

DELEGATION OF POWERS TO THE ENGLAND ILLEGAL MONEY LENDING TEAM

Cabinet Member(s)	Councillor Ray Puddifoot
Cabinet Portfolio(s)	Leader of the Council
Officer Contact(s)	Sue Pollitt, Residents Services
Papers with report	Appendix 1: Instrument of Delegation. Appendix 2: Protocol for Illegal Money Lending Section Investigations.

1. HEADLINE INFORMATION

Summary	<p>This report describes the national arrangements for tackling illegal money lending ("loan sharks") in England, via the England Illegal Money Lending Team (IMLT).</p> <p>Cabinet is asked to authorise the Deputy Chief Executive and Corporate Director of Residents Services, together with the Leader of the Council, to sign a delegation document and working protocol which would allow the IMLT to investigate and institute proceedings against illegal money lenders operating within the London Borough of Hillingdon.</p>
Contribution to our plans and strategies	Putting residents first
Financial Cost	None.
Relevant Policy Overview Committee	Residents' and Environmental Services
Ward(s) affected	All.

2. RECOMMENDATIONS

That Cabinet:

- 1. Authorises officers to negotiate the detailed terms of the protocol and delegation document in order to protect the Council's interests;**
- 2. Authorises the Deputy Chief Executive and Corporate Director of Residents Services, together with the Leader of the Council, to agree and sign the relevant delegation document and protocol with Birmingham City Council on behalf of the London Borough of Hillingdon, once they are finalised.**

Reasons for recommendation

This will allow the England Illegal Money Lending Team to investigate and institute proceedings against illegal money lenders operating in the London Borough of Hillingdon.

Alternative options considered / risk management

1. Cabinet could decide not to authorise the delegation and protocol. If the documents are not signed, any information received about loan shark activity within the London Borough of Hillingdon could not be acted on by the IMLT, thus, in the absence of in-house capability, Hillingdon residents could be deprived of specialist support and enforcement.

2. Cabinet could instruct officers to investigate developing in-house capability to deal with illegal money lending. However, illegal money lending tends to span across multiple local authority areas and requires very specialised skills and systems. For this reason Central Government considers that this type of criminal behaviour is most effectively dealt with by a central organisation - hence the IMLT scheme being run in Birmingham.

Policy Overview Committee comments

None at this stage.

3. INFORMATION

Supporting Information

3.1 The primary legislation governing the consumer credit industry is the Consumer Credit Act 1974. This is enforced by the Trading Standards Service in each local authority area. The Act is based on a licensing system and all consumer credit and consumer hire businesses operating in the United Kingdom (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. Illegal money lending occurs where a person is lending money without the appropriate licence or in breach of any conditions attached to a licence.

3.2 To operate a consumer credit business without being licensed is a criminal offence and carries a maximum penalty of £5000 and/or up to two years' imprisonment. Licences can be revoked where it can be established that the licensee has acted inappropriately.

3.3 Illegal money lending covers a range of activities, from persons that are actually licensed but are acting unlawfully, to the extreme of persons 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 that borrowers face demands for 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.

3.4 Loan sharks do not respect local authority boundaries. Therefore, the most efficient way to tackle these crimes is by teams who can operate across authorities and who are not restricted to a small geographical area.

3.5 In 2007, the prevalence of this type of crime and the inability of individual local authorities to tackle it was recognised by the then Department for Business, Enterprise and Regulatory Reform, (now the Department for Business Innovation and Skills. (BIS)). BERR provided funding to establish a number of regional teams whose only purpose was to tackle illegal money lending. A team was set up in London covering all the London boroughs. In 2010, the London Team successfully prosecuted a loan shark based in Hayes.

3.6 In 2011, BIS restructured the project to a “three national teams” model and provided a total of £5.2m to the 3 teams. The England team is hosted by Birmingham City Council (BCC) and provides a resource to investigate illegal money lending across England. The team operates a “parachute in and out model”, with a local presence through regional officers.

3.7 The IMLT carries out investigations into illegal money lending activities which result in loan sharks being imprisoned not just for illegal money lending, but also blackmail, fraud and money laundering. Often the types of offences dealt with are complex and costly in terms of officer time and legal counsel.

3.8 Since April 2012, the IMLT has identified 32 illegal lenders operating in London. Recent successes in London include a loan shark in Havering imprisoned for 3 years, one in Croydon jailed for 8 months and persons arrested in Southwark, Westminster and Fulham. Quarterly national newsletters and monthly London performance monitoring information are produced. The IMLT Manager also attends all quarterly LoTSA (London Trading Standards Authorities) meetings, where he provides updates on the team’s activities and responds to questions.

