

Wiltshire Council

Cabinet

17 April 2012

Subject: Illegal Money Lending Team - Authorisation

Cabinet member: Cllr Keith Humphries – Public Health and Protection Services

Key Decision: No

Executive Summary

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 these individuals and communities.

An Illegal Money Lending Team has been established within Birmingham Trading Standards as a pilot project in England. 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.

This report seeks approval for Wiltshire Council to authorise the Illegal Money Lending Section (IMLS) of Birmingham City Council to investigate and institute proceedings against illegal money lenders operating within the Wiltshire Council area as part of this national collaborative project.

The benefit that this team can bring to Wiltshire Council is significant. Wiltshire's 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.

Proposal(s)

That the Cabinet agree that the discharge of its function of the enforcement of Part III of the Consumer Credit Act 1974 be carried out in Wiltshire by Birmingham City Council (pursuant to Section 101 of the Local Government Act 1972, Regulation 7 of the Local Authority (Arrangements for Discharge of Functions) (England) Regulations 2000 and Section 13 and 19 of the Local Government Act 2000).

That the attached (appendix 2) "Protocol for Illegal Money Lending Team Investigations" be agreed and authority be delegated to the Service Director, Public Protection to enter into the agreement on behalf of Council and approve minor alterations if required.

Reason for Proposal

This proposal, if agreed, will add to the Council's resources and will enable Wiltshire's Trading Standards Service to have access to a team of highly trained experts from the Illegal Money Lending Team.

Name of Director Maggie Rae**Designation Director of Public Health and Public Protection**

Wiltshire Council

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Key Decision: No

Purpose of Report

1. This report seeks approval for Wiltshire Council to authorise the Illegal Money Lending Section of Birmingham City Council to investigate and institute proceedings against illegal money lenders operating within the Wiltshire Council area as part of a national collaborative project.

Background

2. 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.
 - 2.1 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 are subject to intimidation, theft, forced prostitution and other, extreme physical violence.
 - 2.2 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.
 - 2.3 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.

- 2.4 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 announced that due to the success of the Birmingham team funding will continue and can be used to roll out to other authorities.
- 2.5 In addition, the minister also announced that BIS intended to restructure the project by moving the project 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 will be hosted by Birmingham City Council and will continue to provide a resource to investigate illegal money lending across England.
- 2.6 Birmingham was chosen to lead the new England team due to the efficiencies associated with the expansion. This was favoured to creating a brand new team that would attract high development and set up costs. Centralising national services was key. The team based in Birmingham will continue to operate the “parachute in and out model”, with a local presence through regional officers.
- 2.7 The objectives of the Illegal Money Lending Project are contained at Appendix 1 of this report.
- 2.8 The benefit that this team can bring to Wiltshire Council is significant. Wiltshire’s 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.

Main Considerations and benefits for the Council

3. 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.
 - 3.1 Illegal money lending has a serious detrimental effect on both individuals and the community. Tackling the root causes and providing legitimate alternative sources of credit will contribute to reducing stress and pressures on many individuals and communities.
 - 3.2 Marginalising rogue traders creates an environment which supports and encourages legitimate credit providers thereby providing a ‘level playing field’ and contributing to economic vitality.
 - 3.3 This scheme supports the Governments priority of ‘Better Regulation’ using resources effectively and targeting high risk activities.

Environmental and climate change considerations

4. No environmental and climate change issues have been identified.

Equalities Impact of the Proposal

5. 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. This initiative will help safeguard these vulnerable members of our society.

Risk Assessment

6. 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 Implications

7. There are no financial implications for Wiltshire Council as a result of this proposal. All major costs will be funded by the Treasury.

Legal Implications

8. By virtue of Section 161 of the Consumer Credit Act 1974, it is the duty of each 'local weights and measures authority' to enforce the provisions of the Act within their local authority boundary. This is an executive function for the purposes of the Local Government Act 2000 and the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and therefore it is necessary for Cabinet as the executive to formally delegate this function to Birmingham City Council under Section 13 and 19 of the Local Government Act 2000 and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000. Birmingham City Council is also required to formally accept the delegation.
 - 8.1 Appendix 2 provides for a "Protocol for Illegal Money Lending Team Investigations" be agreed and authority be delegated to the Service Director, Public Protection to enter into the agreement on behalf of Council and approve minor alterations if required. Such a document will protect the interests of both authorities and provide a robust operational framework.
 - 8.2 Any prosecutions will be undertaken by Birmingham City Council with no liability for costs to Wiltshire Council.

