

Report to the Leader of the County Council
Report to the Cabinet Member for Public Protection and Waste
Report submitted by: Interim Executive Director for Environment
Date: 6 March 2015

Part I

Electoral Division affected:
All

Continuation of Authorisation for Birmingham City Council and Officers within its Illegal Money Lending Team to investigate and institute proceedings against illegal money lenders operating within Lancashire
(Appendix 'A' refers)

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Executive Summary

The Trading Standards Service has a duty to enforce the Consumer Credit Act 1974 in relation to unauthorised credit lenders. Until recently the criminal offences for unlicensed trading in credit have been provided for under the Consumer Credit Act 1974 but this has now been updated and the criminal offence is now regulated under section 23 of the Financial Services and Markets Act 2000.

The government funded National Illegal Money Lending Team hosted by Birmingham City Council have been authorised to enforce legislation in relation to unlicensed credit trading in Lancashire. This authorisation expires at the end of March 2015 and therefore it is proposed to extend the authorisation for the Team to enforce the legislation in Lancashire, and also to add the Financial Services and Markets Act 2000 to the list of legislation the Illegal Money Lending Team and Trading Standards Service is authorised to enforce under the Council's Scheme of Delegation to Chief Officers.

This is a Key Decision and the provisions of Standing Order 25 have been complied with.

Recommendations

The Cabinet Member for Public Protection and Waste is recommended to approve:

- (i) that the discharge of its function of the enforcement of the Financial Services and Markets Act 2000, and the Consumer Credit Act 1974 be carried out in Lancashire by Birmingham City Council as set out in the report (pursuant to Section 101 and Section 222 of the Local Government Act 1972,

Regulation 7 of the Local Authority (Arrangements for Discharge of Functions) (England) Regulations 2012 and Section 9EA of the Local Government Act 2000.

- (ii) the “Protocol for Illegal Money Lending Team Investigations” as set out at Appendix 'A' and that the Assistant Director and Head of Trading Standards be authorised to enter into the protocol on behalf of Lancashire County Council and approve minor alterations if required.

The Leader of the County Council is recommended to approve the addition of the Financial Services and Markets Act 2000 to the list of legislation which the Trading Standards service is authorised to enforce under the Council's Scheme of Delegation to Chief Officers and to authorise the Executive Director for the Environment to take future decisions in relation to the function.

Background and Advice

The primary legislation governing the consumer credit industry was the Consumer Credit Act 1974. This legislation has now been updated under the Financial Services Act 2012 and is regulated through the Financial Services and Markets Act 2000. The Trading Standards Service enforces relevant provisions of this Act in each Local Authority area. The legislation provides that those businesses and individuals engaging in this area should be authorised to conduct business by the Financial Conduct Authority (FCA) (previously the Office of Fair Trading (OFT)). The FCA must be satisfied that an applicant who wishes to be authorised for the purposes of Consumer Credit is a fit and proper person and that the business proposed fits in with operating criteria agreed by the FCA.

To operate a consumer credit business without authorisation is a criminal offence and carries a maximum penalty of £5,000 and/or up to two years imprisonment. Authorisation can be revoked where it can be established that the authorised business has acted inappropriately. Warnings and conditions, fines and suspension can be issued where necessary. Illegal money lending covers a range of activities, from persons that are actually authorised but are acting unlawfully, to the extreme of a person offering cash loans without being authorised at all (Loan Sharks). Loan Shark activity is characterised by deliberate criminal fraud and theft, with extortionate rates of interest on loans that mean borrowers face demands for payment of thousands of pounds more than they borrowed and can often never pay off the loans. Borrowers who fail to pay or refuse to pay are subject to intimidation, theft, forced prostitution and other, extreme physical violence.

An Illegal Money Lending Team 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.

The pilot scheme, initially working across the midlands, was successful and was

extended to cover the whole of England. The team have been authorised to investigate and prosecute matters in Lancashire since 2008.

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 the BIS. The Treasury and BIS have announced that due to the success of the Birmingham team that funding will continue.

In 2010 it was estimated that 310,000 households were using illegal lenders. Using this figure it is estimated that £750m is paid to illegal lenders each year by vulnerable communities and individuals.

The England team is hosted by Birmingham City Council and will continue to provide a resource to investigate illegal money lending across England.

The team whose office is based in Birmingham continues to operate the “parachute in and out model”, with a local presence through regional officers.

The benefit that this team can bring to Lancashire is significant. Lancashire County Council Trading Standards Service, like most local authorities, is not able to provide the level of specialist resource to provide 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.

Up to November 2014 the project has written off over £60 million of illegal debts (money victims would have paid back to illegal lenders if the Department had not acted) secured over 321 prosecutions, resulting in prison sentencing totalling over 200 years and one indefinite helped over 25,000 victims of loan sharks including the most hard to reach individuals.

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

The current arrangement with Birmingham City Council expires at the end of March 2015. To enable the arrangement to continue after 31 March 2015 Birmingham City Council requires the formal authorisation of functions to carry out the investigations etc under the Consumer Credit Act and Financial Services and Markets Act and to prosecute any matters in the area.

It is proposed that the delegation will continue until 31st March 2018 with a view to extending the arrangement if successful.

In order to ensure clarity in respect of the operation of these arrangements, the protocol at Appendix 'A' sets out the processes and practices to enable Birmingham City Council and its officers to undertake investigations and legal procedures on behalf of the County Council.

This delegation does not prevent Lancashire County Council Trading Standards Service from undertaking the function.

If agreed the proposed recommendations would add to the County Council's resources and would enable Lancashire County Council Trading Standards Service to have access to a team of highly trained experts from the IMLT.

This area of law enforcement requires specialist resource, expertise, techniques and facilities which Lancashire County Council 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.

The recommendations support the performance of the Authority's duty in relation to enforcement of the provisions of the Consumer Credit Act 1974 and the Financial Services and Markets Act 2000.

Implications:

This item has the following implications, as indicated:

Risk management

The corporate risk management system has been used to assess the level of risk. The risk to adopting this partnership approach by providing delegated powers is assessed as low. The approach removes any risk to future funding of this work as the officers will be employed by another local authority.

Financial

There are no financial implications for Lancashire County Council as a result of this proposal. All major costs will be funded by the Treasury. Incidental costs in providing a work base for officers operating in Lancashire will be contained within the Trading Standards Service budget. Any prosecutions will be undertaken by Birmingham City Council with no liability for costs to Lancashire County Council.

Legal

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 and now, with the introduction of the Financial Services Act 2012, the Financial Services and Markets Act 2000. This is an executive function for the purposes of the Local Government Act 2000 and the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and therefore it is necessary for the Cabinet Member as the executive to formally delegate this function to Birmingham City Council under Section 9EA of the Local Government Act 2000 and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012. Birmingham City Council is also required to formally accept the delegation.

Section 17 – Crime and Disorder Act

Illegal moneylenders invariably target low-income households and the most vulnerable members of society. This can mean that their activities have disproportionate implications for the more deprived areas and action taken against them therefore supports the policy priorities associated with crime and disorder and protecting the more vulnerable members of the community.

Illegal money lending has a serious detrimental effect on both individuals and the community. Tackling the root causes and providing legitimate alternative sources of credit will contribute to reducing stress and pressures on many individuals and communities.

Marginalising rogue traders creates an environment which supports and encourages legitimate credit providers and reduces the fear of crime.

Equal Opportunities

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.

List of Background Papers

Paper	Date	Contact/Directorate/Tel
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N/A

Reason for inclusion in Part II, if appropriate

N/A