

North Tyneside Council Report to Cabinet 9 November 2015

ITEM 7(f)

Illegal Money Lending Project

Portfolio(s): Housing and Transport

Cabinet Member(s): Cllr J Harrison

Report from Service Area: Environment, Housing and Leisure

Responsible Officer: Phil Scott (Tel: 643 7295)
Head of Environment, Housing and Leisure

Wards affected: All

PART 1

1.1 Executive Summary:

This report seeks Cabinet approval to re-enter into an arrangement to enable and authorise Birmingham City Council to investigate and institute proceedings against illegal money lenders operating within the borough of North Tyneside.

1.2 Recommendation(s):

It is recommended that Cabinet delegate:

- (1) the Authority's enforcement functions, as a local weights and measures authority, under Part III of the Consumer Credit Act 1974 to Birmingham City Council to undertake enforcement activities within the borough of North Tyneside;
- (2) the Authority's powers of prosecution under Part III of the Consumer Credit Act 1974 to Birmingham City Council for any matters associated with or discovered during the enforcement activities detailed above; and
- (3) authority to the Head of Environment, Housing and Leisure in consultation with the Head of Finance, the Head of Law and Governance, the Cabinet Member for Finance and Resources and the Cabinet Member for Housing and Transport, to re-enter into a protocol with Birmingham City Council for the enforcement of Part III of the Consumer Credit Act 1974, and to deal with all ancillary matters consistent with the above resolutions.

1.3 Forward plan:

Twenty eight days notice of this report has been given and it first appeared on the Forward Plan that was published on 5 October 2015.

1.4 Council Plan and Policy Framework

The Illegal Money Lending Project aims to support vulnerable members of society who become victims of illegal moneylenders and to protect them from the associated incidences of crime and disorder. It also seeks to marginalise and drive out rogue traders and support and encourage legitimate credit providers. The project therefore contributes towards the Authority's 'Our North Tyneside Plan'.

Our People:

Our People will be cared for and kept safe if they become vulnerable
Working with partners to identify the most vulnerable and protect them from becoming victims of crime.

1.5 Information:

1.5.1 Background

In April 2011 Cabinet approved the delegation of the Authority's enforcement functions under Part III of the Consumer Credit Act 1974 to Birmingham City Council to enable it to undertake enforcement within the borough of North Tyneside. It also delegated the power of prosecution to Birmingham City Council for any matters associated with or discovered during an investigation involving Part III of the Act.

Part of the agreed arrangements between this Authority and Birmingham was to enter into a protocol to facilitate the delegation of powers to Birmingham City Council. This protocol also details how investigations would be carried out. The protocol has now expired and it is necessary to enter into a new protocol to facilitate the further delegation of powers proposed by this report.

The new protocol has been updated to reflect changes in legislation and the fact that responsibility for the oversight of the legislation now rests with the Financial Conduct Authority.

Cabinet approval is sought for the Head of Housing, Environment and Leisure, subject to consultation with the Cabinet Members for Finance and Resources and Housing and Transport, to enter into the new Protocol with Birmingham City Council.

The Consumer Credit Act

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 Financial Conduct Authority (FCA). The FCA must be satisfied that an applicant for a Consumer Credit Licence is a 'fit and proper person' before issuing that person with a licence to trade.

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, or extreme physical violence.

Illegal Money Lending Team

An Illegal Money Lending Team was established within Birmingham City Council 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.

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 National Trading Standards Board (NTSB).

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

Birmingham was chosen to lead the new England team due to the efficiencies associated with having just one national team. The team, although it is based in Birmingham, continues to operate the "parachute in and out model", with a local presence through regional officers.

The benefit that this team brings to North Tyneside is significant. North Tyneside Trading Standards, 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.

1.5.2. Key Statistics

Key statistics for the national project up to March 2015:

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

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 for Work and Pensions, Post Office Counter Fraud Unit, HM Revenue and Customs to facilitate a coordinated approach to tackling crime and disorder.

Since 2011 two investigations have been carried out in North Tyneside relating to illegal money lending. Whilst no formal action was taken against the illegal money lenders, they have ceased their activities. The families targeted by the moneylenders were given appropriate financial advice and assistance. The families were introduced to Credit Unions as an alternative means to borrowing money. Credit Unions encourage saving and responsible lending. In the last 6 months a number of training sessions with staff working in the Sure Start Centres in North Tyneside have taken place informing them of the financial assistance available to them.

1.5.3 Objectives of the Project

Full details of the objectives of the project are attached at **Appendix 1**.

1.5.4 Delegation

In order to continue the scheme into North Tyneside, Birmingham City Council requires formal delegation of functions to carry out the investigations etc under the 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, a draft protocol has been devised and this is attached to this report in **Appendix 2**. The draft protocol sets out the processes and practices to enable Birmingham City Council and its officers to undertake investigations and legal procedures.

This Authority can withdraw the delegated power given to Birmingham City Council at any time although the Protocol says that such a withdrawal should not be 'unreasonably withdrawn' and that there should be a 'good reason' for such a withdrawal.