Options Considered

9. There are no other viable options as the funding is provided on the basis of expanding the Birmingham Council Illegal Money Lending Team.

Conclusions

10. This proposal, if agreed, will add to the Council's resources and will enable Wiltshire's Trading Standards Service to have access to a team of highly trained experts from the IMLT.
 - 10.1 This area of law enforcement requires specialist resource, expertise, techniques and facilities which Wiltshire's Trading 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.

- 10.2 The recommendations will support performance of the Authority's duty in relation to enforcement of the provisions of the Consumer Credit Act 1974.

Name of Director	Maggie Rae
Designation	Director of Public Health and Public Protection

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5 March 2012

Background Papers

None

Appendices

Appendix 1 – Objectives of the Illegal Money Lending Project

Appendix 2 – Protocol for Illegal Money Lending Section Investigations

Appendix 1 – Objectives of the Illegal Money Lending Project

Objective 1 - To obtain a clear understanding of the scale and impact of illegal money lending as well as learning lessons on the best way to enforce.

- 1.1 The evidence so far indicates that illegal moneylenders are widespread and prevalent. They operate in areas that have a high proportion of rented accommodation and target the most vulnerable members of society. High rise flats are common premises targeted by loan sharks as legitimate lenders do not lend to people residing in this type of accommodation due to the health and safety risks for their collectors.
- 1.2 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% up to 117,000% APR in some instances.
- 1.3 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 common traits include: adding indiscriminate charges, targeting single mothers and introducing payment through sexual favours.
- 1.4 Moneylenders often use victims of money lending to assist them with maintaining their criminal lifestyle and anonymity, for example illegal money lenders' vehicles are often registered at a clients' address.
- 1.5 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 moneylenders or removing them altogether may therefore help to reduce levels of other criminal activity within a community.
- 1.6 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, to identify them and if possible establish their address. A significant proportion of targets are also what are termed "life style 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.

Objective 2 - To create a climate where victims can come forward – confident that prosecutions will be undertaken, and convictions obtained, without fear of reprisals.

- 2.1 Effective branding and publicity of the pilot project has meant extensive promotion of the aims of the project and work of the team, 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.

- 2.2 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.

Objective 3 – To change the perception amongst those lending that illegal money lending is rarely prosecuted.

- 3.1 A proactive media campaign is ongoing in those areas that have successfully targeted criminals. Engaging the media promotes the work of the team and raises public awareness.

Objective 4 – To develop ways of replacing the removed lenders with more support for their victims.

- 4.1 The Illegal Money Lending Team 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.
- 4.2 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 Illegal Money Lending Team offers money management to all victims of moneylenders who contact them for advice and assistance. Partnership working in this area is recognised as being essential in this area of service provision. This will be the key role of the 'Financial Inclusions Partnership Officer'

Appendix 2 - DEPARTMENT FOR BUSINESS INNOVATION AND SKILLS (BIS) ILLEGAL MONEY LENDING PROJECT

PROTOCOL FOR ILLEGAL MONEY LENDING SECTION INVESTIGATIONS

Interpretation

For the purposes of this Protocol –

“**BCC**” means Birmingham City Council

“**WC**” means Wiltshire Council Trading Standards

“**IMLS**” means the Illegal Money Lending Section

“**Delegated Power**” means the discharge of the function of the Enforcement of Part III of the Consumer Credit Act 1974 granted to BCC by WCC 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 31 March 2015

“**Birmingham Trading Standards**” means Regulatory Services of BCC

“**Wiltshire Council Contact Officer (WCCO)**” means the relevant person appointed by the Head of Trading Standards of WC to liaise with the Head of Illegal Money Lending Section on matters relating to and in connection with the Illegal Money Lending Project

“**Appropriate Contact Officer**” means The Director of Regulatory Services, Head of Trading Standards or the Head of Illegal Money Lending of Birmingham Regulatory Services 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 IMLS officers when conducting investigations or operating in Wiltshire Council
- The mechanisms whereby Wiltshire Council is updated on the progress of the project and any significant issue relating thereto.
- The exchange of intelligence and information between the IMLS and WC
- 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 IMLS to enforce the provisions of the Consumer Credit Act 1974 within the area of Wiltshire Council. The protocol encourages the exchange of information and a working partnership approach between BCC and WC 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 WC to withdraw the Delegated Power at any time during the Term. However WC 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 WC.

