strategic Director of
Environment and Neighbourhoods**

For Action

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 Information is not available about the scale of the problems in Brent. The crime reported to Brent and Harrow Trading Standards largely relates to credit related scams which the service can and does investigate from its own resources. The more serious offences associated with loan sharks are rarely reported because victims often feel shame or feel under threat of harassment, violence or

- community exclusion if they are identified. Effective action relies, therefore, on the kind of intelligence led operations carried out by the IMLT.
- 3.16 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.
- 3.17 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.
- 3.18 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.
- 3.19 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.
- 3.20 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.
- 3.21 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

- 3.22 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.
- 3.23 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.

- 3.24 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.
- 3.25 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.
- 3.26 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.
- 3.27 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.
- 3.28 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.