3.9 Any prosecutions resulting from investigations carried out by the IMLT within the London Borough of Hillingdon will be undertaken by Birmingham City Council who will not charge the London Borough of Hillingdon as they are funded by Central Government. Where appropriate, action under the Proceeds of Crime Act will be pursued. Any assets recovered through this course of action will remain with the IMLT and will be used to fund initiatives to raise awareness amongst communities of the dangers of using loan sharks, to support victims and to help with access to other forms of credit.

3.10 Delegation

3.10.1 In order for the IMLT to be able to operate within the London Borough of Hillingdon, it is necessary to formally delegate functions to carry out investigations etc under the Consumer Credit Act and to prosecute any matters arising from these investigations. The form of delegation is at Appendix 1.

3.10.2 The operating protocol at Appendix 2 sets out the processes and practices that will be followed by the IMLT and the respective rights and obligations of the IMLT and the London Borough of Hillingdon.

3.10.3 The protocol encourages the exchange of information and a working partnership approach between the IMLT and Hillingdon Trading Standards. It also allows for the delegation to be withdrawn at any time.

3.10.4 One hundred and eighty local authorities (out of a possible 210) have signed the delegation and protocol with BCC since the inception of the England Team in 2011.

3.10.5 This delegation does not prevent Hillingdon Council's Trading Standards Team from undertaking the function.

3.10.6 Officers have attempted to negotiate the terms of the protocol and sought amendments from BCC. In particular, officers sought legal indemnities from BCC so that in the event that any claims arose against LBH from the exercise of the delegated legal powers, BCC would be entirely responsible. However, BCC have declined to agree to the amendments sought. The Manager of the IMLT explained that the protocol is written as it is in order that his team could move quickly when necessary, to enable suspects to be charged immediately in order to ensure that bail conditions or remand were options. The alteration would place constraints on the team's method of working which would be unacceptable.

Financial Implications

None

4. EFFECT ON RESIDENTS, SERVICE USERS & COMMUNITIES

What will be the effect of the recommendation?

Allowing the England IMLT to operate within the London Borough of Hillingdon will offer additional protection to residents, particularly the most vulnerable who may be struggling in difficult financial circumstances. Currently, there is no such protection available.

Tackling loan sharks is a specialist enforcement activity, requiring specific skills and knowledge that are not available within Hillingdon Trading Standards Service. The seriousness and complexity of the crimes, together with their cross-boundary nature, mean that it would not be feasible or efficient for these skills to be developed in-house.

Consultation Carried Out or Required

Where the IMLT have carried out investigations within London Boroughs, the Trading Standards Managers have reported a positive experience.

5. CORPORATE IMPLICATIONS

Corporate Finance

Corporate Finance has reviewed this report and confirms that there are no direct financial implications arising from the recommendation above. As the work of the England Illegal Money Lending Team, hosted by Birmingham City Council, is funded directly from Central Government the delegation of powers does not require transfer of resources.

Legal

Under s.101 (1) (b) of the Local Government Act 1972 the Council can arrange for any of their functions to be discharged by another local authority as long as there is a valid scheme of delegation in place. This report recommends that such a scheme of delegation be implemented.

Part 11.04 of the constitution allows the Council to delegate functions to another authority and states that;

"The Council and/or the Cabinet may delegate functions to another local authority and undertake functions delegated to it by another local authority."

It is therefore legitimate for Cabinet to authorise the proposed delegation of powers to Birmingham City Council.

In order to protect the Council's interests, it is advisable that amendments to the standard form protocol are made. Examples are:

1. An obligation on BCC to keep LBH briefed about all investigations in Hillingdon. At present, the protocol allows BCC to refuse disclosure where there is a significant risk that disclosure may jeopardise a case.
2. An obligation on BCC to cease investigations/prosecutions upon request by LBH. At present LBH only have a power to withdraw the entire delegation. If court proceedings were in motion when LBH withdrew its delegation, LBH would have to assume conduct of all prosecutions and would therefore take on all liability for such prosecutions.
3. An obligation on the part of BCC to indemnify LBH against any losses or costs arising as a result of BCC exercising any of LBH's statutory powers. At present the protocol only says that the exercise of the delegated powers will be "at no cost to LBH" and that "BCC shall be liable for the actions and competence of the persons employed within the IMLS". It is not clear from the wording whether this would require BCC to reimburse LBH if any claims were made against LBH as a result of BCC exercising these powers. Ideally the wording should be strengthened and clarified.

It is understood that BCC have declined to agree to any of the suggested amendments. It is therefore recommended that Cabinet authorise officers to make a further attempt to amend the protocol before signing. In particular, point 3 above would be a desirable amendment and would provide financial protection to the Council without compromising BCC's operational efficiency.

6. BACKGROUND PAPERS

NIL.