3. The IMLS

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

3.3 The Head of Illegal Money Lending Section will report directly to the Director of Regulatory Services or nominated officer as appropriate.

3.4 The Head of the Illegal Money Lending Section BCC will, when required, provide quarterly progress reports, from the Commencement Date, to the Head of Trading Standards of WC 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 Regulatory Services or Head of Trading Standards BCC) prosecutions being pursued or concluded and developments concerning or affecting the Illegal Money Lending Project in Wiltshire.

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 Wiltshire, 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 Wiltshire Council Area

4.1 WC will designate and appoint a Wiltshire Council Contact Officer (WCCO).

4.2 The Head of Illegal Money Lending Section will at any time the Head of Illegal Money Lending Section considers necessary and prudent, or at the request of the WCCO, brief the WCCO on any intelligence gathered, any progress made on investigations and/or prosecutions pending or otherwise, relating to or affecting Wiltshire and/or its residents.

4.3 That the Head of IMLT shall ensure that a summary of the investigation be forwarded electronically to Wiltshire, preferably before institution of proceedings, however in all cases within two working days of instituting proceedings.

4.4 Further to Clause 4.2 and 4.3 above, all reasonable steps will be taken by the Head of Illegal Money Lending Section to keep the WCCO updated on the progress of investigations and enquiries being carried out in Wiltshire and any changes made or introduced by Government concerning the 'Illegal Money Lending Project'. It is

incumbent on the Head of Illegal Money Lending Section to maintain regular dialogue/communication with the WCCO.

- 4.5 The IMLS will have regular contact with the Police and other Government agencies. The Head of Illegal Money Lending Section will consult the WCCO 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 Section will actively involve the WCCO and seek to develop close links between those agencies and BCC.
- 4.6 The Head of Illegal Money Lending Section will as soon as reasonably practicably inform the WCCO of the outcome of any concluded prosecution proceedings conducted within Wiltshire.
- 4.7 BCC, where possible, will consult with WC in good time before issuing any press release concerning any prosecution pursued by BCC pursuant to this Protocol.
- 4.8 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 WCCO in advance. Upon being notified of an intention to contact such a body, Wiltshire Council Trading Standards may arrange for one of their own officers to accompany the relevant officer of the IMLS on any visit.
- 4.9 Where the Head of Illegal Money Lending Section and the Head of Trading Standards of Wiltshire Council agree that an officer or officers of Wiltshire Council Trading Standards will be actively involved in an investigation, that officer will remain an employee of WC but for the purpose of that investigation, will come under the control of the IMLS team manager. Such agreement will be subject to the Head of Illegal Money Lending Section 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 Section and the Head of Trading Standards of Wiltshire Council consider necessary and/or appropriate.
- 4.10 Unless there is prior agreement with the Head of Illegal Money Lending Section 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 WC officer.
- 4.11 The exercise by BCC of these arrangements shall be at no cost to WC
- 4.12 BCC shall have an Appropriate Contact Officer.
- 4.13 In the absence of the IMLS Head of Service, the role, duties, and responsibilities of the Head of Illegal Money Lending Section 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 IMLS will rely on receiving information about Illegal Money Lender activities.

- 5.2 WC will endeavour to provide as much relevant information and intelligence as reasonably and practicably possible to the IMLS concerning any investigation being carried out within Wiltshire having regard to any statutory limitations/restrictions.
- 5.3 Information and intelligence will be provided by the WCCO to the Head of Illegal Money Lending Section or a person designated by him/her.
- 5.4 BCC IMLS 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 IMLS as a source of intelligence.
- 5.5 BCC, IMLS and WC 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 IMLS in Wiltshire 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 IMLS officers and any other officer or person within the direct management of the IMLS 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, IMLS BCC, recommends a prosecution under Part III of the Consumer Credit Act 1974, if required, WC 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 WC ought reasonably to be aware of. WC will be invited to communicate any comments it considers appropriate and necessary concerning the intended prosecution to the Director of Regulatory Services, 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 IMLS and shall ensure that the IMLS 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 WC 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 WC 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 WC 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 IMLS or BCC from discharging their duties, as appropriate.

Commencement date: 1 May 2012

Signed

Wiltshire Council

Signed

Jacqui Kennedy
Director of Regulation and Enforcement
Birmingham City Council.