1.6 Decision options:

The following decision options are available for consideration by Cabinet:

Option 1

To note the existence of the additional enforcement resource provided through the national Illegal Money Lending Project, and to agree with the recommendations to delegate the enforcement functions set out in Part III of the Consumer Credit Act 1974 to Birmingham City Council and authorise the Head of Environment, Housing and Leisure to enter into the Protocol at Appendix 2 after appropriate consultation.

Option 2

To note the existence of the additional enforcement resource provided through the national Illegal Money Lending Project, and to reject the recommendations to delegate the functions set out in Part III of the Consumer Credit Act 1974 to Birmingham City Council.

Option 3

To refer any of the matters arising in this report back to officers for further consideration.

1.7 Reasons for recommended option:

Option 1 is the recommended option for the following reasons:

The proposal seeks to continue to add to the Authority's resources and will enable North Tyneside Council's Trading Standards Service to have access to a team of highly trained experts from the Illegal Money Lending Team.

This area of law enforcement requires specialist resource, expertise, techniques and facilities which the Authority's Trading Standards Service would not otherwise have ready and available access to. Members of the Illegal Money Lending Team include officers with high-level training and expertise in surveillance techniques, security operations and financial accounting investigations. The team includes, amongst others, appropriately trained former police officers and security services personnel.

1.8 Appendices:

Appendix 1 – Objectives of the Project

Appendix 2 – Draft Protocol for Illegal Money Team Investigations

1.9 Contact officers:

Phil Scott – Head of Environment, Housing and Leisure (Tel: 6437295)

Colin MacDonald – Senior Manager, Technical and Regulatory Services (Tel: 6436620)

Alan Burnett – Trading Standards and Licensing Officer (Tel: 643 6621)

Joanne Lee – Public Protection Manager (Tel: 6436901)

John Barton – Lawyer (Tel: 6435354)

Catherine Lyons, Regulatory Services Manager, Tel: (0191) 643 7780

Alison Campbell – Senior Business Partner, Tel (0191) 643 7038

1.10 Background information:

The following background papers have been considered in the preparation of this Report and are available for inspection at the offices of the authors.

- Cabinet report 11/04/2011:
http://www.northtyneside.gov.uk/pls/portal/NTC_PSCM.PSCM_Web.download?p_ID=524170
- Consumer Credit Act 1974: <http://www.legislation.gov.uk/ukpga/1974/39>
- Financial Services Act 2012:
<http://www.legislation.gov.uk/ukpga/2012/21/contents/enacted>

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

There are no financial implications arising for the Authority as a result of this proposal. The Department for Business, Innovation and Skills have provided funding of £3.6m for 2015/16 to cover the project which is administered by the National Trading Standards Board.

Any incidental costs incurred in providing temporary support for investigations within North Tyneside will continue to be funded through the existing revenue budget within the Public Protection budget.

2.2 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. This is an executive function. It is therefore necessary for Cabinet as the executive to formally delegate the functions set out in Part III of the Consumer Credit Act 1974 to Birmingham City Council under Section 9EA of the Local Government Act 2000 and Regulation 5 of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012. Birmingham City Council is also required to formally accept the delegation.

Any prosecutions will be undertaken by Birmingham City Council with no liability for costs to North Tyneside Council.

2.3 Consultation/community engagement

The Illegal Money Lending Project is a nationally funded scheme that assists local authorities effectively enforce their functions under Part III of the Consumer Credit Act 1974, as amended. The strategic management of the project is managed by the Department of Business Innovation and Skills (BIS) and is beyond the control of the Authority. There is therefore limited scope for external consultation or community engagement to influence delivery of the project. Consultation has taken place with the Senior Leadership Team and the Cabinet Member for Housing and Transport.

2.4 Human rights

Investigations undertaken by Birmingham City Council will be undertaken within the scope of the specified legislation and the Regulation of Investigatory Powers Act 2000, having full regard to the rights of the individual balanced against the interests of the wider general public. In reaching any decision or taking any subsequent action due regard will be taken of the relevant Enforcement Policy of Birmingham City Council, and the Human Rights Act 1998 by ensuring that enforcement activity takes place in a proportionate manner and only where it is considered necessary, in the public interest.

2.5 Equalities and diversity

It is recognised that it is often the poorer and more vulnerable members of society who become victims of illegal money lending and find it difficult to access appropriate support and help. Participation in the Illegal Money lending Team initiative overall has a positive impact in the enforcement and prevention of incidents of illegal money lending occurring in the Borough. An extensive range of guidance literature is available to assist consumers and this is available in different formats that reflect this diversity, for example in larger font and different languages. Where language difficulties occur, the service has access to an interpretation service. Where there has been suspected loan shark activity in a particular area communications are devised to reflect that particular area e.g. currently NT Homes are sending out a letter re suspected loan sharks with contact details.

2.6 Risk management

Risks associated with the service are managed via the Operational Risk Management Group.

2.7 Crime and disorder

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.

Instances of money lending crime are investigated in accordance with specific legislation and in accordance with the Regulation of Investigatory Powers Act 2000.

2.8 Environment and sustainability

There are no direct implications for environment and sustainability arising from this report.

PART 3 - SIGN OFF

- Deputy Chief Executive x
- Head of Service x
- Mayor/Cabinet Member(s) x
- Monitoring Officer x
- Chief Finance Officer x
- Head of Corporate Strategy x